

TEXAS MUTUAL INSURANCE
COMPANY,
Petitioner

V.

ANGELA UPCHURCH, D.C.,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Texas Mutual Insurance Company (Carrier) appealed the Findings and Decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC) that it pay Angela Upchurch, D.C. (Provider) for chiropractic treatment and related services provided to an injured worker (Claimant). Carrier disputes the IRO's conclusion that these services were medically necessary. The Administrative Law Judge (ALJ) concludes that Carrier has not met its burden of proof with respect to certain services in dispute provided to Claimant between May 19, 2003, and June 11, 2003,¹ but finds that Carrier has met its burden of proof with respect to the medical necessity of other services provided to Claimant.² Thus, Provider should be reimbursed for all services, except the one-on-one physical therapy and neuromuscular reeducation, rendered between May 19, 2003, through June 11, 2003.³

I. PROCEDURAL HISTORY

ALJ Penny Wilkov conducted a hearing in this case on April 14, 2005, at the State Office of Administrative Hearings, Austin, Texas. Attorney Timothy P. Riley represented Carrier. Attorney

¹ These services were billed under CPT Code 99213MP (office visits with manipulation), 97265 (joint mobilization), 97250 (myofascial release), 97112 (manual traction) and 97750 (physical performance test).

² These other services were billed under CPT Code 97110 (therapeutic exercises, one-on-one) and 97112 (neuromuscular reeducation).

³ The parties stipulated at the hearing that two dates of service would not be included in this decision: May 14, 2003, and May 15, 2003.

Roma Mutreja represented Provider. No party challenged jurisdiction or notice. Following post-hearing filings by the parties, the record closed on May 9, 2005.

II. DISCUSSION

1. Background

Claimant, a plumber, sustained work-related injuries while working on a roof on ____, when he fell eight feet off a ladder landing on his arm and back. Claimant has been diagnosed with bilateral SI joint strain, possible internal disc derangement L5-S1, and herniated nucleus pulposus L5-S1 with possible S1 nerve root compression.⁴ Claimant describes symptoms of severe low back pain, right leg numbness, and weakness in his legs and reports a subjective level of pain of eight on a scale of one to ten, with ten being the highest level of pain. Claimant's history of treatments following his injury has included chiropractic treatment, medications, physical therapy, a TENS unit, injections, hypnotherapy, biofeedback training, and acupuncture as well as diagnostic tests including x-rays, an MRI, and nerve conduction tests.⁵

Carrier denied payment for certain chiropractic services, including therapeutic exercises, neuromuscular reeducation, manual traction, joint mobilization, myofascial release, and physical performance testing, as well as associated office visits and report writing, administered by Provider from May 19, 2003, through June 11, 2003, as not medically necessary.

B. Evidence and Argument

1. Carrier

Carrier submitted Claimant's medical records and presented the testimony of David Alvarado, D.C. Carrier argues that all treatment rendered by Provider was medically unnecessary for several reasons. First, Carrier contends that the care given to Claimant exceeded

⁴ Respondent's Exhibit 1, pages 120-122, (June 11, 2003, Examination by Benjamin J. Cunningham, M.D.).

⁵ Petitioner's Exhibit 1, pages 278-305.

normal chiropractic treatment protocols. According to Dr. Alvarado, the passive treatments, including manipulation, joint mobilization, myofascial release and manual traction, were only appropriately administered during the inflammatory stage of the injury, identified as four to six weeks after the injury. Here, he pointed out that the passive therapies continued approximately four months after the injury when minimal benefit is shown for continuing this type of treatment.

Second, Carrier argues that the medical records do not reflect any significant progress in treatment beyond normal healing. Carrier points to Claimant's subjective report of pain of eight on a scale of one to ten on the first date in dispute, May 19, 2003, compared with Claimant's report of pain of eight on the same scale, on June 5, 2003, after three months of therapy, with the Claimant noting that he was experiencing severe pain throughout the treatment.⁶ Further, Dr. Alvarado testified that the range of motion test results on the lumbar spine and shoulder (the sites of primary injury) on April 24, 2003, after six weeks of therapy, compared with the results of the same test on June 5, 2003, after three months of therapy, showed no significant progress other than the normal healing process.⁷

Third, Carrier argues that one-on-one physical therapy was not medically necessary. Dr. Alvarado testified that once Claimant was shown how to perform the exercise, there was no reason for continuing one-on-one intensively supervised exercises. Here, he pointed out that the use of close supervision on a gym ball, treadmill, and with weights could have been done in a group setting, thereby promoting Claimant's confidence and independence.

Fourth, Carrier contends that neuromuscular reeducation is normally necessary if a patient has to re-learn a motor skill, such as after a stroke, and only if it is documented in the medical records. Here, Carrier points out that there was no indication that the nerves were damaged and any unbalance or gait issues were likely attributable to pain which is not addressed by neuromuscular reeducation.

⁶ Petitioner's Exhibit 1, pages 191, 201, and 237.

