

**DOCKET NO. 453-05-1131.M5
TWCC MDR NO. M5-04-3559-01**

BRETT M. DOWNEY, D.C.

PETITIONER

V.

**SERVICE LLOYDS INSURANCE
COMPANY**

RESPONDENT

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Brett M. Downey (Provider) appealed the decision of the Texas Workers' Compensation Commission (Commission) designee, an Independent Review Organization (IRO), which denied his request for reimbursement for mechanical traction, manual therapy, therapeutic activities, neuromuscular reeducation, training in daily living activities, and office visits (collectively, requested services) from June 23, 2003, through September 2, 2003, as not medically necessary. The Administrative Law Judge (ALJ) finds that Provider did not prove that the requested services were medically necessary; therefore, Provider is not entitled to reimbursement from Service Lloyds Insurance Company (Carrier) for the requested services.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On May 17, 2005, ALJ Michael J. O'Malley convened the hearing on the merits at the William P. Clements Building, 300 West 15th Street, Austin, Texas. Carrier appeared through its attorney, Tom W. Lueders, II. Provider appeared and represented himself. After the evidence was presented, the record of the hearing closed the same day. There were no contested issues regarding notice or jurisdiction; therefore, those issues are presented in the findings of fact and conclusions of law without further discussion.

II. BACKGROUND, EVIDENCE, AND DISCUSSION

1. Background

On ____, Claimant ____ (a ____-year-old male) sustained a compensable work-related injury when he lifted a wrench over his head. Claimant injured his upper back between his shoulder blades and his neck. The initial diagnosis was thoracic sprain/strain and neck sprain/strain. Shortly after his injury, Provider began providing chiropractic care to Claimant and provided care until September 2, 2003.

2. Legal Standards

Provider has the burden of proof in this proceeding. 28 TEX. ADMIN CODE § 148.21(h). 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. LABOR CODE ANN. § 408.021(a).

3. Parties' Positions and Evidence

1. Provider's Position and Evidence

After submitting documents in evidence, Dr. Downey testified on the medical necessity of the requested services. He testified that Claimant suffered a upper back and neck strain/sprain with radiculopathy. He further testified that he initially treated Claimant with passive modalities and, as he improved, he began active modalities. Dr. Downey stated that his notes were thorough, and they explained how Claimant improved with continued chiropractic treatment. In addition, he claimed

that his treatment resolved Claimant's neck and back pain, and he released Claimant from care on September 2, 2003.

2. Carrier's Position and Evidence

Carrier submitted documents in evidence but did not call any witnesses to testify. Carrier argues that chiropractic care for a thoracic and neck sprain/strain is not justified 15 months after the injury. To support its position, Carrier relied on the June 11, 2003 peer review report, which indicated that normal treatment protocol for this injury would include six to eight weeks of treatment (not exceeding 15 office visits of chiropractic care). In addition, Carrier relied on July 28, 2003, designated doctor report, which indicated that Claimant had a zero percent whole person impairment and was at maximum medical improvement on July 28, 2003.

3. ALJ's Analysis

The ALJ finds Provider did not prove by a preponderance of evidence that the requested services were medically necessary. First, two MRIs resulted in insignificant findings. The first MRI of the thoracic spine conducted on January 10, 2003, indicated posterocentral disc protrusion at T11-T12 with effacement of the epidural fat and spine fluid without any significant compression of the cord (no neurologic compromise).¹ The second MRI of the cervical spine conducted on March 4, 2003, showed a normal cervical spine.²

Second, M. Athari, M.D., evaluated Claimant on February 13, 2003, and found that a head compression test was positive for radicular pain, but all other tests were normal.³ Third, on March 31, 2003, John J. DeBender, M.D., evaluated Claimant and found that sensation and muscle

¹ Provider Ex. 1 at 73-74.

² Provider Ex. 1 at 71-72.

