

**SOAH DOCKET NO. 453-05-0969.M5  
MR NO. M5-04-0553-01**

<b>AMERICAN HOME ASSURANCE COMPANY, Petitioner</b>	§ § § § § § § § §	<b>BEFORE THE STATE OFFICE</b>
<b>V.</b>		<b>OF</b>
<b>DANA J. SANTELLI, D.C., Respondent</b>		<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

American Home Assurance Company (AHAC) challenges the decision of the Texas Workers' Compensation Commission (Commission),<sup>1</sup> acting through an independent review organization (IRO), in a dispute regarding the medical necessity of physical medicine treatments provided to Claimant \_\_\_. The Administrative Law Judge (ALJ) finds in favor of AHAC.

**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

A notice of hearing was issued on October 26, 2004, referencing MR. No. M5-04-2745-01.<sup>2</sup> At the request of AHAC, an amended notice of hearing was issued on March 2, 2005, with the corrected MR No. M5-04-0533-01. The hearing originally set for April 28, 2005, was held on June 14, 2005, at the facilities of the State Office of Administrative Hearings, 300 W. 15<sup>th</sup> St., Austin, Texas. AHAC was represented by Peter McCauley, an attorney. ALJ Katherine L. Smith presided. Respondent Dana J. Santelli, D.C., did not appear because he did not receive a copy of Order No. 2 setting the hearing on June 14. The hearing reconvened on October 11, 2005. AHAC

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<sup>1</sup> Effective September 1, 2005, the functions of the Commission were transferred to the newly created Division of Workers' Compensation of the Texas Department of Insurance.

<sup>2</sup> M5-04-2745-01 was a companion case involving later dates of service.

was represented by William Floyd, an attorney. Dr. Santelli appeared *pro se*. The record closed on October 11, 2005. Neither party challenged jurisdiction.

## **II. BACKGROUND**

Claimant suffered a compensable injury on \_\_\_\_, when she twisted her back while trying to catch a falling case of paint that she had just placed on a conveyor belt. Claimant sought treatment with Dr. Santelli on May 6, 2002. Claimant was diagnosed with thoracic sprain/strain and thoracic spine facet disorder. AHAC denied reimbursement for services that Dr. Santelli provided to Claimant from October 25, 2002, to April 30, 2003, based on lack of medical necessity. At issue are office visits with manipulations, myofascial release, electrical stimulation, ultrasound therapy, and hot/cold pack therapy. The IRO found in a decision issued on September 7, 2004, that the services were medically necessary because Claimant responded to the treatment provided. Claimant subsequently received chronic pain management treatment at PRIDE from July to October 2003.

## **III. DISCUSSION**

### **A. AHAC's Evidence and Argument**

AHAC presented the testimony of Mike Hamby, D.C., its expert witness, who testified that the treatments were excessive and that no objective evidence substantiated the need for such extensive care. Dr. Hamby noted that the treatments in question and those of two months prior were given 20 retrospective reviews by six different doctors, which included seven reviews that he performed, all of which found that the treatments were not medically necessary. Res. Ex. A at 68-89. Dr. Hamby testified that under the ACOEM<sup>3</sup> guidelines, the maximum number of visits for a sprain/strain should be 18 over six to eight weeks. According to Dr. Hamby, treatment beyond 18 visits can be justified only if there is a complicating factor, such as a ruptured disc or neuropathy,

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<sup>3</sup> American College of Occupational and Environmental Medicine.

which was not present in this case, as revealed by a July 23, 2002, MRI of the spine. Pet. Ex. 1 at 33. Dr. Hamby testified that although Claimant was first diagnosed with a thoracic sprain/strain,<sup>4</sup> the diagnosis was changed in November to more subjective diagnoses of facet disorder and muscle spasms,<sup>5</sup> which carried through the rest of the dates of service in dispute. Res. Ex A at 77. Dr. Hamby pointed out that despite more than 40 sessions, Claimant's condition did not change from October 2002 to April 2003 as evidenced by her statement on February 20, 2003, to Jan Garrett, M.D., that the manipulations had not been helpful "over the last many months," as well as the many medical notes reflecting no change in Claimant's condition. Pet. Ex. 1 at 77, 236-239, 242, 245. Dr. Hamby also criticized the quality of Dr. Santelli's records noting that the chart notes contain only brief notations and no objective evidence. Pet. Ex. 1 at 236-39, 242, 245. Dr. Hamby also noted that Dr. Santelli billed for every visit using CPT code 99213, but that the records do not reflect decision-making that would have warranted billing under CPT code 99213.

Dr. Hamby also relies on the IRO decision denying reimbursement for the treatment that Dr. Santelli provided to Claimant from May 2 to July 22, 2003, in the companion case, MR No. M5-04-2745-01, issued on August 27, 2004. In that decision the IRO found that chiropractic treatment three times a week after six months of treatment is counterproductive because the muscles and ligaments need to be strengthened by more active rehabilitation in order to be healed. The IRO also noted that failure to initiate active rehab sooner may lead to depression, de-conditioning, dependency on the treatment, and subsequent failure during active rehabilitation. Pet. Ex. 3.

AHAC argues that the treatments provided from October 25, 2002, to April 30, 2003, were not appropriate for Claimant's condition and did not improve her medical condition, but actually prolonged her condition. AHAC argues further that she improved only after her mental health issues were addressed in the PRIDE program and after she received active rehabilitation with weights and exercising.

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<sup>4</sup> ICD code 847.1.

<sup>5</sup> ICD codes 724.8 and 728.5.

## **B. Dr. Santelli's Evidence and Argument**

Claimant testified that the treatments Dr. Santelli provided helped relieve her pain, in that her pain level would drop during the treatment sessions and remain at that level throughout the day and then for a few days to a couple of weeks afterward, until the pain would return due to the activities of daily living. Claimant stated that she became a chronic pain patient. She testified that after the PRIDE program she was pain free for several months, but that the pain has returned. Claimant stated that she still does stretching exercises at home that she learned at PRIDE, which helps relieve the pain, and that she still seeks treatment with Dr. Santelli when needed.

Dr. Santelli argues that his treatment kept Claimant's pain down to a manageable level and that his treatment was necessary to treat her pain. He stated that he responsibly referred her to other treatment when she became a chronic pain patient. He noted that no spine guidelines were in effect during the period in question and argues that providing pain relief was medically necessary health care under section TEX. LABOR CODE ANN. § 408.021, because it relieved the pain resulting from Claimant's compensable injury.

## **C. ALJ's Analysis**

Contrary to the IRO's decision, the ALJ finds that Claimant did not respond or improve under the treatment provided. On November 22, 2002, Bobby Enkvetchakul, M.D., determined in a retrospective peer review of the services provided on November 1 and 4, 2002, that the records did not document any objective measure of loss of motion, strength, or function that justified the therapy. By then Claimant had undergone 40 prior visits. He stated further that chiropractic manipulations were not necessary after the first month if there is no benefit and no documented improvement. Res. Ex. A at 77. Although Claimant's pain levels of six or higher out of ten may have improved during each treatment session to a four or five, that same response continued well into June 2003, and was only temporary. That Claimant was essentially maintained at the status quo

may have prolonged her

treatment with the development of depression, deconditioning, and dependence on Dr. Santelli. As early as December 20, 2002, Dr. Santelli noted that Claimant's "condition continues to get worse," and yet he continued with the same treatment with no reassessment. Res. Ex. A at 32. Moreover, Claimant's level of pain actually seemed to increase toward the end of the dates in dispute. Res. Ex. A at 49-60. Claimant's needs should have been addressed elsewhere, sooner.

As Dr. Santelli noted, the Spine Treatment Guideline,<sup>6</sup> was no longer in effect as of March 8, 2002. But the Medical Fee Guideline<sup>7</sup> was, as was 28 TAC § 133.1(a)(3)(E)(I), which provides that when a healthcare provider bills for one of the three highest level office visits, which includes CPT code 99213, and for physical medicine treatment, the Commission requires the healthcare provider to submit the following: progress or SOAP<sup>8</sup> notes substantiating the care given and the need for further treatment and services, and indicating progress, improvement, the date of the next treatment and services, complications, and expected release date. When billing for an office visit using 99213, two of the following must take place: an expanded, problem-focused history; an expanded, problem-focused examination; or medical decision making of low complexity.

As Dr. Hamby noted, the medical notes from the office visits billed as 99213-MP document neither an expanded, problem-focused history, nor an expanded, problem-focused examination. It is interesting to note that CPT code 99213 is the only office visit code on the form used for notetaking. Moreover, there is no evidence or progress or reassessment of the treatments being provided.

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<sup>6</sup> 28 Tex. Admin. Code (TAC) § 134.1001.

