

<b>MEGA REHAB CENTER,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>AMERICAN CASUALTY COMPANY,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

### DECISION AND ORDER

Mega Rehab Center (Petitioner) has challenged the decision of an independent review organization (IRO) on behalf of the Texas Workers' Compensation Commission (Commission) in a dispute regarding the medical necessity of chiropractic treatment and related services. The IRO found that the insurer, American Casualty Company (Respondent), properly denied reimbursement for services that Petitioner provided from November 26, 2002, through July 15, 2003, to a claimant suffering shoulder and cervical spine injuries.

Petitioner contended that the IRO's decision was incorrect with respect to some of the services considered *i.e.*, Petitioner's medical evaluations and nerve conduction velocity (NCV) testing of the claimant. Accordingly, Petitioner urged that these specific services were medically necessary, within the meaning of §§ 408.021 and 401.011(19) of the Texas Workers' Compensation Act (the Act), TEX. LABOR CODE ANN. ch. 401 *et seq.*

This decision disagrees with that of the IRO, in part, finding that reimbursement of Petitioner for the disputed evaluations and testing is appropriate.

#### I. JURISDICTION, NOTICE, AND VENUE

The Commission has jurisdiction over this matter pursuant to § 413.031 of the Act. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003. No party challenged jurisdiction, notice, or venue.

#### II. STATEMENT OF THE CASE

The hearing in this docket was convened on July 14, 2005, at SOAH facilities in the William P. Clements Building, 300 W. 15<sup>th</sup> St., Austin, Texas. Administrative Law Judge (ALJ) Mike Rogan presided. The parties appeared by telephone. Petitioner was represented by Stephen Dudas, D.C. Respondent was represented by Jo Beth Gilleland, Attorney. Both parties presented evidence and argument, after which the record closed on the same date.<sup>1</sup>

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<sup>1</sup>The staff of the Commission formally elected not to participate in this proceeding, although it filed a general Statement of Matters Asserted with the notice of the hearing.

The record revealed that on \_\_\_\_, the claimant suffered multiple injuries, including compensable injuries to her shoulder and cervical spine. After receiving treatment (including physical therapy) from other sources, the claimant on November 26, 2002, began additional treatment with Petitioner, which ultimately included nine sessions of physical therapy, five evaluations, and one NCV test.

When Petitioner subsequently billed Respondent (the insurer for the claimant's employer) for services in the case from November 26, 2002, through July 15, 2003, Respondent denied reimbursement on the grounds that the treatment had been medically unnecessary. Petitioner sought medical dispute resolution through the Commission. The IRO to which the Commission referred the dispute issued a decision on January 29, 2004, concluding that Respondent had correctly characterized the disputed services as unnecessary. The IRO declared the following:

[A] close review of the records indicates that similar physical medicine treatment had been unsuccessfully attempted in the summer of 2002 prior to [the patient's] consulting with Dr. Dudas on 11/26/02. Absent documentation from the doctor indicating why a different result could be expected by repeating similar treatment - or that a different result in fact occurred - the referenced care can only be classified as being medically unnecessary.

More importantly, the reviewer could find no documentation whatsoever that chiropractic spinal adjustments were performed at any time. According to the AHCPR guidelines, spinal manipulation was the only recommended treatment that could relieve symptoms, increase function and hasten recovery for patients with low back pain. Based on that, the reviewer fails to understand why a doctor of chiropractic would withhold this recommended treatment while repeating a host of non-recommended therapies.

The Commission's Medical Review Division (MRD) reviewed the IRO's decision and, on October 8, 2004, issued its own decision confirming that the disputed services were not medically necessary and should not be reimbursed.<sup>2</sup> Petitioner then made a timely request for review of the IRO and MRD decisions before SOAH.

### **III. THE PARTIES' EVIDENCE AND ARGUMENTS**

#### **A. Petitioner**

Petitioner argued that the IRO simply did not address the necessity of the disputed evaluations and NCV testing. Rather, the IRO only discussed whether the physical therapy that Petitioner provided the claimant was appropriate. Dr. Dudas, who was the claimant's treating physician during her treatment with Petitioner, testified that the five evaluations conducted in almost eight months did not represent over-utilization of care, but were necessary to assess the patient's condition and progress. He acknowledged that the evaluations did include consideration of the patient's response to physical therapy, but he asserted that the primary focus of these visits was upon whether the patient needed other types of care B including medications, epidural steroid injections, and surgery.

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<sup>2</sup> The MRD decision also noted that the dispute encompassed a few services that were not addressed by the IRO's determination upon medical necessity. The MRD decision accordingly ruled upon reimbursement for those other services. At the SOAH hearing, Petitioner made clear that it was not challenging either the MRD's decision on these other services or the IRO's determination as to the physical therapy services in this case.

Petitioner ordered the claimant's NCV testing upon the recommendation of a neurosurgeon, Dr. Dudas noted. It was performed primarily because the claimant exhibited symptoms of radiculopathy and an apparent double crush syndrome *i.e.*, injuries to separate areas of the shoulder and neck. The testing was intended, according to Dr. Dudas, to identify the exact location of any nerve damage that was producing the radiculopathy.

Referring to a Table of Disputed Services from the Commission's review process in this case,<sup>3</sup> Dr. Dudas identified \$1,744 as the total maximum allowable reimbursement for the disputed evaluations and testing, under applicable Commission fee guidelines.

## **B. Respondent**

Respondent relied in large part upon a peer review by William E. Blair, Jr., M.D., an orthopedic surgeon who examined the record of the case in November of 2002. Dr. Blair's brief analysis concludes that the claimant probably has sustained at most, if any, a non-verifiable, non-specific soft tissue injury to the arm and neck . . . His recommendation in the case states, it is highly unlikely that [claimant] requires any additional ongoing scheduled medical care, chiropractic care, or alternative medical therapies.

## **IV. ANALYSIS**

The rationale for the IRO's decision in this case has little or no relevance to the disputed evaluations and testing, instead focusing almost entirely on the allegedly redundant physical therapy provided to the claimant. The rebutted testimony of Dr. Dudas provided the most persuasive evidence in the record with respect to the purpose, context, and effect of the disputed services. Therefore, the ALJ finds that Petitioner has discharged its burden of proof in demonstrating that the IRO's decision should be reversed, in part.

Dr. Blair's peer review report offers little explanation for its findings. As noted in testimony by Dr. Dudas, the review took place before the complainant's treatment with Petitioner even began and states only that it was based upon documentation provided, without identifying the scope or nature of that documentation.

The IRO decision suggests that some further treatment is appropriate in the claimant's case, since it refers to previous physical therapy that was unsuccessfully attempted and criticizes Petitioner for failing to perform the only type of chiropractic treatment that the reviewer thinks would be effective in relieving the claimant's pain (albeit pain associated with a non-compensable aspect of the claimant's injuries). The disputed evaluations and testing were intended, of course, to determine exactly what sort of additional treatment would be effective in the case.

## **V. CONCLUSION**

The ALJ finds that, under the record provided in this case, the specific medical services at issue B evaluations and NCV testing of the claimant - have been shown to be medically necessary and reasonable. Reimbursement of \$1,744 for these services is therefore appropriate, contrary to the prior determination of the IRO.

## **VI. FINDINGS OF FACT**

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<sup>3</sup>Exhibit No. 1, p. 8.

1. On \_\_\_\_, claimant suffered multiple injuries, including shoulder and cervical spine injuries that were compensable under the Texas Worker's Compensation Act (the Act), TEX. LABOR CODE ANN. § 401.001 *et seq.*
2. After receiving treatment for her injuries (including physical therapy) from other sources, claimant on November 26, 2002, began additional treatment with Mega Rehab Center (Petitioner), which ultimately included nine sessions of physical therapy, five evaluations, and one nerve conduction velocity (NCV) test.
3. Petitioner sought reimbursement of \$3,311 for services noted in Finding of Fact No. 2 from American Casualty Company (Respondent), the insurer for claimant's employer.
4. Respondent denied the requested reimbursement on the basis that the services were medically unnecessary.
5. Petitioner made a timely request to the Texas Workers' Compensation Commission (Commission) for medical dispute resolution with respect to the requested reimbursement.
6. The independent review organization (IRO) to which the Commission referred the dispute issued a decision on January 29, 2004, concluding that Respondent had correctly characterized the disputed services as unnecessary.
7. The Commission's Medical Review Division reviewed and concurred with the IRO's decision in a decision dated October 8, 2004, in dispute resolution docket No. M5-04-0727-01.
8. Petitioner requested in timely manner a hearing with the State Office of Administrative Hearings (SOAH), seeking review and reversal of the IRO and MRD decisions regarding reimbursement.
9. The Commission mailed notice of the hearing's setting to the parties at their addresses on November 29, 2004.
10. A hearing in this matter was convened before SOAH on July 14, 2005, in Austin, Texas. Petitioner and Respondent were represented and participated by telephone. The hearing concluded and the record in the proceeding closed on the same date.
11. At the hearing, Petitioner announced that it was contesting only the IRO decision insofar as it had denied reimbursement for five evaluations and one NCV test.
12. The primary focus of the five evaluations of claimant conducted by Petitioner was to determine whether the patient needed care other than continuing physical therapy including medications, epidural steroid injections, and surgery.
13. Petitioner ordered the NCV test upon the recommendation of a neurosurgeon, because the claimant exhibited symptoms of radiculopathy and an apparent double crush syndrome *i.e.*, injuries to separate areas of the shoulder and neck. The test was intended to identify the exact location of any nerve damage that was producing the radiculopathy.
14. The Commission's applicable Medical Fee Guidelines restrict Petitioner to a total maximum allowable reimbursement of \$1,744 for the services noted in Finding of Fact No. 11.

## VII. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction related to this matter pursuant to § 413.031 of the Act.
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 § 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and the Commission's rules, 28 TEX. ADMIN. CODE (TAC) §§ 133.305(g) and 148.001-148.028.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Petitioner, the party seeking relief, bore the burden of proof in this case, pursuant to 28 TAC § 148.21(h).
6. Based upon the foregoing Findings of Fact, the services for the claimant noted in Finding of Fact No. 11 represent elements of health care medically necessary under § 408.021 of the Act.
7. Based upon the foregoing Findings of Fact and Conclusions of Law, the findings and decisions in this matter of the IRO, issued on January 29, 2004, and of the MRD, issued on October 8, 2004, should be reversed, in part; contrary to those decisions, reimbursement of \$1,744 for the services noted in Finding of Fact No. 11 is appropriate.

### ORDER

**IT IS THEREFORE, ORDERED** that Respondent, American Casualty Company, shall reimburse Petitioner, Mega Rehab Center, \$1,744 for five patient evaluations and one nerve conduction velocity test performed between November 26, 2002, and July 15, 2003.

**SIGNED July 25, 2005.**

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**MIKE ROGAN**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**