

SCD BACK AND JOINT CLINIC,
LTD., Petitioner

V.

AMERICAN HOME ASSURANCE
COMPANY,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

SCD Back and Joint Clinic, Ltd. (Petitioner) requested a hearing to contest the Findings and Decision of the Texas Workers' Compensation Commission (Commission) acting through Texas Medical Foundation, an Independent Review Organization (IRO), denying Petitioner reimbursement for chiropractic services performed on _____ (Claimant) for the period August 26, 2003, through October 8, 2003 (Disputed Services).

The Administrative Law Judge (ALJ) finds Petitioner is not entitled to reimbursement of the Disputed Services from American Home Assurance Company (Respondent) for the chiropractic services performed on _____ (Claimant), because the services were not medically necessary.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Notice and jurisdiction were not contested. Those issues are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing in this matter convened on July 21, 2005, at the State Office of Administrative Hearings (SOAH) before ALJ Stephen J. Pacey. Petitioner was represented by William Maxwell, attorney, and Respondent was represented by Dan C. Kelley, attorney. The record closed the same day following adjournment of the hearing.

II. DISCUSSION

A. Background

Claimant sustained a work-related injury on or about _____, when his fellow employees rolled a pallet towards him hitting his inside left ankle. John R. Wyatt, D.C., Claimant's treating physician, diagnosed Claimant to have a left ankle sprain, left ankle tendinitis, and myofascial pain syndrome. On June 6, 2003, Dr. Wyatt began an eight-week treatment plan consisting of three sessions of treatment each week. Several diagnostic tests were performed. Kenneth G. Berliner, M.D., reported that a July 7, 2003 MRI of the left ankle was unremarkable, a July 22, 2003 EMG of the lower extremities was normal, and a September 11, 2003 bone scan of the lower extremities was normal.¹ After the initial treatment plan, Dr. Wyatt continued to treat Claimant.² The treatments were the same or similar to those performed the first eight weeks. Respondent denied payment and continued to deny payment for the remainder of the services. Petitioner requested medical dispute resolution on Respondent's denial. Following its review of the decision issued by the IRO, the MRD denied Petitioner's request for reimbursement of the disputed services on September 30, 2004. Petitioner received the denial on October 7, 2004, and requested a hearing on October 27, 2004.

B. Parties' Arguments

Because the question at the hearing was whether the Disputed Services treated as a whole were medically necessary, the parties did not argue or discuss each individual treatment. Basically, Respondent denied reimbursement because Claimant's condition did not improve from June 6, 2003, to August 26, 2003 (prior periods). Respondent's position was that without functional objective improvements further treatment without a revision of the treatment plan was unnecessary.

Petitioner's witness Dr. Bailey argued that there were objective findings that indicated improvement during prior period treatments. He asserted that strength tests reflected that in the prior

¹ Petitioner's Exhibit No. 1, at page 57.

² Dr. Wyatt worked for Petitioner, and David N. Bailey, D.C., Petitioner's owner, testified on behalf of Petitioner.

period, Claimant's ankle strength improved 913 percent. Dr. Bailey also mentioned eight days in September and October that the treatment visits reduced Claimant's pain level. Petitioner also argued that after the disputed dates of service, Claimant was diagnosed with Complex Regional Pain Syndrome (CRPS), which is defined as a history of trauma to the affected area associated with pain that is disproportionate to the inciting event. Dr. Bailey said that one of the characteristics of CRPS is that testing such as an unremarkable MRI, a negative EMG and normal bone scan may prove the possibility of the syndrome's existence.

Michael R. Hamby, D.C., testified for Respondent. Dr. Hamby said that Claimant's subjective pain levels and complaints remained moderate despite continued treatment. There was no indication in the notes that the Claimant continued to receive any significant objective benefit. According to Dr. Hamby, Claimant's pain level in June 2003 was 5 on a 10-point scale and the level in October 2003 was still 5. He indicated that Claimant's ankle strength did not improve and his ankle range of motion actually decreased. Dr. Hamby argued that the Petitioner's strength tests were conducted to test hip and the knee strength but not ankle strength. In Dr. Hamby's opinion, there was no improvement in any objective measures that justified additional therapy. He indicated that the documentation reviewed did not validate functional improvement during the prior periods of treatment of Claimant.

Phillip Osborne, M.D., reported that according to Medicare guidelines, if an individual's expected restoration potential is insignificant in relation to the extent and duration of physical therapy services required to achieve such potential, the services are not considered reasonable or necessary. Dr. Osborne also reported that there was no evidence that the provided treatment cured or relieved the effects of Claimant's injury, promoted Claimant's recovery, or helped Claimant return to employment.³ Dr. Osborne concluded that evidence of objective functional improvement is essential to establish the reasonableness and necessity of care. He reported that Claimant showed no functional improvement so it was not medically necessary to continue to treat with the same or similar services.

³ Respondent's Exhibit 1, at page 9.

III. ANALYSIS

Petitioner did not prove that the disputed services were medically necessary. In almost two months, the evidence showed no functional improvement in Claimant's condition. Petitioner's treatment did not improve Claimant's condition, and it is not medically necessary to continue with the same treatment that had already resulted in no improvement. Dr. Hamby's testimony indicated that the strength of Claimant's ankle decreased, the range of motion of the ankle decreased, and the pain remained 5 on a 10-point scale. The evidence not only revealed that Claimant's condition did not improve, but it proved in some cases it worsened.

There must be some demonstrable benefit from therapy in order to establish medical necessity. In the prior period, there was no documentation or supporting evidence that demonstrated the treatments caused significant continuing benefit to Claimant. Although it was suggested that the lack of improvement could indicate CRPS, Dr. Baily testified that Claimant was not suffering from CRPS before or during the disputed period.

Since Petitioner's two months of treatments demonstrated no objective functional improvement in Claimant's condition, it was not medically necessary to continue the same treatments during the disputed period, which also produced no functional improvement. The ALJ concludes that the disputed services were not medically necessary and no reimbursement should be made for these services.

IV. FINDINGS OF FACT

1. _____ (Claimant) sustained a work-related injury on or about _____, when his fellow employees rolled a pallet towards him hitting his inside left ankle.
2. John R Wyatt, D.C., Claimant's treating physician, diagnosed Claimant to have a left ankle sprain, left ankle tendinitis, and myofascial pain syndrome.
3. On June 6, 2003, Dr. Wyatt began an eight-week treatment plan consisting of three sessions of treatment each week.
4. Several diagnostic tests were performed. A July 7, 2003 MRI of the left ankle was unremarkable, a July 22, 2003 EMG of the lower extremities was normal, and a September 11, 2003 bone scan of the lower extremities was normal

5. After the initial treatment plan, Dr. Wyatt continued to treat Claimant with treatments that were the same or similar to those performed during the first eight weeks.
6. After SCD Back and Joint Clinic, Ltd's (Petitioner) treatments, Claimant's condition did not improve from June 6, 2003, to August 26, 2003 (prior periods).
7. There must be some demonstrable benefit from therapy in order to establish medical necessity, and without functional objective improvements further treatment without a revision of the treatment plan was unnecessary.
8. In the prior period, there was no documentation or supporting evidence that demonstrated significant continuing benefit in Claimant's condition, and the treatment plan was not revised.
 - A. Claimant's range of motion in his ankle decreased both in the prior period and the period from August 8, 2003, to October 8, 2003 (disputed period).
 - B. Claimant's pain level was a 5 on a 10-point scale both in the prior period and disputed period.
 - C. Claimant's ankle strength decreased during both periods.
9. Since Petitioner's two months of treatments demonstrated no objective functional improvement in Claimant's condition, it was not medically necessary to continue the same treatments during the disputed period, which also produced no functional improvement.
10. American Home Assurance Company (Respondent) denied payment and continued to deny payment for the remainder of the services, and Petitioner requested medical dispute resolution on Respondent's denial.
11. The MRD referred the dispute to an independent review organization (IRO), which agreed on August 26, 2004, with Respondent's position that the procedures in question were not medically necessary.
12. Based on the IRO recommendation, the MRD found on September 30, 2004, that Petitioner was not entitled to reimbursement for the physical therapy performed from August 26, 2003, through October 8, 2003.
13. On October 27, 2004, Petitioner filed a request for hearing before the State Office of Administrative Hearings (SOAH).
14. Notice of the hearing was sent January 20, 2005.
15. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

16. The hearing convened on July 21, 2005, with Administrative Law Judge Stephen J. Pacey presiding. Petitioner was represented by William Maxwell, attorney. Dan C. Kelley, attorney, represented Respondent. The hearing concluded and the record closed that same day.

V. 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. 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. § 413.031(k) and TEX. GOV'T. CODE ANN. ch. 2003.
3. Petitioner timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 102.7 and 148.3.
4. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. ch. 2001.
5. 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).
6. Petitioner had the burden of proof in this matter.
7. Based upon the Findings of Fact, Petitioner did not prove by a preponderance of the evidence that the physical therapy treatments performed on Claimant from August 26, 2003, through October 8, 2003, were medically necessary.

ORDER

THEREFORE IT IS ORDERED that Respondent American Home Assurance Company shall not pay Petitioner SCD Back and Joint Clinic, Ltd for the Disputed Services provided to Claimant.

SIGNED September 2, 2005.

**STEPHEN J. PACEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**