

**SOAH DOCKET NO. 453-05-1639.M5  
TWCC MDR NO. M5-04-1381-01**

**INSURANCE COMPANY OF THE  
STATE OF PENNSYLVANIA**

**vs.**

**LAURENCE NEIL SMITH, D.C.**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

The issue involved is whether Insurance Company of the State of Pennsylvania (Carrier) correctly denied payment of \$1,045 billed by Laurence Neil Smith, D.C. (Provider) for chiropractic treatments provided to an injured worker (Claimant) between February 3 and March 3, 2003. Carrier challenged the medical necessity of the treatment, but Provider contended all care that relieves symptoms from a compensable injury is necessary. The Administrative Law Judge (ALJ) finds that the chiropractic treatments at issue were not medically necessary, and Provider is not entitled to reimbursement.

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

On August 23, 2005, ALJ Georgie B. Cunningham conducted the hearing on the merits at the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas. Attorney Steven M. Tipton represented Carrier, and Provider appeared *pro se*. The parties did not contest jurisdiction or notice. Therefore, those issues are addressed in the findings of fact and conclusions of law without discussion. The ALJ closed the hearing on August 23, 2005.

## II. DISCUSSION

At the hearing, the parties relied on their documentary evidence and arguments. According to the documentary evidence, Claimant, a stacker operator, injured his head, back, and right arm when he fell to the floor after suffering heat exhaustion on \_\_\_\_\_. He was initially treated at a hospital and discharged. Thereafter, he received chiropractic treatments from Provider and was deemed to have reached MMI on January 31, 1996.

Claimant did not have any treatment between 1998 and 2002 for his work-related injury. The record is not entirely clear when in 2002 Claimant again sought treatment, but on December 6, 2002, Dr. John C. McConnell prescribed “massage therapy, range of motion, and modalities” three times weekly for four weeks with no refills. Thereafter, Provider treated Claimant between January 7 and May 28, 2003, but Carrier denied all the claims based on a lack of medical necessity.

Provider requested dispute resolution from the Texas Workers' Compensation Commission (Commission), and the case was reviewed by an Independent Review Organization (IRO) doctor who was certified in chiropractic medicine and who was currently on the Commission's approved doctor list. The IRO decision indicated the medical records for the treatments between January 16 and May 28, 2003, had been reviewed. The reviewer determined that sufficient documentation was not provided to justify the intense treatment. The decision specifically stated, “There are no national treatment guidelines that will allow for this type of treatment of this frequency and intensity 7 ½ years post injury date.”

Although the evidence did not clearly show that the IRO reviewer did *not* consider the medical necessity of all of the treatment provided, the Commission's Medical Review Division (MRD) officer indicated that not all of the Explanation of Benefits (EOBs) had been submitted. The MRD officer addressed the claims between February 3 and March 3, 2003, and ordered Carrier to pay the claims, with the exception of the claims billed under CPT Code 97110.

Carrier contended it had provided the EOBs and filed its request for hearing based on the order to reimburse Provider. Provider did not appeal the denial of the other claims. At first, the hearing did not appear to be one involving medical necessity. However, the ALJ concluded it is a case of medical necessity for the following reasons: (1) Carrier provided all of the purportedly missing EOBs; (2) Provider presented some of the purportedly missing EOBs; (3) the MRD decision reported as missing some of the EOBs that even Provider furnished; (4) the IRO decision appeared to address all of the treatment furnished between January 16 and May 28, 2003; (5) the MRD decision stated that Provider did not prevail on the issues of medical necessity from January 16 through May 28, 2003, and was therefore not entitled to reimbursement of the IRO fee; and (6) Provider did not contest that the issue was one of medical necessity.

Carrier argued that Claimant had extensive chiropractic treatment for more than four years without significant improvement. Even though Dr. McConnell stressed home exercises in his prescription, Provider did not explain why treatment was needed in a facility beyond the prescribed four weeks. Neither did he adequately justify the need for two-hour treatments per visit.

It is even more significant that Provider did not explain why he furnished office visits with manipulation, kinetic activities, and neuromuscular re-education when Dr. McConnell had prescribed massage therapy, range of motion, and modalities. Although Provider argued he and Dr. McConnell had such a close working relationship that specifics in a prescription were unnecessary, no objective evidence was offered to establish that point.

Provider referenced a statutory requirement and argued that all treatment that relieves the effects naturally resulting from a compensable injury must be provided.<sup>1</sup> Referencing a statutory provision alone will not make care medically necessary. The ALJ agrees with Carrier that the statute provides further that the health care must be reasonably required by the nature of the injury.

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<sup>1</sup> TEX. LAB. CODE ANN. § 408.021.

Claimant's condition did not indicate a need for intense, continued chiropractic care 7 ½ years post-injury.

The ALJ agrees with the Carrier's and IRO reviewer's positions that Provider's treatment went beyond the established standards of chiropractic care without the necessity of continued treatment being demonstrated. Therefore, Provider is not entitled to reimbursement.

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

1. Between January 7 and May 28, 2003, Laurence Neil Smith, D.C. (Provider) treated Claimant for a work-related injury.
2. Insurance Company of the State of Pennsylvania (Carrier), which provided workers' compensation coverage for Claimant's employer, denied payment for the chiropractic treatment.
3. Provider requested medical dispute resolution by the Texas Workers' Compensation Commission (Commission) based on Carrier's denial.
4. On April 30, 2004, an Independent Review Organization (IRO) determined that the chiropractic treatments were not medically necessary.
5. On September 30, 2004, the Commission's Medical Review Division (MRD) issued its decision that Provider had not prevailed on his claims from January 7 through January 29, 2003, and from March 10 through May 28, 2003.
6. The MRD decision determined that the IRO opinion did not address the services provided between February 3 and March 3, 2003, because the Explanation of Benefits (EOBs) had not been submitted.
7. The MRD decision determined that Provider was not entitled to reimbursement for the one-on-one therapy billed under CPT Code 97110 between February 3 and March 3, 2003.
8. The MRD decision ordered Carrier to reimburse Provider \$1,045 for the office visits with manipulation, kinetic activities, and neuromuscular re-education provided between February 3 and March 3, 2003.

9. The MRD decision did not provide a reason for ordering the payment of the claims.
10. On October 14, 2004, Carrier requested a hearing on this matter before the State Office of Administrative Hearings.
11. On November 16, 2004, the Commission sent a hearing notice advising the parties of the matters to be determined; the right to appear and be represented by counsel; the date, time, and place of the hearing; and the statutes and rules involved.
12. While working as a stacker operator on\_\_\_\_, Claimant suffered heat exhaustion causing him to fall and injure his head, back, and right arm.
13. Claimant was treated at a hospital and released.
14. Provider began treating Claimant after his release from the hospital.
15. Claimant was deemed to have reached MMI on January 31, 1996.
16. Claimant did not have any treatment between 1998 and 2002 for his work-related injury.
17. On December 6, 2002, Dr. John C. McConnell prescribed “massage therapy, range of motion, and modalities” three times weekly for four weeks with no refills.
18. Between February 3 and March 3, 2003, Provider submitted claims to Carrier for neuromuscular re-education, kinetic activities, and office visits with manipulation.
19. Carrier denied the claims because the treatment was not medically necessary.
20. The IRO review was performed by a physician who was certified in chiropractic medicine and who was currently on the Commission’s approved doctor list.
21. The evidence did not clearly show that the IRO reviewer did not consider the medical necessity of all of the treatment provided.
22. The IRO reviewer found that the treatment was not medically necessary from January 16 through May 28, 2003.
23. Claimant had already received extensive chiropractic treatment for nearly four years without significant improvement.

24. Provider furnished office visits with manipulation, kinetic activities, and neuromuscular re-education although the prescription was for massage therapy, range of motion, and modalities.
25. Provider furnished treatment more than four weeks.
26. Dr. McConnell stressed home exercises.
27. The medical records did not indicate why treatment was not needed in a facility or why each treatment should be two hours in length.
28. Claimant's condition did not indicate a need for intense, continued chiropractic care 7 ½ years post-injury.

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

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, 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. LAB. CODE ANN. §§ 402.073 and 413.031(k), and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided to the parties in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Based on the findings of fact and conclusions of law, the disputed services were not medically necessary, as specified in TEX. LAB. CODE ANN. § 408.021.

**ORDER**

IT IS, THEREFORE, ORDERED that Laurence Neil Smith, D.C., is not entitled to reimbursement from Insurance Company of the State of Pennsylvania for the disputed services from February 3, 2003, through March 3, 2003.

**SIGNED October 24, 2005.**

**GEORGIE B. CUNNINGHAM  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**