⁷ Petitioner's Exhibit 1, pages 71 and 142.

2. Provider

Provider submitted medical records and testified concerning Claimant's treatment. Provider argues that the extent of treatment in this case was warranted by the severity of the injuries. First, Provider pointed out that the injuries were severe in that Claimant had multiple body parts injured, including his spine and shoulder, which resulted in severe pain and difficulty walking and balancing. According to Provider, the chiropractic protocols referred to by Dr. Alvarado of four to six weeks of passive therapy are typically used to treat a sprain or strain and not a more severe injury as occurred in this case. Here, the continued passive therapy was used to promote muscle tone and relieve stiffness and spasms while the injury healed.

Second, Provider argues that she was following Dr. Benjamin Cunningham's recommended treatment, and disputes any lack of progress. Provider notes that on June 11, 2003, Dr. Cunningham stated that "[Claimant] is to continue with physical therapy in regards to SI joint manipulations and stretching and overall generalized lumbar conditioning."⁸ Provider concedes that Claimant's subjective reports of pain were unchanged throughout the disputed period but notes that Claimant showed improvement in strength, range of motion, and ability to walk.

Third, Provider addressed the necessity of one-on-one physical therapy. Provider testified that the therapy was necessary because Claimant had adjustment disorder⁹ and required additional motivation, encouragement, and instruction to continue the treatments. Further, Provider noted that the facility was not suited to a group setting.

As to the necessity of neuromuscular reeducation, Provider stated that Claimant was having difficulty with his back and shoulder and with gait and balance and, therefore, the reeducation was necessary to help Claimant function properly. Provider testified that working on strength alone would not have benefited his coordination.

⁸ Respondent's Exhibit 1, page 122.

⁹ Petitioner's Exhibit 1, page 88. (Report by Tracy Duran, M.S., on May 15, 2003, which notes that Claimant has difficulty with lifestyle adjustment, depression, and anxiety due to the injury).

C. Applicable Law

Under the workers' compensation system, an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment. TEX. LAB. CODE ANN. § 408.021. "Health care" includes "all reasonable and necessary medical . . . services." TEX. LAB. CODE ANN. § 401.011(19).

D. Analysis and Conclusion

Carrier has not met its burden of proof with respect to the passive therapy and related office visits and tests provided to Claimant between May 19, 2003, and June 11, 2003. However, Carrier has met its burden of proof with respect to the medical necessity of one-on-one physical therapy and neuromuscular reeducation services provided to Claimant during the same time period.

With regard to the passive therapy and related office visits and tests, Provider has demonstrated that Claimant had a more complicated injury that warranted continued passive care. These treatments were necessary to maintain muscle tone and relieve stiffness associated with the injury beyond the normal four to six weeks following a simple strain injury. On the other hand, Carrier has demonstrated that the one-on-one physical therapy and muscular reeducation were not medically necessary. The reasons given by Provider for the one-on-one physical therapy--adjustment disorder and the lack of a bigger facility--did not provide sufficient justification for closely supervised exercises since group therapy would have been equally beneficial and more cost effective to Claimant's recovery. Further, as to the neuromuscular reeducation, Carrier has demonstrated that this therapy was not medically necessary since it did not improve Claimant's balance or gait. Specifically, on April 25, 2003, prior to the disputed service, and on June 5, 2003, after the disputed service, Provider stated identically that "There is a right limp and decreased right weight bearing. Postural- he has anterior head carriage...the shoulder is high on left and the pelvis is high on left."¹⁰

¹⁰ Petitioner's Exhibit 1, pages 78 and 96.

Therefore, in conclusion, Carrier has not met its burden of proof with respect to the medical necessity of services in dispute provided to Claimant between May 19, 2003, and June 11, 2003, including procedures billed under CPT Code 999213MP (office visits with manipulation), CPT Code 97265 (joint mobilization), CPT Code 97250 (myofascial release), CPT Code 97112 (manual traction) and CPT Code 97750 (physical performance test). However, Carrier has met its burden of proof with respect to the medical necessity of services in dispute provided to Claimant including procedures billed under CPT Code 97110 (therapeutic exercises, one-on-one) and CPT Code 97112 (neuromuscular reeducation).

III. FINDINGS OF FACT

1. An injured worker (Claimant), a plumber, sustained work-related injuries on ____, while working on a roof when he fell eight feet off a ladder landing on his arm and back.
2. Claimant has been diagnosed with bilateral SI joint strain, possible internal disc derangement L5-S1, and herniated nucleus pulposus L5-S1 with possible S1 nerve root compression.
3. Claimant describes symptoms of severe low back pain, right leg numbness, and weakness in his legs and reports a subjective level of pain of eight on a scale of one to ten, with ten being the highest level of pain.
4. Claimant's history of treatments following his injury includes chiropractic treatment, medications, physical therapy, a TENS unit, injections, hypnotherapy, biofeedback training, and acupuncture as well as diagnostic tests including x-rays, an MRI, and nerve conduction tests.
5. At the time of the injury, Claimant's employer had its workers' compensation insurance through Texas Mutual Insurance Company (Carrier).
6. Claimant has seen several physicians and therapists since the date of the injury, but at the time period in issue, Claimant was receiving physical therapy and treatment by Angela Upchurch, D.C. (Provider).
7. Provider submitted a claim to Carrier for treatment rendered to Claimant between May 19, 2003, and June 11, 2003, including procedures billed under CPT Code 999213MP (office visits with manipulation), CPT Code 97265 (joint mobilization), CPT Code 97250 (myofascial release), CPT Code 97112 (manual traction), CPT Code 97750 (physical performance test), CPT Code 97110 (therapeutic exercises, one-on-one), and CPT Code 97112 (neuromuscular reeducation).
8. Carrier denied Provider's request for reimbursement.
9. Provider requested medical dispute resolution with the Texas Workers' Compensation

10. An Independent Review Organization concluded that treatments rendered from May 19, 2003 until June 11, 2003, were medically necessary.
11. Carrier filed a request for a hearing before the State Office of Administrative Hearings on September 7, 2004.
12. The Commission sent notice of the hearing to the parties on October 12, 2004. The hearing notice informed the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the statutes and rules involved; and the matters asserted.
13. The hearing convened on April 14, 2005, at the State Office of Administrative Hearings, Austin, Texas. Attorney Timothy P. Riley represented Carrier. Attorney Roma Mutreja represented Provider. No party challenged jurisdiction or notice. Following post-hearing filings by the parties, the record closed on May 9, 2005.
14. With regard to the passive therapy and related office visits and tests, Claimant had a more complicated injury that warranted continued passive care.
15. The passive therapy and related office visits and tests were necessary to maintain muscle tone and relieve stiffness associated with the injury beyond the normal four to six weeks following injury.
16. The medical assessment and judgment of Claimant's treating physician, who had personally examined and analyzed Claimant's injury, was that Claimant would benefit from continued passive therapy.
17. The one-on-one physical therapy was not medically necessary because once Claimant was shown how to perform the exercise, there was no reason for continuing one-on-one intensively supervised exercises.
18. The use of close supervision on a gym ball, treadmill, and with weights could have been done in a group setting and would have promoted Claimant's confidence and independence.
19. The neuromuscular reeducation therapy was not medically necessary since it did not improve Claimant's balance or gait and is primarily used when there is neurological damage which was not demonstrated to have occurred with Claimant.
20. Carrier has not shown that the disputed services rendered from May 19, 2003 until June 11, 2003, for passive therapy and related office visits and tests were not medical necessary.
21. Carrier has shown that the disputed services rendered from May 19, 2003 until June 11, 2003, for one-on-one physical therapy and neurological reeducation were not medical necessary.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing, 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.
2. Provider timely filed a request for hearing before SOAH, as specified in 28 TEX. ADMIN. CODE § 148.3.
3. The parties received proper and timely notice of the hearing pursuant to TEX. GOV'T CODE ANN. ch. 2001 and 1 TEX. ADMIN. CODE § 155.27.
4. Carrier had the burden of proving the case by a preponderance of the evidence pursuant to 28 TEX. ADMIN. CODE § 148.21.
5. An employee who has sustained a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LAB. CODE ANN. § 408.021(a).
6. Health care includes all reasonable and necessary medical services. TEX. LAB. CODE ANN. § 401.011(19)(A).
7. Carrier failed to establish that the physical therapy modalities billed under CPT Code 999213MP (office visits with manipulation), CPT Code 97265 (joint mobilization), CPT Code 97250 (myofascial release), CPT Code 97112 (manual traction) and CPT Code 97750 (physical performance test) are not reimbursable under TEX. LAB. CODE ANN. §§ 401.011(19) and 408.021(a). Carrier should reimburse for these services under TEX. LAB. CODE ANN. §§ 401.011(19) and 408.021(a).
8. Carrier has established that the modalities billed under CPT Code 97110 (therapeutic exercises, one-on-one) and CPT Code 97112 (neuromuscular reeducation) are not reimbursable under TEX. LAB. CODE ANN. §§ 401.011(19) and 408.021(a). Carrier should not reimburse Provider for these services provided to Claimant for his compensable injury.

ORDER

IT IS **ORDERED** that Angela Upchurch, D.C. is entitled to reimbursement by Texas Mutual Insurance Company for the physical therapy modalities provided to Claimant between May 19, 2003, and June 11, 2003, billed under CPT Code 999213MP (office visits with manipulation), CPT Code 97265 (joint mobilization), CPT Code 97250 (myofascial release), CPT Code 97112 (manual

traction) and CPT Code 97750 (physical performance test), but is not entitled to reimbursement for physical modalities billed under CPT Code 97110 (therapeutic exercises, one-on-one) and CPT Code 97112 (neuromuscular reeducation).

SIGNED July 5, 2005.

**PENNY WILKOV
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**