³ Carrier Ex. 1 at 71-72; Provider Ex. 1 at 63-64.

functions were normal in the upper extremities. His exam resulted in normal findings, and he concluded that the cervical strain was resolving. He recommended over-the-counter anti-inflammatory medications as needed and the use of heat at home. He did not indicate that further physical therapy was needed.⁴

Fourth, a June 11, 2003, peer review report, indicated that a sprain/strain injury of this type would require not more than six to eight weeks of chiropractic treatment.⁵ Fifth, on June 26, 2003, Dr. Athari conducted EMG/NCV studies. The EMG of the upper extremities was unremarkable, and the NCV study showed normal results.⁶ Finally, on July 28, 2003, Harry L. Moskowitz, D.O., a designated doctor for the Texas Workers' Compensation Commission, found that Claimant had no symptoms except with exertion and had no significant findings; this was equivalent to a zero percent impairment rating. He concluded that Claimant was at maximum medical improvement.⁷

Claimant's injury was diagnosed as a thoracic and neck sprain/strain. Claimant received almost 17 months of chiropractic treatment for a sprain/strain without any objective findings indicating that this amount of treatment was warranted. In fact, the objective diagnostic tests (MRIs and EMG/NCV) were, for the most part, unremarkable and did not indicate significant findings. Although there was some indication of radiculopathy noted by Dr. Athari, most of the doctors agreed that Claimant's injury had resolved before June 23, 2003, with no further treatment indicated.⁸ For these reasons, the ALJ finds that Provider did not prove that the requested services from June 23, 2003, through September 2, 2003, were medically necessary.

⁴ Provider Ex. 1 at 65-66.

⁵ Carrier Ex. 1 at 6-7.

⁶ Provider Ex. 1 at 68-70.

⁷ Carrier Ex. 1 at 82-83.

⁸ Claimant never stopped working.

III. FINDINGS OF FACT

1. On ____, Claimant ____ (Claimant) sustained a compensable work-related injury while lifting a wrench over his head.
2. At the time of the compensable injury, Claimant's employer had workers' compensation insurance with Service Lloyds Insurance Company (Carrier).
3. Claimant's diagnosis was thoracic sprain/strain and neck sprain/strain.
4. Brett M. Downey, D.C., (Provider) became Claimant's treating doctor.
5. Dr. Downey began treatment with passive modalities, and as Claimant improved, he began active modalities.
6. An MRI of the thoracic spine conducted on January 10, 2003, indicated posterocentral disc protrusion at T11-T12 with effacement of the epidural fat and spine fluid without any significant compression of the cord (no neurologic compromise).
7. An MRI of the cervical spine conducted on March 4, 2003, showed a normal cervical spine.
8. On February 13, 2003, Claimant's head compression test was positive for radicular pain, but all other tests were normal.
9. On March 31, 2003, Claimant's sensation and muscle functions were normal in the upper extremities; the sprain/strain was resolving.
10. On March 31, 2003, Claimant should have been treated with over-the-counter anti-inflammatory medications as needed and the use of heat at home. He did not need further physical therapy.
11. A sprain/strain injury of this type should not have required more than six to eight weeks of chiropractic treatment.
12. On June 26, 2003, Claimant's EMG of the upper extremities was unremarkable, and his NCV study showed normal results.

13. On July 28, 2003, Claimant had no significant findings, which was equivalent to a zero percent impairment rating. Claimant was at maximum medical improvement.
14. Carrier denied Provider's request for reimbursement for mechanical traction, manual therapy, therapeutic activities, neuromuscular reeducation, training in daily living activities, and office visits (collectively, requested services) from June 23, 2003, through September 2, 2003, as not medically necessary
15. On August 23, 2004, an Independent Review Organization (IRO) upheld Carrier's decision to deny reimbursement for the requested services.
16. On September 17, 2004, Provider appealed the IRO's decision.
17. The Texas Workers' Compensation Commission sent notice of the hearing to the parties on November 8, 2004. The hearing notice informed the parties of the matter to be determined, the right to appear and be represented, the time and place of the hearing, and the statutes and rules involved.
18. The hearing was held on May 17, 2005. Carrier appeared through its attorney, Tom W. Lueders, II. Provider appeared and represented himself.
19. At the hearing, the only contested issue involved the medical necessity of the requested services.

IV. CONCLUSIONS OF LAW

1. 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. §§ 402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. Proper and timely notice of the hearing was provided to the parties in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. 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).

4. Pursuant to 28 TEX. ADMIN. CODE § 148.21(h), Provider has the burden of proving by a preponderance of the evidence that the requested services were medically necessary.
5. Provider did not prove by a preponderance of the evidence that the requested services were medically necessary.
6. Based on the Findings of Fact and Conclusions of Law, Carrier is not required to reimburse Provider for the requested services.

ORDER

IT IS HEREBY ORDERED that Service Lloyds Insurance Company is not required to reimburse Brett M. Downey, D.C., for mechanical traction, manual therapy, therapeutic activities, neuromuscular reeducation, training in daily living activities, and office visits conducted from June 23, 2003, through September 2, 2003.

SIGNED May 24, 2005.

MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARING