

DOCKET NO. 453-04-5856.M5
TWCC MDR NO. M5-03-2285-01

AMERICAN HOME	§	BEFORE THE STATE OFFICE
ASSURANCE COMPANY	§	
<i>PETITIONER</i>	§	
	§	
V.	§	OF
	§	
SCD BACK AND JOINT CLINIC	§	
<i>RESPONDENT</i>	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. SUMMARY

American Home Assurance Company (Carrier) asserts that the disputed services, including office visits, therapeutic exercises, myofascial release, electrical stimulation, joint mobilization, and testing, performed from May 13, 2002, through August 16, 2002 (totaling \$7,061.00) were not medically necessary. The Independent Review Organization (IRO) found that the disputed services were medically necessary. The Carrier paid SCD Back and Joint Clinic (Provider) and appealed the IRO's decision. The Administrative Law Judge (ALJ) finds the disputed services were medically necessary.

II. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On October 21, 2004, ALJ Lilo D. Pomerleau convened the hearing at the William P. Clements Building, 300 West 15th Street, Austin, Texas. Carrier appeared through its attorney, Peter Macaulay. Provider appeared through its attorney, William Maxwell. After the evidence was presented, the record closed that same day.

III. BACKGROUND, EVIDENCE, AND DISCUSSION

1. Background

On ____, Claimant ____, suffered a work-related injury. Claimant caught his left foot between the wheel on a pallet jack, crushing his left ankle; a subsequent x-ray indicated no injury to the bone. Claimant was diagnosed with posterior tibial tendonitis left foot. An MRI dated March 13, 2002, indicated "increased fluid in the sheath about the tibialis posterior tendon, compatible with tendonitis . . . impression: posterior tibial tenosynovitis."¹ The MRI revealed no bony or soft tissue pathology with the exception of mild tibialis posterior tendinitis of the left foot.² The treating doctor, Dalton Heath, M.D., advised Claimant to continue physical therapy and

¹ Carriers Ex. 1 at 126.

² *Id.* at 127.

concluded that he could not “diagnose any injury that is of significance to the patient’s left foot.”³

Claimant underwent physical therapy for almost two months and also went to a podiatrist, Dimitrios Mantzoros, M.D., who injected Claimant’s ankle a number of times with cortisone, without improvement. Subsequently, Dr. Mantzoros withdrew as Claimant’s doctor. Dr. Heath also withdrew as Claimant’s doctor. On May 9, 2002, Claimant began treatments at the Back and Joint Clinic with David Bailey, D.C.

Eduardo R. Elizondo, M.D. performed a designated doctor examination on July 11, 2002. Dr. Elizondo indicated that he needed additional testing or an opportunity to review the results of a recently performed bone scan study before finding maximum medical improvement (MMI). He recommended progression to a gait training and progressive weight bearing regimen until the results of diagnostic tests were available for his review. If the results of these tests were normal, he indicated Claimant could be near or at MMI in about four weeks (or about August 14, 2002).⁴ The services in dispute ended on August 16, 2002.

2. Parties’ Positions and Evidence

1. Carrier’s Position and Evidence

Brad Hayes, D.C., testified on behalf of Carrier. He reviewed medical notes provided to him by Carrier, which included a number of test results and doctor reports. He was not provided and, thus, did not review the SOAH notes of the treating doctor, Dr. Bailey, taken on the disputed dates of service. Dr. Hayes testified that Claimant had a number of tests, including an MRI and X-ray, all of which showed some increased fluid in the sheath of the posterior tendon-tibialis posterior tendinitis.

According to Dr. Hayes, 95% of patients with this type of injury heal within 84 days. He found that nothing in the test reports indicated that additional services were necessary.

Carrier argues that objective findings-podiatrist reports, MRI, and bone scans-indicate a case of tendonitis, which should heal in a matter of days for the majority of patients. According to Carrier, Claimant had already undergone therapy for months-no additional therapy was needed and time should have been allowed to heal Claimant’s injury. Carrier also noted that, on May 10, 2002, Claimant had a medical evaluation (Impairment Rating) for a finger laceration. The Impairment Rating included an evaluation of Claimant’s left ankle, showing range of motion “WNL,” within normal limits, and “G,” good strength.⁵ Again, Claimant argues that objective test results fail to support a need for the services, testing, and treatments in dispute.

2. Provider’s Position and Evidence

The treating doctor, David Bailey, D.C., testified on behalf of Provider. In his initial evaluation of Claimant on May 9, 2002, he diagnosed Claimant with tarsal tunnel syndrome (an

³ *Id.*

⁴ *Id.* at 155-156.

⁵ Carrier’s Ex. 1 at 138-139.

irritation of the nerves of the foot); left ankle sprain/strain (soft tissue injury); and tibialis tendonitis (inflammation of the tendon). He testified that the disputed treatments and services relieved the effects naturally resulting from the compensable injury.