<sup>7</sup> 1996 Medical Fee Guideline, 28 TAC § 134.201 (eff. date April 1, 1996), which was in effect because of the decision in *Texas Medical Ass'n v. Texas Workers' Compensation Com'n*, 137 S.W.3d 342 (Tex. App. BAustin 2004, rehearing overruled June 24, 2004), which did not overturn the District Court Judge's determination that the effective date of the 2002 MFG would be August 1, 2003. Final Judgment, Cause No. GN 202203, June 1, 2003 (J. Dietz).

<sup>8</sup> Subjective/objective/assessment/plan.

Therefore, the ALJ finds that AHAC has met its burden of proof that the treatments Dr. Santelli provided to Claimant from October 25, 2002, to April 30, 2003, were not medically necessary and Dr. Santelli is not due reimbursement from AHAC.

#### **IV. FINDINGS OF FACT**

1. Claimant suffered a compensable injury on \_\_\_\_, when she twisted her back while trying to catch a falling case of paint that she had just placed on a conveyor belt.
2. At the time of the injury, Claimant's employer had workers' compensation insurance coverage with American Home Assurance Company (AHAC).
3. Claimant sought treatment with Dr. Santelli on May 6, 2002. Claimant was diagnosed with thoracic sprain/strain and thoracic spine facet disorder.
4. AHAC denied reimbursement for office visits with manipulations, myofascial release, electrical stimulation, ultrasound therapy, and hot/cold pack therapy, that Dr. Santelli provided to Claimant from October 25, 2002, to April 30, 2003, based on lack of medical necessity.
5. Dr. Santelli requested medical dispute resolution at the Texas Workers' Compensation Commission (Commission).
6. On September 7, 2004, the Commission's Medical Review Division adopted the conclusion of an independent review organization (IRO) that the services in dispute were medically necessary.
7. On September 16, 2005, AHAC requested a hearing with the State Office of Administrative Hearings (SOAH), seeking review of the IRO's decision.
8. The Commission issued a notice of the hearing on October 26, 2005.

The Commission issued an amended notice of the hearing on March 2, 2005, to reflect the correct MR number. The notice of hearing stated the date, time, and location of the hearing and cited to the statutes and rules involved, and provided a short, plain statement of the factual matters involved.

9. The hearing convened on June 14 and October 11, 2005, at 300 W. 15<sup>th</sup> St., Austin, Texas. AHAC appeared on June 14. Both parties were appeared on October 11.
10. Claimant did not respond or improve under the treatment provided. Although Claimant's pain levels of six or higher out of ten may have improved during each treatment session, that relief was only temporary, and the same response continued into June 2003.
11. The treatment provided may have prolonged Claimant's treatment with the onset of depression, deconditioning, and dependence on her treating doctor.
12. The treatment notes do not document office visits with an expanded, problem-focused history or an expanded, problem-focused examination.
13. Despite Claimant showing no progress from the physical medicine treatments provided, more of the same treatment was provided without reassessment.
14. Claimant should have been referred sooner to treatment that would address her depression and chronic pain.

## **V. CONCLUSIONS OF LAW**

1. The Division of Workers' Compensation of the Texas Department of Insurance has jurisdiction related to this matter pursuant to Acts of May 30, 2005, 79th Leg., ch. 265, § 8.013, eff. Sept. 1, 2005, and TEX. LAB. CODE ANN. § 413.031.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. §§ 402.073(b) and 413.031(k); TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN CODE (TAC) §§ 148.1-148.28.
5. AHAC had the burden of proof in this proceeding. 28 TAC §§ 148.14(a); 1 TAC § 155.41.

6. Under TEX. LABOR CODE § 408.021(a)(1), an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed that cures or relieves the effects naturally resulting from the compensable injury.
7. The office visits billed as 99213-MP, do not meet the requirements of the 1996 Medical Fee Guideline, adopted by reference in 28 TAC § 134.201 (eff. April 1, 1996), and thus were not medically necessary health care.
8. The office visits with manipulations, myofascial release, electrical stimulation, ultrasound therapy, and hot/cold pack therapy provided to Claimant from October 25, 2003, through April 20, 2003, were not medically necessary health care.
9. Based upon the foregoing Findings of Fact and Conclusions of Law, AHAC's petition is granted.

### **ORDER**

**IT IS THEREFORE, ORDERED** that Dr. Santelli is not due reimbursement from American Home Assurance Company for the treatments provided to Claimant from October 25, 2002, to April 30, 2003.

**SIGNED December 7, 2005.**

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**KATHERINE L. SMITH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**