

**SOAH DOCKET NO. 453-05-0938.M5**  
**TWCC MDR NO. [M5-04-3208-01]**

**ERIC A. VANDERWERFF, D.C.,**  
**Petitioner**

v.

**INDEMNITY INSURANCE**  
**COMPANY OF NORTH AMERICA,**  
**Respondent**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

**I. SUMMARY**

Eric A. Vanderwerff, D.C., (Provider) appealed the decision of Texas Medical Foundation, an independent review organization certified by the Texas Department of Insurance, in Texas Workers' Compensation Commission (TWCC) Medical Review Division tracking number M5-04-3208-01, denying reimbursement for medical services provided to the Claimant. This decision orders that Indemnity Insurance Company of North America (Carrier) is not required to reimburse the Provider for the services in dispute.

The Administrative Law Judge (ALJ) convened a hearing on April 25, 2005. The hearing was concluded and the record closed that date. The Provider appeared *pro se* by telephone. The Carrier appeared through James M. Loughlin, attorney.

**II. EVIDENCE AND BASIS FOR DECISION**

The issue presented in this proceeding is whether the Carrier should reimburse the Provider \$3,957.83 plus interest for medical services provided between April 14, 2003, and October 30, 2003, and billed under CPT Codes G0283 (electrical stimulation), 97012 (mechanical traction), 97112 (neuromuscular re-education), 97140-59 (manipulative therapy including joint mobilization and myofascial release), 97250 (myofascial release), 97265 (joint mobilization), 98941 (chiropractic manipulation), and 99213-MP (office visit with manipulation). The Carrier argued that the medical services provided to the Claimant were not medically necessary or reasonably required to treat the compensable injury.

The documentary record in this case consisted of two packets of medical records (Pro. Exh. 1 - 116 pages, and Res. Exh. 1 - 259 pages). Also, the Provider testified in his own behalf and William Defoyd, D.C., testified for the Carrier.

The record revealed that on \_\_\_\_, the Claimant, a \_\_\_\_year-old man, suffered an injury to his lower back from carrying a 100-pound bag of starch. On his initial visit to the Provider, the Claimant complained of intense low back pain radiating down his legs.<sup>1</sup> An x-ray taken and interpreted by the Provider revealed a narrowed disc space at the L5-S1 level, a one inch lateral tilt of the sacral base, and a Schmorl's node at the inferior base plate of L5.<sup>2</sup> The Provider's treatment plan consisted of joint mobilization, myofascial therapy, lumbar traction, rehabilitative exercises, and neuromuscular re-education to be delivered to the Claimant three to four times per week for only eight weeks unless acceptable improvement was shown.<sup>3</sup>

The Claimant underwent further diagnostic testing, including an MRI of the lumbar spine without contrast performed on March 5, 2003, which was negative. It revealed normal alignment and no significant disc bulge or herniation at any level.<sup>4</sup> A second MRI scan performed on the same day showed normal alignment throughout the lumbar region, and normal disc spaces at each level. John D. Fisk, M.D., concluded that the Claimant had a normal lumbar spine.<sup>5</sup> An EMG study performed by Christine Huynh, M.D., on March 18, 2003, revealed right and left radiculopathy at the L5 level.<sup>6</sup>

An independent medical examination was performed on April 28, 2003, by Matthew W. Karcher, D.C. According to Dr. Karcher's report, radiographs taken that day revealed no gross pathology. Additionally, he found no support for the Provider's diagnosis of lumbar disc displacement, but his examination did support a diagnosis of lumbar vertebral subluxation and muscle spasm. Dr. Karcher concluded that the Provider's treatment had been somewhat excessive and that the Claimant was a candidate for a work conditioning program.<sup>7</sup>

Ronald O. Voyles II, D.C., reviewed the Claimant's medical records and then examined him on June 20, 2003. According to Dr. Voyles, the Claimant was suffering from lumbar sprain/strain and had reached maximum medical improvement.<sup>8</sup>

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<sup>1</sup> The Provider diagnosed the Claimant with disc herniation.

<sup>2</sup> According to the Provider, a Schmorl's node is a stress fracture resulting from a disc herniating straight upwards into the bone.

<sup>3</sup> Pro. Exh. 1, pages 11 - 14.

<sup>4</sup> Pro. Exh. 1, page 15.

<sup>5</sup> Pro. Exh. 1, pages 16 and 17.

<sup>6</sup> Pro. Exh. 1, page 22.

<sup>7</sup> Pro. Exh. 1, page 95 and 96.

<sup>8</sup> Pro. Exh. 1, pages 114 - 116.

On April 27, 2004, an impairment rating evaluation report was prepared by G. Kirk Harmon, D.C., at TWCC's request. Dr. Harmon reviewed the Claimant's medical records and examined him prior to preparing the report. The Claimant was diagnosed with lumbar radiculopathy and lumbar sprain/strain, and given a 10% whole person impairment rating.<sup>9</sup>

The Provider testified that the diagnosis of lumbar sprain/strain was a gross mis-diagnosis. In support of his position, the Provider pointed to the Claimant's inability to lift much weight and the Claimant's complaints of sciatica, which results from disc herniation, not lumbar sprain/strain. Further, the Provider testified that the Claimant's x-rays showed evidence of a Schmorl's node and one degree of lateral tilt, which are further indications of disc herniation, not lumbar sprain/strain. Finally, the Provider testified that a lumbar sprain/strain would not warrant a 10% whole body impairment rating.

Dr. Defoyd graduated from the Texas Chiropractic College in 1986 and has been in private chiropractic practice in Austin, Texas, since that time. He has also provided consulting services for carriers and served on several TWCC committees. Dr. Defoyd reviewed the Claimant's medical records in preparation of his testimony.

