

SOAH DOCKET NO. 453-04-4401.M5
TWCC MDR NO. M5-03-2759-01

CARL M. NAEHRITZ, III, D.C.,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
TWIN CITY FIRE INSURANCE	§	
COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Carl M. Naehritz, III, D.C. (Petitioner) challenged the Findings and Decision of the Texas Workers' Compensation Commission (Commission) acting through Maximus, an Independent Review Organization (IRO), finding physical therapy treatments were not medically necessary for the treatment of injured worker ____, Claimant.

After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that Twin City Fire Insurance Company (Respondent) is not liable for reimbursing Petitioner for the physical therapy treatments.¹

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY.

The hearing convened on October 5, 2004, with State Office of Administrative Hearings ALJ Stephen J. Pacey presiding. Petitioner appeared Respondent appeared through its attorney, W. Jon Grove. The hearing concluded October 5, 2004, and after allowing the parties additional time to file more documentation, the record closed October 12, 2004. Neither party objected to notice or jurisdiction.

II. DISCUSSION

On ____, Claimant suffered a work related injury when a doughnut tray fell on Claimant's head, knocking her to the floor, where she hit her head and lower back. Claimant had been treated by a number of doctors when Petitioner first examined her on July 29, 2002. Petitioner's diagnoses was post-concussion syndrome, post-traumatic cervical syndrome, and post-traumatic lumbar radicular syndrome. Petitioner primarily provided passive modalities from July 29, 2002, to May 30, 2003. The majority of office visits consisted of an office visit, joint mobilization, myofascial release,

¹ Date of service in dispute are July 29, 2002, through May 30, 2003. The modalities denied were office visits with manipulations, hot or cold packs, electrical stimulation, myofascial release, joint mobilization, range of motion measurements manual traction, foot insert, neuromuscular stimulator, miscellaneous supplies, durable medical equipment, therapeutic activities, functional capacity examination, manipulations, X-rays, and phone consultations.

Therapeutic activities and manipulations.² According to Michael A. Booth, D.C., only the therapeutic activities were active modalities.³

Respondent denied payment on the basis that the services were not medically necessary one-and-one-half years post-injury. Petitioner asserted that the treatments were medically necessary to relieve pain. Petitioner filed a medical dispute, and the IRO concluded the treatments were not medically necessary.

III. EVIDENCE AND DECISION

A. Doctor's Reports

On January 11, 2002, Charles Collins, D.C., evaluated Claimant to be at maximum medical improvement on November 14, 2001, with 0% impairment. At the time of the evaluation, Dr. Collins was Claimant's treating doctor.

On February 19, 2002, John A. Kern, M.D., conducted an independent medical evaluation. Dr. Kern reported that Claimant's MRI showed a normal cervical spine, and it indicated that Claimant had a 3 millimeter disc protrusion at L5-S1. Dr. Kern also reported that Claimant had a negative CT scan of the head. In Dr. Kern's opinion, the physical findings in Claimant's neck are inconsistent with her cervical spine MRI and may suggest symptom magnification. He also reported that he detected no evidence of radiculopathy.

On October 1, 2002, Brian Peragotti, D.C., conducted a peer review. He determined that passive modalities should not be considered medically necessary after August 15, 2002, unless there was proper documentation. He also reported that Claimant should begin a return to work program such as work conditioning or work hardening.

On February 13, 2003, Larry Kjeldgaard, D.O., reported that Petitioner should place Claimant at MMI and generate an impairment rating. According to Dr. Kjeldgaard, additional physical therapy would not provide a substantial amount of relief to Claimant.

The Commission's designated doctor, Paul L. Patrick, D.O. reported on April 8, 2003, that he determined Claimant reached Maximum Medical Improvement (MMI) on March 28, 2003, with an impairment rating of 5%.⁴

B. Petitioner's Evidence and Assertions

² Respondent's Exhibit 2, at pages 21-65.

³ Dr. Booth testified for Respondent.

⁴ Dr. Patrick defined MMI as the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated.

Petitioner testified that his services were medically necessary 18 to 30 months post-injury because Claimant suffered from chronic pain and his therapy helped relieve her pain.⁵ Petitioner also indicated that Dr. Patrick's MMI impairment rating was incorrect. Petitioner asserted that the impairment rating should have been 15%. Petitioner said that Dr. Patrick failed to recognize the significant signs of lumbosacral radiculopathy,⁶ which were verified by electro-diagnostic studies.⁷ Petitioner claimed that Dr. Patrick and others incorrectly diagnosed Claimant's injury, consequently the symptoms of pain were not considered by Respondent and some of the doctors. Petitioner concluded that he was treating Claimant's pain and spasms, and the documentation provided demonstrated that the patient needed continued chiropractic care one-and one-half years post-injury.

Scott Wallace, D.C., testified for Petitioner. Dr. Wallace testified that Claimant had mild brain atrophy and this condition slows the healing process. He said that this condition, coupled with her head injury, definitely slowed Claimant's healing. Dr. Wallace concluded that Dr. Patrick's MMI and impairment record were flawed, that the documentation properly supported the disputed services, and that the disputed services were medically necessary.

C. Respondent's Evidence and Assertions

Respondent contended Claimant underwent physical therapy previously and that Petitioner's chiropractic services commencing about 18 months post-injury and continuing to approximately 30 months post-injury were medically unreasonable and/or medically unnecessary. Respondent argued that Dr. Peragotti's peer review indicated that unless properly documented, passive modalities were not medically necessary after August 15, 2002. Noting that most of the services billed were passive modalities, Respondent asserted they were properly denied. Respondent indicated that the documentation provided, if any, did not demonstrate that Claimant needed continued chiropractic care.

Respondent argued that Petitioner before commencing chiropractic services, knew or should have known of Dr. Collins' and Dr. Kern's Claimant's previous medical opinions. According to Respondent, both Dr. Collins and Dr. Kern indicated that further chiropractic services were not needed. Dr. Collins, Claimant's treating doctor, placed her at MMI on November 14, 2001 with 0% impairment. Dr. Kern reported that the cervical spine was normal, a CT scan of her head was negative, and no evidence of radiculopathy. Dr. Kern also reported that Claimant may magnify her symptoms. Respondent also pointed out that on February 13, 2003, Dr. Kjeldgaard's report opined that additional physical therapy would not provide relief to Claimant.

Michael A. Booth, D.C., testified for Respondent. Dr. Booth said that Claimant's injury was a 3mm disc protrusion. He indicated that this condition should resolve itself within six to eight

⁵ This is the fundamental issue in this case. Respondent claims that Petitioner's services were not medically necessary 18 to 30 months years post-injury.

⁶ Radiculopathy is a disease of the nerve roots. More particularly, it is compression causing encroachment upon the small spinal canal resulting in neural disorders of the lower limbs. *Dorland's Illustrated Medical Dictionary*. 28th Edition, 1994.

⁷ Benefit Contested Case Hearing was held on October 16, 2003. The hearing officer concluded that Dr. Patrick's 5% impairment rating was correct.

Weeks. In Dr. Booth's opinion, the disc certainly would have retracted in one-and-one-half year. For this reason, he argued that none of the disputed services were medically necessary. He said that the tests conducted by the Petitioner that indicated a contrary conclusion were flawed. Dr. Booth opined that the tests were self-limiting and not objective. He said the tests were controlled by Claimant. He concluded that after 18 months post-injury, none of the chiropractic services were medically necessary.

Respondent concluded by arguing that the services were either unreasonable and/or unnecessary and that the documentation did not indicate the chiropractic services were medically necessary.

C. Analysis.

Petitioner was sincere and credible. He asserted that his chiropractic services were intended to reduce Claimant's pain, but the evidence does not support his belief. There was evidence that Claimant's pain became worse from session-to-session.⁸ Petitioner never changed Claimant's therapy regimen, which primarily consisted of office visits, joint mobilization, myofascial release manipulations, and therapeutic exercises. Other than therapeutic exercises, all the modalities were passive. Dr. Peragotti reported that passive modalities were not medically necessary unless there was documentation of medical necessity. There was no such documentation except for Petitioner's claim that the therapies reduced Claimant's pain.

Before commencing therapy, Petitioner either did not review or did not consider the previous doctors' reports. Dr. Kern suggested symptom magnification, and Dr. Collins evaluated Claimant at MMI in 2001. During Claimant's therapy, at least three doctors suggested that physical therapy would not provide a substantial amount of relief to Claimant.

The Claimant did not have radiculopathy. Before Petitioner performed physical therapy, the independent medical evaluation concluded that Claimant did not have radiculopathy. Dr. Patrick, the designated doctor, said that Claimant's MRI was not consistent with Petitioner's testing, and the MRI revealed no evidence of radiculopathy. The contested Benefit Review supported Dr Patrick's conclusion. Respondent's witness, Dr. Booth suggested that the 3mm disk protrusion should have retracted within six to eight weeks, and certainly would have retracted in one and one-half years.

Petitioner failed to prove the medical necessity of the chiropractic services. The services were performed one-and-one-half years post-injury. Based upon the credible evidence in the record The ALJ concludes the services rendered were not medically necessary. Therefore, Petitioner is not entitled to reimbursement for the treatments from July 29, 2002 through May 30, 2003.

IV. FINDINGS OF FACT

1. ____ (Claimant) suffered a work related injury on ____, when a doughnut rack fell, knocking her to the floor where she injured her back and head.

⁸ Respondent's Exh. 1, at page 59.

2. Claimant had been treated by a number of doctors when Petitioner first examined her on July 29, 2002. Petitioner's diagnoses was post-concussion syndrome, post-traumatic cervical syndrome, and post-traumatic lumbar radicular syndrome.
3. Claimant's primary injury was a 3mm disk bulge at L5-S1, which should have resolved itself six to eight weeks after the injury.
4. Petitioner primarily provided passive modalities from July 29, 2002, to May 30, 2003.
5. The majority of the chiropractic services were office visits, joint mobilization, myofascial relief, therapeutic activities, and manipulations.
6. The medical need for passive modalities was not documented.
7. Petitioner's chiropractic services were performed 18 to 30 months post-injury.
8. Petitioner's chiropractic service conducted 18 to 30 months post-injury were neither medically necessary or reasonable.
 - a. Absent an exacerbation, which was not present, chiropractic services conducted one-and-one-half years post injury can not reasonably be expected cure or relieve Claimant's symptoms.
 - b. At the time of the chiropractic services, Claimant did not have radiculopathy.
 - c. Petitioner's documentation neither indicated improvement in Claimant condition, nor did it indicate a need for the services.
9. Respondent denied reimbursement for physical therapy treatments from July 29, 2002, through May 30, 2003, as not medically necessary.
10. The Texas Workers' Compensation Commission (Commission) acting through Maximus, an Independent Review Organization (IRO), found that the physical therapy treatments provided by Petitioner were not medically necessary for the treatment of Claimant.
11. Petitioner timely requested a hearing before the State Office of Administrative Hearings (SOAH).
12. The hearing convened on October 3, 2004, with State Office of Administrative Hearings ALJ Stephen J. Pacey presiding. Petitioner appeared *pro se*. Respondent appeared through its attorney, W. Jon Grove. The hearing concluded and the record closed October 12, 2004.

V. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act, specifically TEX. LABOR CODE ANN. §413.031(k), and TEX. GOV'T CODE ANN. ch. 2003.

2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.
3. The request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE § 148.3.
4. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Petitioner has the burden of proof in this matter. 28 TEX. ADMIN. CODE §§ 148.21(h) and 133.308(w).
6. The physical therapy treatments provided by Petitioner to Claimant from July 29, 2002, through May 30, 2003, were not medically necessary.

ORDER

THEREFORE IT IS ORDERED that Twin City Fire Insurance Company is not required to reimburse Carl M. Naehritz, III., D.C., for charges associated with physical therapy treatments provided to injured worker ____ from July 29, 2002, through May 30, 2004.

SIGNED December 10, 2004.

**STEPHEN J. PACEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**