Dr. Bailey disagreed with Dr. Hayes' use of statistics. Dr. Bailey suggested that while statistics provide data, a treating physician must look at the individual. More over, he opined that, while all patients may heal in time, unless a patient is treated professionally, the quality of the healing may be poor. As a treating doctor, he relied on Dynatron testing to measure the functional status of Claimant's ankle. Dr. Bailey testified that the Dynatron machine objectively measures the Claimant's strength; use of the machine correlates the patient's complaints with objective testing. On May 9, 2002, the Dynatron tests revealed impairment in the left ankle.⁶

3. ALJ's Analysis

The burden of proof in this matter rests on Carrier. While the ALJ found compelling Carrier's argument that most patients with a similar soft issue injury heal in less than three months, Provider showed sufficient evidence that Claimant's injury persisted beyond this time frame. In particular, objective Dynatron testing dated May 9, 2002, indicated moderate to marked loss of strength in the left ankle and a designated doctor examination on July 11, 2002 (after the disputed services began) confirmed that further services (gait training and progressive weight bearing exercises) were reasonable and Claimant had not reached MMI. Dr. Bailey's SOAH notes sufficiently tracked the treatments, Claimant's pain levels, and improvement over the course of the period in dispute.

On the other hand, the ALJ gave less weight to the May 10, 2002 designated doctor report touted by Carrier because that medical evaluation concerned an injury to Claimant's finger. While such report indicated that the doctor evaluated a number of other body parts (including trunk, shoulder, elbow, forearm, wrist, hip, knee, and ankle) and the report indicated "G" in all categories, the focus of the evaluation was on Claimant's finger.⁷ Finally, Dr. Hayes did not review and did not offer an opinion on Dr. Bailey's SOAH notes.

Accordingly, the ALJ finds Provider's services from May 13, 2002, through August 16, 2002, were medically necessary.

IV. FINDINGS OF FACT

4. On ____, Claimant ____ (Claimant) suffered a work-related injury. Claimant caught his left foot between the wheel on a pallet jack, crushing his left ankle with a pallet.
5. At the time of the injury, Claimant's employer had workers' compensation insurance through American Home Assurance Company (Carrier).
6. An MRI dated March 13, 2002, revealed no bony or soft tissue pathology with the exception of mild tibialis posterior tendinitis of the left foot.

⁶ Provider's Ex. 3 at 8.

⁷ Carrier's Ex. 1 at 138-140.

7. Before beginning his treatments with Dr. Bailey, Claimant underwent multiple steroid injections and was given medication for management of his pain.
3. On May 9, 2002, David Bailey, D.C., began to treat Claimant and diagnosed him with tarsal tunnel syndrome-left ankle; left ankle sprain/strain; and tibialis tendonitis.
5. On May 13, 2002, through August 16, 2002, Dr. Bailey treated Claimant with therapeutic exercises, myofascial release, joint mobilization, analgesic balm, and had Claimant undergo several muscle tests.
6. On July 11, 2002, Eduardo R. Elizondo, M.D., performed an impairment evaluation and found Claimant not to be at maximum medical improvement and recommended progression to a gait training and progressive weight bearing regimen.
7. Throughout Dr. Bailey's treatment, Claimant continued to complain of significant pain and was unable to work.
8. Claimant's condition improved with Dr. Bailey's treatment.
9. The chiropractic care received by Claimant from May 31, 2002, through August 16, 2002, was medically necessary to treat his chronic pain and swelling in his left ankle.
10. On March 11, 2004, an Independent Review Organization (IRO) found that the chiropractic care was medically necessary.
11. Carrier paid Provider for the services in question.
12. On April 28, 2004, Carrier appealed the IRO's decision.
13. The Commission sent notice of the hearing to the parties on June 7, 2004. The hearing notice informed the parties of the matter to be determined, the right to appear and be represented, the time and place of the hearing, and the statutes and rules involved.
14. The hearing was held on October 21, 2004, and the record closed the same day. Carrier appeared through its attorney, Peter Macaulay. Provider appeared through its attorney, William Maxwell.

V. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings 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.
2. Proper and timely notice of the hearing was provided to the parties in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. Pursuant to 28 TEX. ADMIN. CODE § 148.21(h), Carrier had the burden of proving by a preponderance of the evidence that the chiropractic care performed from May 31, 2002, through August 16, 2002, was not medically necessary.

4. Carrier did not prove by a preponderance that the chiropractic care performed from May 31, 2002, through August 16, 2002, was not medically necessary.
5. Based on the Findings of Fact and Conclusions of Law, the chiropractic care provided Claimant from May 31, 2002, through August 16, 2002, was medically necessary. As Carrier has paid Provider for the services in question, no additional payment is necessary.

ORDER

IT IS HEREBY ORDERED that American Home Assurance Company is not entitled to reimbursement from SCD Back and Joint Clinic for the chiropractic care performed from May 31, 2002, through August 16, 2002.

SIGNED December 8, 2004.

**LILO D. POMERLEAU
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARING**