

**SOAH DOCKET NO. 453-05-2039.M5  
MR NO. M5-04-3530-01**

<b>WEST BELT MEDICAL, P.L.L.C.,</b>	:	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	:	
	:	
<b>V.</b>	:	<b>OF</b>
	:	
<b>SERVICE LLOYDS INSURANCE</b>	:	<b>ADMINISTRATIVE HEARINGS</b>
<b>COMPANY,</b>	:	
<b>Respondent</b>	:	

**DECISION AND ORDER**

This case is an appeal by West Belt Medical, P.L.L.C. (Provider) from a decision of an independent review organization (IRO) on behalf of the Texas Department of Insurance, Division of Workers' Compensation (formerly, the Texas Workers' Compensation Commission) in a dispute regarding medical necessity for chiropractic treatment. The IRO found that Service Lloyds Insurance Company (Carrier) properly denied reimbursement for examinations, mechanical traction, therapeutic exercises, and chiropractic treatment. Provider appealed on the basis that these 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.* The Administrative Law Judge (ALJ) finds that Provider should be reimbursed for the disputed services.

**I. STATEMENT OF THE CASE**

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. 2005. No party challenged jurisdiction or venue. ALJ Lilo D. Pomerleau convened the hearing in this docket on July 18, 2005, at SOAH

facilities in the William P. Clements Building, 300 W. 15<sup>th</sup> Street, Austin, Texas. Provider was

represented William F. Pulkingham, attorney, and Carrier was represented by Tom W. Lueders, II, attorney. The record closed that same day.

Claimant injured his low back on \_\_\_\_\_, when he lifted a 30 pound barrel. Claimant was initially treated by Daniel D. Cantu, D.C., with physical therapy and steroid injections. On October 8, 2002, Ajay Bindle, M.D., performed back surgery, consisting of a lumbar laminectomy and diskectomy, on Claimant. Post-surgery, Claimant received chiropractic treatment, aquatic therapy, nerve blocks, and medication. Claimant changed treating doctors to W. Robert Morrow, D.C. He diagnosed Claimant as having post operative scaring and lumbar disc herniation with myelopathy.<sup>1</sup> Claimant is also diabetic.

At issue are office visits, testing, and chiropractic therapy, provided from August 19 through November 21, 2003.<sup>2</sup> The amount in question is \$6,156.06.

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

#### **A. Provider**

Provider submitted into evidence medical records and argument previously submitted to the IRO and the testimony of Dr. Morrow. When Claimant first presented to Dr. Morrow he complained of stiff back pain radiating to his legs, restricted range of motion, moderate to severe lumbar spasms. Claimant had surgical scars and four half-inch burns, two on his buttocks and two on his back, from inappropriately applied electrical therapy electrodes. The burns were painful, deep, raw, and leaking fluid and limited Claimant's movement. Diabetes further slowed Claimant's recovery.

On that first visit, Dr. Morrow examined Claimant, took x-rays, and found that Claimant had scar tissue and either a calcified disc fragment or a bone chip on L-5, but he needed a CT scan to

---

<sup>1</sup> See Provider's Ex. 1 at 40-41, August 19, 2003 examination notes; testimony.

<sup>2</sup> Provider's Ex. 1 at 4.

make a determination. Because of Claimant's burns, Dr. Morrow could not perform standard tests on Claimant and, thus, could not determine why Claimant had pain radiating down his leg.

Dr. Morrow also started Claimant with physical therapy: a lumbar traction program (CPT code 97012) to stretch and break up the scar tissue, with bending and stretching to stretch his spine deep into the ligaments (CTP code 97110). Dr. Morrow stated it takes weeks of bending and stretching to work deep enough into the muscles to reach into the ligaments. He further stated that a patient cannot perform home exercises as a substitute for this treatment because a patient cannot get to the spinal core without clinical assistance.

Dr. Morrow testified that on September 22, 2003, after receiving the results of the September 12, 2003 CT scan, he stepped up the back exercises because there was no bone spur. Claimant was started on certain lumbar equipment to release back pain.

The MRI dated October 20, 2003, indicated Claimant had exuberant scar tissue-the formation of scar tissue between bone and nerve on the L5 nerve root, which is alleviated best through surgery. However, Dr. Morrow also opined that traction-physical medicine-is sometimes effective to break up the scar tissue. He referred Claimant back to Dr. Bindal to determine whether the fragment should be removed. On October 27, 2003, Dr. Morrow also sent Claimant for physiological assessment because Claimant was depressed, and Dr. Morrow worried that Claimant was magnifying his symptoms.<sup>3</sup>

Dr. Morrow testified that he disagreed with the IRO reviewer that Claimant's initial history (before Claimant began seeing Dr. Morrow) of failed conservative treatment should have informed Provider that further conservative treatment would have a similarly poor prognosis. Dr. Morrow contended that the massage and electrical stimulation provided by Claimant's previous doctor, Dr. Cantu, was a waste because that doctor did not work down to the core of Claimant's spinal ligaments and applied electrodes in the wrong places.

---

<sup>3</sup> Dr. Morrow stated that the results of this testing did not likely change his treatment plan.

Provider argues that Claimant's treatment plan changed from chiropractic treatment to pain management on November 20, 2003, when Dr. Morrow received Dr. Bindal's report that a second surgery was necessary. During November, Claimant's pain was increasing, despite treatment. Dr. Morrow testified that Claimant's pain relief was temporary but longer lasting than the relief Claimant would have received from medication. If the breakdown of scar tissue would have been successful, Claimant would have had initially more pain but then relief.

## **B. Carrier**

Carrier also submitted into evidence medical records and argument previously submitted to the IRO. Carrier argues that Claimant did not benefit from the treatment.

Before the disputed services were provided, on April 21, 2003, Dennis Teal, D.C., reviewed Claimant's case history and found Claimant had a "lumbar disc disorder secondary to the compensable injury."<sup>4</sup> He further found that additional physical medicine care did not appear reasonable and necessary but that further studies consisting of neurodiagnostics would be reasonable to see if further surgery was required.

After the disputed services were provided, on April 23, 2004, Timothy J. Fahey, D.C., reviewed Claimant's case history and noted that the September 12, 2003 CT scan revealed no evidence of disc protrusion or bulge. Dr. Fahey took issue with Provider's offering passive modalities to Claimant on September 19, 2003.

Carrier argues these doctors and the IRO reviewer offer persuasive evidence that the services in question were not reasonable and necessary. Carrier notes that many services were not disputed: notably, services offered by Provider after the second surgery were reimbursed. Carrier contends that chiropractic care could not have cured the deficit in the lumbar spine, and Dr. Morrow should

---

<sup>4</sup> Provider's Ex. 1 at 88.

have known this and not provided months of treatment when surgery was necessary. Carrier further argues that Claimant did not benefit from the treatment, as required by § 408.021.

### III. ANALYSIS

At issue is whether Provider showed by a preponderance of evidence that the disputed services were reasonable and necessary. Provider met that burden.

The evidence indicates that Claimant was not properly treated after his failed back surgery on October 8, 2002. The chiropractic care he received from his previous doctor did not alleviate Claimant's pain-worse, the treatment left burns on Claimant. When Claimant first presented to Provider on August 19, 2003, his back was stiff, with pain radiating down his legs, and he had visible burns, with pain associated with those burns as well. Provider tried to determine the cause of Claimant's back pain through testing (x-rays, CT scan, and MRI). As his treating doctor, Provider was required to initially examine Claimant, see him at least once a month, and file certain forms with the Commission (although Carrier disputed the filing of these forms under CPT code 99080).

Dr. Morrow's testimony established that on August 19, 2003, Claimant needed immediate treatment and testing. Provider furnished Claimant with x-rays, mechanical traction, and stretching exercises, beginning that first day. Claimant's burns were also treated and allowed to heal. Provider referred Claimant for testing. Services at issue continued, two or three days a week, for approximately three months until November 21, 2003. While some passive therapies were included in the treatment, they were used as an adjunct to the active, deep tissue therapy. Eventually, Provider's services led to the proper diagnosis and treatment (a second surgery). Dr. Morrow's testimony that the necessity of the treatment in question-gearred towards the breaking up of Claimant's scar tissue-was not controverted. Dr. Morrow had a clear treatment goal in mind, based on his diagnosis, and he proceeded with services designed to meet that goal. Moreover, he changed his treatment in response to test results. For instance, he increased back exercises after the MRI ruled out a bone spur. It also appears from the treatment notes that Provider performed less physical therapies once Claimant had seen his surgeon, Dr. Bindal, who recommended a second surgery.

Dr. Morrow also noted that the second surgery was delayed because Carrier initially denied authorization. Although Carrier-through cross examination-tried to question Dr. Morrow's stated treatment plan and pointed out that Claimant's condition actually deteriorated, there was no evidence specifically controverting the reasonableness or necessity of the treating doctor's goal to break up scar tissue. As to the fact that Claimant's pain grew worse, Dr. Morrow testified that Claimant, just before his second surgery, got some pain relief for days at a time.

The ALJ notes that there was some delay during the time period at issue-first, when Dr. Morrow did not have either the MRI or CT test results and, second, when Dr. Morrow did not hear from the surgeon (Dr. Bindal) confirming that a second surgery was necessary. Those delays did not allow Provider to change the treatment plan sooner. But there is no showing that this delay was unreasonable. Carrier inquired during cross examination about the report from Dr. Moorehead stating that Claimant needed second surgery.<sup>5</sup> However, Dr. Morrow testified he did not have that report when he provided the services in question because Claimant did not disclose that the report existed. Dr. Morrow documented the dates of his requests for various medical reports (for instance, from the previous treating chiropractor and the surgeon), but such records were not timely sent.

The ALJ acknowledges that Claimant received some weekly services that could have been avoided if Provider could have immediately determined that: (1) the first surgery had failed, (2) the pain was not caused solely by scar tissue, and (3) surgery was the one sure treatment that could have alleviated Claimant's pain. However, Provider proved that his diagnosis and plan of action was reasonable until the second surgery was performed. The ALJ concludes that Provider met its burden of proving that the services at issue were reasonable and necessary.

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

1. On \_\_\_\_\_, Claimant was injured on the job when he was lifting a 30-pound barrel and felt a painful pop in his low back. The injury was a compensable injury under the Texas Worker's Compensation Act (the Act), TEX. LABOR CODE ANN. § 401.001 *et seq.*

---

<sup>5</sup> Dr. Moorehead's report, dated March 4, 2003, was copied to Dr. Cantu, Claimant's previous chiropractor. (Dr. Morrow did not address whether he had seen Dr. Teal's report before he began treating Claimant.)

2. On October 8, 2002, Ajay Bindle, M.D. performed back surgery-a lumbar laminectomy and diskectomy at L4-5 and L5-S1 Bon Claimant.
3. Claimant first presented to W. Robert Morrow, D.C., at West Belt Medical, P.L.L.C. (Provider), on August 19, 2003. At that time, Claimant complained of stiff back pain radiating to his legs, restricted range of motion, and moderate to server lumbar spasms. Claimant also had four half-inch burns form inappropriately applied electrical therapy electrodes.
4. On that first visit, Provider took x-rays, examined Claimant, and determined that Claimant had scar tissue and either a calcified disc fragment or a bone chip on L-5. In order to make a final determination, Provider ordered additional tests. Because of Claimant's burns, Provider could not perform standard tests on Claimant and, thus, could not determine why Claimant had pain radiating down his leg.
5. From August 19 through November 21, 2003, Claimant received chiropractic treatment, testing, and therapeutic exercise for the injury noted in Finding of Fact No. 1.
6. Provider sought reimbursement for therapeutic treatment and office visits from Service Lloyds Insurance Company (Carrier), the insurer for Claimant's employer.
7. Carrier denied the requested reimbursement.
8. Provider made a timely request to the Texas Workers' Compensation Commission (Commission), now known as the Texas Department of Insurance, Division of Workers' Compensation, for medical dispute resolution with respect to the requested reimbursement.
9. The independent review organization (IRO) to which the Commission referred the dispute issued a decision on August 23, 2004, and concluded that office visits, testing, chiropractic treatments, and therapeutic exercises for dates of service August 19 through November 21, 2003, were not medically necessary.
10. The Commission's Medical Review Division reviewed and concurred with the IRO's decision in a decision dated October 20, 2004, in dispute resolution Docket No. M5-04-3530-01.
11. Provider requested in a timely manner a hearing with the State Office of Administrative Hearings (SOAH), seeking review and reversal of the MRD decision regarding reimbursement.
12. The Commission mailed notice of the hearing's setting to the parties at their addresses on November 30, 2004.

13. On July 18, 2005, Lilo D. Pomerleau, an Administrative Law Judge with SOAH, convened a hearing in this matter at the William P. Clements Building, 300 W. 15<sup>th</sup> Street, Austin, Texas. Provider was represented William F. Pulkingham, attorney, and Carrier was represented by Tom W. Lueders, II, attorney. The record closed that same day.
14. Claimant was not properly treated by his first chiropractor after his failed back surgery on October 8, 2002, and subsequently changed treating doctors.
15. Dr. Morrow was Claimant's treating doctor when the disputed services were provided.
16. As Claimant's treating doctor, Dr. Morrow, on behalf of Provider, was required to initially examine Claimant, see him at least once a month, and file certain forms with the Commission.
17. On August 19, 2003, Claimant needed immediate treatment and testing to determine the cause of Claimant's condition.
18. Provider furnished Claimant with X-rays, mechanical traction, and stretching exercises, beginning on the first office visit. Provider referred Claimant for testing, specifically a CT scan and MRI.
19. Provider's treatment goal was to break up Claimant's scar tissue and determine the cause of Claimant's pain.
20. Provider continued to provide services designed to break up Claimant's scar tissue and/or to treat Claimant's pain through November 21, 2003, for two or three days a week.
21. Passive therapies were used as an adjunct to the active, deep tissue therapy that Claimant could not do at home, through home exercises.
22. Provider's services eventually led to the proper diagnosis and treatment (a second surgery).
23. Once Claimant's surgeon determined a second surgery was necessary, Provider changed his treatment plan to provide pain relief.

## **VII. CONCLUSIONS OF LAW**

1. The Texas Department of Insurance, Division of Workers' Compensation has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (the Act), TEX. LABOR CODE ANN. § 413.031.

2. 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.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and SOAH's rules, 1TEX. ADMIN. CODE (TAC) § 155.1 *et seq.*
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Provider bore the burden of proof as to whether examinations, mechanical traction, therapeutic exercises, and chiropractic treatment provided from August 19 through November 21, 2003, were medically necessary pursuant to 28 TAC § 148.14 and 1 TAC § 155.41(b).
6. Based upon the foregoing Findings of Fact, the office visits and chiropractic treatment for dates of service August 19 through November 21, 2003, 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 Provider is entitled to reimbursement for examinations, mechanical traction, therapeutic exercises, and chiropractic treatment provided from August 19 through November 21, 2003.

**ORDER**

**IT IS THEREFORE, ORDERED** that the appeal of West Belt Medical, P.L.L.C., seeking reimbursement for office visits, testing, chiropractic treatments, and exercise therapy provided on August 19 through November 21, 2003, is granted. Service Lloyds Insurance Company shall reimburse West Belt Medical, P.L.L.C., for the services at issue.

**SIGNED September 15, 2005.**

---

**LILO D. POMERLEAU  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**