

**SOAH DOCKET NO. 453-04-5710.M5  
TWCC MDR NO. M5-03-2661-01**

<b>JERRY L. ORSBURN, D.C.</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
<b>vs.</b>	§	<b>OF</b>
	§	
<b>LIBERTY MUTUAL FIRE INSURANCE COMPANY</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

The issue involved is whether Liberty Mutual Fire Insurance Company (Carrier) correctly denied payment of \$3,410 billed by Jerry L. Orsburn, D.C. (Provider) for therapeutic procedures, myofascial release, and office visits provided to an injured worker (Claimant) from April 28 through May 21, 2003. Carrier challenged the medical necessity of the treatment, but Provider contended the Claimant's condition improved, showing that the services were necessary and reasonable. The Administrative Law Judge (ALJ) finds Provider failed to establish the medical necessity for the disputed services, and is therefore not entitled to reimbursement.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

On October 7, 2004, ALJ Georgie B. Cunningham conducted the hearing on the merits at the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas. Attorney Kevin J. Franta represented Carrier, and Provider appeared. The parties did not contest jurisdiction or notice. Therefore, those issues are addressed in the findings of fact and conclusions of law without discussion. The ALJ closed the hearing on October 7, 2004, following the presentation of evidence.

**II. DISCUSSION**

At the hearing, Carrier presented the telephonic testimony of Thomas D. Sato, D.C., and Provider testified in his own behalf. Both parties presented documentary evidence. According to the documentary evidence, Claimant had a compensable shoulder, elbow, and neck injury on January 28, 2003. Provider treated Claimant from January 29 through May 21, 2003. At issue here are the claims for myofascial release, therapeutic procedures, and office visits from April 28 through May 21, 2003.

The evidence establishes that Claimant needed rehabilitation services, and it is commendable that Provider helped Claimant recover so quickly. However, Provider failed to show that Claimant needed ongoing treatment after April 28, 2003. Both the subjective assessments Claimant provided and Provider's evaluation on April 25, 2003, revealed that Claimant had achieved a significant reduction in pain and symptoms.

With the exception of reducing treatments from daily to three times weekly, Provider showed no attempt to gradually reduce treatment levels. For example, he did not explain why he continued to provide one-on-one physical therapy to a patient where no safety issues or regimen changes were documented. Neither did Provider establish why he needed to schedule detailed office visits with each treatment when he had already evaluated Claimant and established a treatment protocol.

Furthermore, Provider failed to show why he had not instructed Claimant in performing home exercises or changed Claimant's treatment modalities as he improved.

The ALJ agrees with the IRO reviewer and the Carrier's peer reviewer and expert witness that Provider's treatment went beyond the established standards of chiropractic care without the necessity of continued treatment being demonstrated. The reasoning is set forth in more detail in the findings of fact herein.

### **III. FINDINGS OF FACT**

1. On\_\_\_\_, Claimant suffered a compensable workers' compensation injury to his right shoulder and elbow, neck, and upper back when he was uncrating a tractor.
2. Jerry L. Orsburn, D.C. (Provider) treated Claimant for his work-related injury from January 29 through May 21, 2003.
3. Liberty Mutual Fire Insurance Company (Carrier) denied payment for the therapeutic procedures, office visits, and myofascial release Provider furnished Claimant from April 28 through May 21, 2003.
4. Provider requested medical dispute resolution based on Carrier's denial.
5. On August 5, 2003, the Independent Review Organization (IRO) determined that the treatments were not medically necessary.
6. On March 30, 2004, the Medical Review Division of the Texas Workers' Compensation Commission (Commission) issued its decision based on the IRO determination that Provider had not prevailed on its claims.
7. On April 21, 2004, Provider requested a hearing on this matter before the State Office of Administrative Hearings (SOAH).
8. On May 20, 2004, the Commission sent a hearing notice advising the parties of the matters to be determined; the right to appear and be represented by counsel; the date, time, and place of the hearing; and the statutes and rules involved.
9. Both Provider and Carrier were represented at the hearing conducted on October 7, 2004.
10. Following an evaluation on January 29, 2003, Provider determined that Claimant had a rotator cuff sprain/strain, bicipital tenosynovitis, and cervical intervertebral disc displacement without myelopathy.
  - a. Claimant reported pain level of eight on a one-to-ten scale, a "pins and needles" sensation in his right fingers, sleep interference from the pain, difficulty turning his head from one side to the other and up and down, and an impaired ability to work and engage in daily living activities.
  - b. Provider implemented a daily treatment plan involving passive and active therapies and chiropractic spinal manipulations.

11. Provider reevaluated Claimant on February 27, 2003.
  - a. Claimant rated his pain level as two on a one-to-ten scale and reported having sharp pain in his right shoulder, difficulty reaching or carrying heavy objects with his right arm, difficulty turning his head, sleep interruption, and limited ability to work and engage in recreational activities.
  - b. Provider decided to continue the same daily treatment plan for four weeks.
  
12. Provider reevaluated Claimant on March 28, 2003.
  - a. Claimant rated his pain level on a one-to-ten scale as one in his right shoulder and neck, between zero and one in his right elbow, and three for an occasional headache.
  - b. Claimant did not report any other complaints.
  3. Claimant's daily living activities and functional abilities were improving and his sleep cycle was nearly normal.
  4. Claimant reported that the occasional numbness and tingling sensations in his right hand had "mostly" resolved.
  5. Claimant contended his occasional numbness and tingling sensations were made worse by working, reaching overhead with his right arm, attempting to lift or carry heavy objects with his right arm, and bending his head forward or from side to side.
  6. Provider concluded he should continue to treat Claimant three to four times weekly for four weeks using the same modalities.
  
13. Provider reevaluated Claimant on April 25, 2003.
  1. Claimant rated his right-shoulder and elbow, neck, and upper back pain as one on a zero-to-ten pain scale.
  2. Claimant's headaches, numbness and tingling sensations in his right hand, sleep interference, and problems with daily living activities had resolved.
  3. Claimant still had neck and upper back stiffness and a "shooting" pain in his right shoulder and elbow.
  4. Claimant's range of motion had increased and his strength had returned to normal.
  5. Claimant's neck movements had improved, but he experienced mild aggravation with certain movements.
  6. Claimant had no indication of radicular problems.

7. Provider concluded he should continue to treat Claimant three times per week for four weeks using the same treatment modalities.
14. Chiropractic guidelines indicate that a doctor should generally use two-week trials of care for two primary reasons: (a) to determine a patient's progress and necessary treatment and (b) to avoid over-treatment that might lead to illness conviction, disability mind set, and chronic complaints of pain.
15. Provider did not implement trial reductions in care to determine actual progress and the stability of the patient.
16. Provider did not have Claimant perform strengthening exercises at home as chiropractic guidelines suggest.
17. Provider did not indicate what therapeutic exercises he had provided prior to April 25, 2003, or which ones he planned to provide thereafter.
18. On April 21, 2003, a peer reviewer examined documents including patient and provider information summaries, a HCFA form for March 14, 2003, Provider's office notes, the Commission's status reports, and an independent medical examination dated March 13, 2003, and had a conference call with Provider.
19. The peer reviewer could not recommend further treatment without documentation supporting medical necessity.
20. Provider did not demonstrate Claimant's need to have one-on-one therapy continued.
21. Provider did not demonstrate that Claimant had special safety needs or difficulty understanding the implementation of the program.
22. Provider did not demonstrate Claimant's symptom response to physical therapy or any progression in the program.
23. Claimant repeated the same exercises each session without progressing to more challenging exercises.
24. Provider did not demonstrate why Claimant needed a detailed office visit each time he was treated.
25. Provider did not document objective findings in the detailed office visits.

#### **IV. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 413.031.

2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073 and 413.031(k), and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided to the parties in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Provider had the burden of proving he was entitled to reimbursement for the claims for treating Claimant from April 28 through May 21, 2003, pursuant to 28 TEX. ADMIN. CODE § 148.21(h) and (i).
5. Based on the findings of fact, Provider failed to show the treatment he provided Claimant after April 28, 2003, was medically necessary, as specified in TEX. LAB. CODE ANN. 408.021.

### **ORDER**

IT IS, THEREFORE, ORDERED that Provider Jerry L. Orsburn is not entitled to reimbursement from Liberty Mutual Fire Insurance Company for the chiropractic services provided from April 28 through May 21, 2003.

**SIGNED December 7, 2004.**

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**GEORGIE B. CUNNINGHAM  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**