In Dr. Defoyd's opinion, the Claimant did not have a disc herniation because it was not found by the two neuro-radiologists who did the MRI imagining studies. He also stated that any radiculopathy was mild and the finding of radiculopathy did not correlate with the MRI findings because there was no finding of disc compression. According to Dr. Defoyd, an EMG not supported by MRI findings of disc compression should be disregarded.

Dr. Defoyd also testified that by April 14, 2003, the passive chiropractic treatment provided to the Claimant was no longer appropriate. The continued passive treatment was outside the normal treatment time and far exceeded the time needed for improvement. Dr. Defoyd stressed that the Provider did not provide any rationale in the medical records for continued passive treatment and did not update the original treatment plan dated January 27, 2003.

The ALJ concludes the Provider failed to prove that the medical services delivered from April 14, 2003, to October 30, 2003, were medically necessary and reasonably required to treat the Claimant's compensable injury. As testified to by Dr. Defoyd, the passive treatment delivered to the Claimant went well beyond normal treatment parameters. Further, the Provider stated in his initial treatment plan that joint mobilization, myofascial therapy, lumbar traction, rehabilitative exercises, and neuromuscular re-education would be delivered to the Claimant three to four times per week for only eight weeks unless acceptable improvement was shown. The Provider failed to update his initial treatment plan and failed to document acceptable improvement for continuation of the same treatment modalities. Finally, the medical records and the testimony of Dr. Defoyd supported a diagnosis of lumbar sprain/strain rather than the Provider's diagnosis of disc herniation, making

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<sup>9</sup> Pro. Exh. 1, pages 85 - 88.

continued passive treatment after April 14, 2003, inappropriate the Claimant's injury. Therefore, the Provider should not be reimbursed for the contested services delivered to the Claimant.

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

1. On \_\_\_\_, the Claimant suffered a compensable injury to his lower back.
2. The Claimant's injury is covered by workers' compensation insurance written for the Claimant's employer by Indemnity Insurance Company of North America (Carrier).
3. The Claimant was treated with chiropractic care beginning January 23, 2003, by Eric A Vanderwerff, D.C. (Provider) following a diagnosis of disc herniation.
4. The Provider's passive treatment modalities for the Claimant's injury were billed under CPT Codes G0283 (electrical stimulation), 97012 (mechanical traction), 97112 (neuromuscular re-education), 97140-59 (manipulative therapy including joint mobilization and myofascial release), 97250 (myofascial release), 97265 (joint mobilization), 98941 (chiropractic manipulation), and 99213-MP (office visit with manipulation).
5. The medical services in dispute were provided from April 14, 2003, to October 30, 2003.
6. The Carrier denied reimbursement of \$3,957.83 for the services on the basis that the treatment was not medically necessary or reasonably required to treat the compensable injury.
7. An MRI of the lumbar spine without contrast performed on March 5, 2003, revealed normal alignment and no significant disc bulge or herniation at any level.
8. A second MRI scan performed on March 5, 2003, revealed normal alignment throughout the lumbar region and normal disc spaces at each level.
9. An EMG study performed by Christine Huynh, M.D., on March 18, 2003, revealed right and left radiculopathy at the L5 level.
10. An EMG not supported by MRI findings of disc compression should be disregarded.
11. The initial treatment plan provided that joint mobilization, myofascial therapy, lumbar traction, rehabilitative exercises, and neuromuscular re-education would be delivered to the Claimant three to four times per week for only eight weeks unless acceptable improvement was shown.
12. The Provider failed to update his initial treatment plan and failed to document acceptable improvement for continuation beyond eight weeks of the treatment modalities listed in Finding of Fact No. 11.

13. After April 14, 2003, continued passive treatment was outside the normal treatment time and far exceeded the time needed for improvement.
14. The correct diagnosis for the Claimant's injury was lumbar sprain/strain rather than the Provider's diagnosis of disc herniation.
15. The Provider timely requested dispute resolution by the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC).
16. On August 10, 2004, the MRD issued its decision concluding that the disputed expenses should not be paid, and the Provider timely appealed this decision.
17. TWCC sent notice of the hearing to the parties on October 21, 2004. The hearing notice informed the parties of the matter to be determined, the right to appear and be represented by counsel, the time and place of the hearing, and the statutes and rules involved.
18. The hearing on the merits convened April 25, 2005, before Michael J. Borkland, Administrative Law Judge. The Provider appeared *pro se* by telephone. The Carrier appeared through James M. Loughlin, attorney.

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

1. The Texas Workers' Compensation Commission (TWCC) has jurisdiction to decide the issues presented pursuant to TEX. LAB. CODE ANN. §413.031.
2. 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. §413.031 and TEX. GOV'T CODE ch. 2003.
3. Based on Finding of Fact No. 17, the notice of hearing issued by TWCC conformed to the requirements of TEX. GOV'T CODE §2001.052.
4. The Provider has the burden of proving by a preponderance of the evidence that he should prevail in this matter. TEX. LAB. CODE ANN. §413.031.
5. Based on Findings of Fact Nos. 7 - 14, the Provider failed to prove that reimbursement for treatment provided from April 14, 2003, to October 30, 2003, should be ordered.

**ORDER**

IT IS, THEREFORE, ORDERED that Indemnity Insurance Company of North America is not required to reimburse Eric A. Vanderwerff, D.C. for the disputed services provided in treating the Claimant.

**SIGNED June 3, 2005.**

**MICHAEL J. BORKLAND  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**