

**SOAH DOCKET NO. 453-04-8358.M5
TWCC MR NO. M5-04-2315-01**

FIRE AND CASUALTY INSURANCE,	:	BEFORE THE STATE OFFICE
Petitioner	:	
	:	
V.	:	OF
	:	
ERIC A. VANDERWERFF, D.C.,	:	
Respondent	:	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

The issue in this case is the medical necessity of services performed for a workers' compensation claimant from November 11, 2003, through December 30, 2003. The Administrative Law Judge (ALJ) finds the services were medically necessary and orders reimbursement.

I. FACTUAL AND PROCEDURAL HISTORY

Workers' compensation claimant ____ (the Claimant) sustained a compensable injury to his lower back on _____. He was first examined by Respondent Eric A. Vanderwerff, D.C., on September 26, 2003. At his initial consultation, the Claimant complained of numbing, shooting, burning pain with some stiffness, from his left-upper back into his entire lower back area. Dr. Vanderwerff suspected a disc injury and began treating the Claimant accordingly. An MRI conducted November 24, 2003, showed several disc bulges, but no disc herniation.

Dr. Vanderwerff treated the Claimant from September 26, 2003, through December 30, 2003. Fire and Casualty Insurance, Inc. (the Carrier) declined to reimburse Dr. Vanderwerff for office visits, manual therapy, neuromuscular reeducation and therapeutic exercises performed from November 11, 2003, through December 30, 2003. Dr. Vanderwerff filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission), which referred the matter to an independent review organization (IRO). The IRO found the services to be medically necessary and ordered reimbursement. The Carrier filed a timely request for a hearing

before the State Office of Administrative Hearings (SOAH).

Before the hearing on the merits, the Carrier filed a motion for summary disposition on the ground that Dr. Vanderwerff had not requested reconsideration of the denial of reimbursement, as required by the Commission's rules. The ALJ found Dr. Vanderwerff had requested reconsideration and denied the motion in Order No. 4, issued June 15, 2005.

The hearing was held July 19, 2005, with ALJ Henry D. Card presiding. Both parties participated in the hearing and offered documents into evidence. Dr. Vanderwerff also testified. The hearing was adjourned and the record closed the same day.

Under 28 TEX. ADMIN. CODE (TAC) § 148.14(a), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. § 413.031.

II. DISCUSSION

The Carrier's evidence consisted of medical records and other documents, including three peer reviews performed by Kevin R. White, D.C. In the first two reviews, Dr. White did not have the results of the MRI. He characterized the injury as a minor sprain/strain and stated the Claimant should have been returned to work within two weeks. In the third review, performed December 16, 2003, Dr. White had the benefit of the MRI results. He acknowledged there were disc bulges at L3-4, L4-5, and L5-S1, which he characterized as mild. He stated that the Claimant was not a surgical candidate and should be discharged "with sufficient treatment that has been administered already."¹

The Carrier's documentation also included a report on surveillance it had commissioned on the Claimant. The results of the surveillance were not particularly dramatic, but did show the Claimant on November 9, 2003, had helped a friend or family member unload a barbecue grill from the rear of a vehicle.

¹ Respondent's Ex. 1, page 52.

Dr. Vanderwerff testified that the tests he had conducted on initial examination had all indicated an injury beyond a simple strain/sprain. He stated that the MRI results bore out that diagnosis, although they did not show any disc herniation. He asserted that his treatment protocol was the same even though there was no actual disc herniation. Dr. Vanderwerff testified his treatment had been medically necessary to relieve the Claimant's symptoms and promote his recovery. He observed that during the course of the treatment, the Claimant showed at least symptomatic improvement, with his subjective pain level decreasing from 8 to 5.

Dr. Vanderwerff also pointed out that the Claimant had returned to his office on November 11, 2003, after helping to unload the barbecue grill, with significantly increased pain.

The ALJ concludes the Carrier did not meet its burden of proving the services were not medically necessary. Two of Dr. White's peer reviews did not consider the MRI results because he did not have them available. The third did address those results, but the analysis was fairly cursory and did not directly address the course of treatment that Dr. Vanderwerff provided. Although the Claimant was not a surgical candidate, as Dr. White observed, that fact does not preclude continued conservative treatment. Moreover, Dr. White's final peer review is unclear on whether he considered treatment provided before December 16, 2003, when that review was written, to have been medically necessary.

The documentary evidence supports Dr. Vanderwerff's contention that the Claimant's condition was improving. Dr. Vanderwerff's testimony thoroughly presented his reasons for continuing to treat the Claimant. That reasoning was unrebutted.

The ALJ concludes the disputed services were medically necessary and orders the Carrier to reimburse Dr. Vanderwerff for them.

III. FINDINGS OF FACT

1. Workers' compensation claimant ____ (the Claimant) sustained a compensable injury to his lower back on ____.
2. The Claimant was first examined by Respondent Eric A. Vanderwerff, D.C., on September 26, 2003. At his initial consultation, the Claimant complained of numbing, shooting, burning pain with some stiffness, from his left-upper back into his entire lower back area.
3. Dr. Vanderwerff suspected a disc injury and began treating the Claimant accordingly.
4. An MRI conducted November 24, 2003, showed several disc bulges, but no disc herniation.
5. Dr. Vanderwerff treated the Claimant from September 26, 2003, through December 30, 2003.
6. Fire and Casualty Insurance, Inc. (the Carrier) declined to reimburse Dr. Vanderwerff for office visits, manual therapy, neuromuscular reeducation and therapeutic exercises performed from November 11, 2003, through December 30, 2003.
7. Dr. Vanderwerff filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission), which referred the matter to an independent review organization (IRO).
8. The IRO found the services to be medically necessary and ordered reimbursement.
9. The Carrier filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).
10. Before the hearing on the merits, the Carrier filed a motion for summary disposition on the ground that Dr. Vanderwerff had not requested reconsideration of the denial of reimbursement, as required by the Commission's rules. The ALJ denied the motion in Order No. 4, issued June 15, 2005.
11. Notice of the hearing was sent to the parties August 26, 2004.
12. The notice 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.
13. The hearing was held July 19, 2005, with ALJ Henry D. Card presiding. Both parties participated in the hearing and offered documents into evidence. Dr. Vanderwerff also testified. The hearing was adjourned and the record closed the same day.
14. Two the peer reviews conducted by Kevin White, D.C., on whose opinion the Carrier relied,

did not consider the MRI results because he did not have them available.

15. The third of Dr. White's peer reviews addressed the MRI results, but the analysis was fairly cursory and did not directly address the course of treatment that Dr. Vanderwerff provided.
16. Although the Claimant was not a surgical candidate, as Dr. White observed, that fact does not preclude continued conservative treatment.
17. Dr. White's final peer review is unclear on whether he considered treatment provided before December 16, 2003, when that review was written, to have been medically necessary.
18. The Claimant's condition improved during the course of Dr. Vanderwerff's treatment.
19. The disputed services were medically necessary.

IV. CONCLUSIONS OF LAW

20. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
21. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
22. The Carrier has the burden of proving it should not be required to reimburse Dr. Vanderwerff for the services at issue. 28 TEX. ADMIN. CODE §148.14(a).
23. The Carrier failed to carry its burden of proof.
24. The Carrier should reimburse Dr. Vanderwerff for the services in dispute.

ORDER

IT IS, THEREFORE, ORDERED that Fire and Casualty Insurance shall reimburse Eric A. Vanderwerff, D.C., for services performed for Claimant ___ from November 11, 2003, through December 30, 2003, plus interest as applicable.

SIGNED September 15, 2005.

**HENRY D. CARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**