

SOAH DOCKET NO. 453-04-4569.M5
TWCC MR NO.M5-04-0153-01

DON A. SAYLER, D.C.,
Petitioner

V.

THE TRAVELERS INDEMNITY COS.,
Respondent

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. INTRODUCTION

After an Independent Review Organization (IRO) reviewer determined chiropractic and physical medicine treatment was not medically necessary for a workers' compensation claimant, Don A. Sayler, D.C. (Provider) appealed. Based on the record, the Administrative Law Judge (ALJ) finds the evidence did not establish the medical necessity of services provided from September 19, 2002, through December 27, 2002.

The hearing convened on July 8, 2004. The Provider appeared *pro se*, and attorney Steve Loomis represented Travelers Indemnity Company (Carrier). After some of the evidence was taken, the hearing adjourned to July 20, 2004, when the hearing concluded and the record closed.

II. DISCUSSION AND ANALYSIS

As reflected in the Findings of Fact and Conclusions of Law, the claimant sustained for a work-related injury on _____, that was diagnosed as a mild-to-moderate herniation in the central-to-left area of the L4-5 disc. She was injured while vacuuming with a heavy-suction vacuum as she used her legs to hold down the carpet that was being lifted by the vacuum. When first injured, the claimant was unable to walk. However, after being treated by the Provider and with the aid of a TENS unit, she was able to return to light-duty work four days later. A March 1997 functional-

capacity evaluation indicated that the claimant could work at a light-duty level without other restrictions. In July 1997, she was released for full-duty work.

During the rest of 1997 through 1999, the claimant was treated, as needed, by the Provider. But, she saw him only once in 2000. Then, she began making periodic visits for treatment in 2001 and 2002, and had 25 treatments during the last quarter of 2002.

The record includes no orthopedic evaluation, MRI, or neurological studies after 1997. For the service dates in question, there is no specific evaluation of exacerbation or re-injury other than a notation that states, static w/exacerbation. The claimant received treatment not only in the lumbar area but also for cervical and thoracic conditions that appear to be unrelated to her compensable injury.

The claimant testified that the Provider's care relieved her symptoms and enabled her to continue working. However, the record does not contain sufficient evidence linking the ___ work-related injury to the twenty-five treatment dates during the last quarter of 2002. The ALJ agrees with the IRO and finds that without an intervening orthopedic or neurological evaluation, the evidence does not establish that the 2002 treatments were reasonably required by the nature of the ___ injury.

III. FINDINGS OF FACT

1. On _____, the claimant sustained a work-related injury that resulted in a mild-to-moderate herniation in the central-to-left area of the L4-5 disc.
2. After her injury, the claimant was treated with chiropractic care, and using a TENS unit, was able to return to light-duty work on February 2, 1997.
3. By March 14, 1997, the claimant could work at a light-demand level without restrictions.
4. The claimant returned to full-duty work in July 1997.
5. Thereafter, the claimant received chiropractic care, as needed, through 1999.

6. In 2000, the claimant was treated only once with chiropractic care.
7. Without receiving an intervening orthopedic evaluation or any diagnostic testing, the claimant again began receiving chiropractic treatment in 2001 and 2002.
8. The treatments the claimant received in 2001 and 2002 included manipulations and passive modalities.
9. With the goal of treating ongoing pain and discogenic symptoms, the Provider used chiropractic manipulations, electrical stimulation, and manual and mechanical traction to treat the claimant.
10. Ongoing pain and discogenic require reassessment and evaluation if conditions persist beyond conservative care.
11. There was no evidence of an exacerbation or re-injury that precipitated the 2001 and 2002 visits.
12. During the disputed service dates, September 19, 2002, through December 27, 2002, the claimant received chiropractic treatments for cervical and thoracic conditions that were unrelated to her workers' compensation injury.
13. For the chiropractic and related services provided on the disputed service dates, the Provider billed \$4,137.00, but it is unclear from the record what the maximum allowable reimbursement is for them.
14. Characterizing the treatments as not medically reasonable or necessary, the Carrier denied reimbursement for the services.
15. The IRO found that treatment on the disputed service dates was not supported by documentation, and the medical necessity for the level, frequency, and duration of care for compensable conditions was not supported by the Provider's rationale.
16. Petitioner timely requested a hearing before the State Office of Administrative Hearings (SOAH).
17. Notice of the hearing was sent to both parties on April 28, 2004.

18. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
19. The hearing convened on July 8, 2004, and both parties were represented. The hearing concluded and the record closed on July 20, 2004.

IV. 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. ' ' 402.073(b) and 413.031(k), and TEX. GOV ' T CODE ANN. ch. 2003.
2. The hearing request was timely made pursuant to 28 TEX. ADMIN. CODE ' 148.3.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV ' T CODE ANN. ' ' 2001.051 and 2001.052.
4. The Provider had the burden of proof in this matter. 28 TEX. ADMIN. CODE ' 148.21(h).
5. There was insufficient evidence to prove that the Provider's chiropractic services from September 19, 2002, to December 27, 2002, were reasonably required for treatment of the work-related injury, as provided in TEX. LABOR CODE ANN. ' 408.021(a),

ORDER

THEREFORE IT IS ORDERED that the Provider's appeal and reimbursement request for services provided September 19, 2002, to December 27, 2002, are denied.

SIGNED September 17, 2004.

**SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**