

**DOCKET NO. 453-05-0944.M5
MDR NO. M5-04-2200-01**

**SAN ANTONIO ACCIDENT
INJURY CARE,
Petitioner**

VS.

**EMPLOYERS INSURANCE
COMPANY OF WAUSAU,
Respondent**

§
§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

San Antonio Accident Injury Care (Provider) challenges an Independent Review Organization (IRO) decision concluding that chiropractic services provided to an injured worker (Claimant) were not medically necessary. Based on the evidence presented at hearing, the Administrative Law Judge (ALJ) concludes the disputed services were not medically. Consequently, Provider is not entitled to reimbursement from the carrier, Employers Insurance Company of Wausau (Carrier).

I. PROCEDURAL HISTORY

ALJ Gary Elkins convened and closed the hearing in this case on September 12, 2005. Provider appeared and was represented by Attorney William Maxwell. Carrier appeared and was represented by Attorney Kevin Franta. Notice and jurisdiction, which were not disputed, are addressed in the Findings of Fact and Conclusions of Law.

II. DISCUSSION

A. Background.

Claimant suffered a compensable injury to her right elbow on _____. The injury was diagnosed as lateral epicondylitis. For approximately three weeks, Concentra Medical Centers (Concentra) treated the injury with physical therapy, home exercises, Tylenol, and modified work activity. On September 5, 2003, Provider employee Richard Alexander, D.C., began treating Claimant as her treating doctor. He adopted a treatment plan consisting of therapeutic exercises and other modalities, including electrical stimulation, ultrasound, and physical therapy. Ultimately, Carrier reimbursed Provider for all but 14 sessions of treatment that were rendered from October 24, 2003 to January 14, 2004. After being denied reimbursement for the 14 sessions, Provider sought medical dispute resolution.

In denying Provider's reimbursement claim, the IRO included a detailed rationale supporting its conclusion. In response to the IRO decision, Provider requested a hearing before the State Office of Administrative Hearings, which culminated in a hearing and this Decision and Order.

B. Summary of Evidence and Argument

Through the testimony of Dr. Alexander, Provider asserted the following in support of its position that the disputed services were medically necessary:

- Even though Claimant was treated for her injury prior to the disputed services, the original provider's treatment notes were vague, leaving the nature of the services unclear.
- Claimant's pain levels decreased and her strength increased as a result of the disputed services.
- An at-home program was not employed with Claimant because people typically do not stick with such programs, they usually do not have equipment at their homes, and there is no way to evaluate improvement from such a program.
- The disputed treatments provided an effective complement to corticosteroid injections administered to Claimant on three occasions.

- At least two other doctors who saw Claimant agreed that Provider's treatment approach was reasonable.
- The treatments were conservatively provided in a group setting.
- Under Provider's care, Claimant's pain levels decreased, her strength increased, and the results were as planned.

As reflected in the testimony of its expert witness, William DeFoyd, D.C., Carrier focused on the following assertions in support of its argument that the disputed services were not medically necessary:

- On ____, two days after Claimant's injury, an evaluation of her injury revealed no deformity, no ecchymosis, and no swelling, and she exhibited a full range of motion.
- By September 3, 2005, Claimant's range of motion and manual muscle testing were within normal limits; she reported feeling improved overall; she rated herself as experiencing pain at a level of 4 on a scale of 1 to 10; she was working at a modified duty level and was tolerating it well; and her physical therapist concluded the goals for Claimant had been met and the physical therapy program should be discontinued. Nevertheless, two days later on Claimant's first visit to Dr. Alexander he reported her estimated pain level at 7 and took her off work.
- Removing Claimant from work was inconsistent with certain treatment guidelines.
- On September 17, 2003, Claimant reported her pain level at 9.
- On October 15, 2003, after having been under Provider's care for over a month, Claimant's pain levels had increased and her grip strength had decreased.
- Provider's treatment approach never changed regardless of the amount of improvement observed. Instead, Provider forged ahead with "conveyor belt" medicine.
- Claimant's 19 sessions of treatment before the disputed dates of service were more than adequate to treat her injury.
- Despite Provider's claim to the contrary, the five or six physical therapy treatments following each corticosteroid injection were not automatically called for.
- Claimant's improvement during four consecutive weeks in November and December 2003, when no services were provided, indicates injuries of the type suffered by Claimant naturally improve with the passage of time.
- A contusion of the type experienced by Claimant should naturally heal itself in six- to-eight weeks.

C. Analysis and Conclusion

As set out in detail in the findings of fact and conclusions of law, the preponderant evidence reflects that the disputed services were not reasonable and necessary for the treatment of Claimant's lateral epicondylitis of the right elbow. The ALJ was persuaded by the testimony of Dr. DeFoyd that the passage of time, not Provider's treatment regimen, was the primary reason for her improvement. This conclusion is particularly evident in light of the improvement Claimant experienced during the approximately four weeks she went without Provider's treatment while she was being evaluated and treated for another medical problem not identified in the evidentiary record.

The ALJ was equally unpersuaded by the testimony of Dr. Alexander that he provided his services at his office rather than attempting a home-based program because people typically do not adhere to home-based programs and because with such an approach there is no way to measure the patient's improvement. Were these reasons legitimate, a home-based program would never be considered a treatment alternative. Dr. Alexander did not go so far as to make that assertion, however.

Likewise, the ALJ was not swayed by another of Dr. Alexander's motivations in choosing the treatment program for Claimant: that the nature of the services rendered by the previous provider, Concentra, were unclear. The evidence reflects that adequate information regarding Claimant's care under Concentra was, in fact, available to Provider.

The ALJ found inconsistent Dr. Alexander's testimony regarding the significance of a patient's subjective reports of pain. In response to a question about Claimant's report of significant pain of 7-to-8 on a scale of 1 to 10 November 11, 2003, after having been under Provider's care for two months, Dr. Alexander commented that reported pain levels are very subjective, with some patients over-reporting their pain levels, others under-reporting, and still others accurately reporting their pain. Later in his testimony, however, Dr. Alexander reflected on his reason for continuing with his treatment regimen: because Claimant continued to report having pain.

Also puzzling was the significant increase in Claimant's reported pain level during her first visit to Provider September 5, 2003, and Dr. Alexander's decision to take her off work at that time, which was just two days after Claimant had reported to Concentra that she was experiencing both significantly less pain and the ability to tolerate her modified work activity well.

Ultimately, as reflected in the findings and conclusions, the disputed services were not medically necessary in light of the nature and severity of Claimant's injury; her medical status prior to treating with Provider; Provider's failure to attempt a home-based treatment program; the natural improvement in her condition during the four week period when Provider was not treating her; and the questionable results produced by Provider during the period of disputed treatments.

III. FINDINGS OF FACT

1. An injured worker (Claimant) suffered a compensable injury to her right elbow on _____. The injury was diagnosed as lateral epicondylitis, or tennis elbow.
2. At the time of Claimant's injury, her employer held workers' compensation insurance coverage with Employers Insurance Company of Wausau (Carrier).
3. Provider, San Antonio Accident Injury Care, began treating Claimant on September 5, 2003 with modalities that included electrical stimulation, ultrasound, massage therapy, and active physical therapy.
4. Carrier reimbursed Provider for all but 14 sessions of treatment administered from October 24, 2003 to January 14, 2004.
5. Provider requested medical dispute resolution before the Texas Workers' Compensation Commission (Commission) for the 14 treatment sessions referred to in Finding 4.
6. The reviewing Independent Review Organization (IRO) concluded the disputed services were not medically necessary.
7. In response to the IRO decision, Provider requested a hearing before the State Office of Administrative Hearings (SOAH).
8. Notice of the hearing was sent to the parties on October 27, 2004. The notice informed the

parties of the date, time, and location of the hearing; the matters to be considered; the legal authority under which the hearing would be held; and the statutory provisions applicable to the matters to be considered.

9. The hearing convened and closed September 12, 2005, before SOAH Administrative Law Judge Gary Elkins.
10. On ____, two days after her injury, Claimant's right elbow exhibited no deformity, no ecchymosis, no swelling, and a full range of motion.
11. On ____, Claimant was working within the duty restrictions placed on her as a result of her injury.
12. On August 25, 2003, Claimant exhibited good grip strength; her elbow revealed no deformity; she exhibited no ecchymosis or swelling; she had a full range of motion; and she was working within her duty restrictions.
13. By September 3, 2005, Claimant's range of motion and manual muscle testing were within normal limits; she reported feeling improved overall; she rated herself as experiencing pain at a level of 4 on a scale of 1 to 10; she was working at a modified duty level and was tolerating it well; and the goals for her treatment program had been met.
14. The treatments Concentra Medical Centers provided to Claimant during the three weeks prior to Provider initial treatment were described in Concentra's treatment reports.
15. During Claimant's first visit to Provider on September 5, 2005, Provider reported Claimant's estimated pain level at 7 and took her off work.
16. While under Provider's care on September 17, 2003, Claimant reported her pain level at 9.
17. On October 15, 2003, after having been under Provider's care for over a month, Claimant's pain levels had increased and her grip strength had decreased.
18. Provider's approach to treating Claimant never changed regardless of the amount of improvement observed during each treatment session.
19. Claimant's elbow injury improved during approximately four consecutive weeks in November and December 2003 when she was not being treated by Provider.
20. A contusion of the type experienced by Claimant should naturally heal itself in six-to-eight weeks.
21. Provider never attempted a home-based treatment program.

22. Provider's services did not produce improvements to Claimant's compensable injury.
23. The five or six physical therapy treatments provided by Provider following each of three corticosteroid injections were not automatically required for the treatment of Claimant.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding pursuant to TEX. LAB. CODE ANN. §413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
3. The disputed services neither promoted Claimant's recovery nor enhanced her ability to return to employment. TEX. LAB. CODE ANN. §408.021.
4. The disputed services were not reasonably required by the nature of Claimant's injury. TEX. LAB. CODE ANN. §408.021.
5. The disputed services were not medically necessary.
6. Provider is not entitled to reimbursement for any of the disputed services.

ORDER

IT IS ORDERED that the reimbursement claim of San Antonio Accident Injury Care for services provided to Claimant from October 24, 2003 to January 14, 2004 is denied.

Signed November 14, 2005.

**GARY W. ELKINS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**