

**DOCKET NO. 453-05-4268.M5
MRD NO. M5-04-3447-01**

**STATE OFFICE OF RISK
MANAGEMENT,
Petitioner**

V.

**ROBYNN M. POORTVLIET, D.C.,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

The State Office of Risk Management (SORM) challenges the decision of the Independent Review Organization (IRO) recommending reimbursement for chiropractic services from December 16, 2003 through January 16, 2004 (Disputed Services) provided by Robynn M. Poortvliet, D.C. to an injured worker (Claimant). After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that SORM should reimburse Dr. Poortvliet the sum of \$1,435.00.

I. BACKGROUND

Claimant suffered a compensable, work-related injury to her lower back on _____. She was diagnosed with a lumbar strain-sprain. Following a treatment regimen consisting of x-rays, prescription pain-killers, and six weeks of physical therapy, Claimant was released back to work with an impairment rating of 1%. On December 16, 2003, Claimant presented herself to Dr. Poortvliet for chronic pain allegedly related to her _____ injury. Subsequent to an exam and new x-rays of Claimant's spine on December 16, 2003, Dr. Poortvliet administered the disputed services. SORM declined reimbursement, asserting that the services were not medically necessary in relation to the compensable injury.

Based on SORM's denial, Dr. Poortvliet sought medical dispute resolution through the Texas Workers' Compensation Commission (Commission). The matter was referred to an IRO for the review process. The IRO determined that the disputed services were medically necessary for the treatment of Claimant's compensable injury and directed SORM to reimburse Dr. Poortvliet for the disputed services, plus all accrued interest due at the time of payment. SORM then requested a hearing before the State Office of Administrative Hearings (SOAH). The hearing convened on October 13, 2005, with ALJ Tommy L. Broyles presiding. J. Red Tripp, Deputy General Counsel appeared on behalf of SORM and Robynn M. Poortvliet, D.C., appeared *pro se* by telephone. No party objected to notice or jurisdiction, and the record closed on that same day.

II. DISCUSSION

SORM argues that none of the disputed services were reasonable or necessary because Claimant was released by her original treating doctor to return to work with only a 1% impairment in December of 1993. SORM did not call any witnesses but instead relied upon Claimant's medical records, noting that she has been diagnosed with diabetes and multiple sclerosis. SORM suggested that these medical conditions, rather than the compensable injury, are likely the cause of Claimant's chronic pain.

During her testimony, Dr. Poortvliet agreed with the findings and rationale offered by the IRO. She offered Claimant's medical records beginning in December of 2003 and argued that they prove up the medical necessity of the services provided in relation to the compensable injury. Dr. Poortvliet explained that prior to making this determination, she examined Claimant, ordered and reviewed x-rays, ascertained Claimant's medical history, and correlated Claimant's present issues with the symptomatic profile of Claimant's compensable injury in 1993. Dr. Poortvliet further stated that her determinations were in accordance with AMA Guidelines.

Responding to the arguments offered by SORM, Dr. Poortvliet disagreed that Claimant is necessarily precluded from experiencing flare-ups related to the compensable injury simply because

she was released with a 1% impairment 10 years ago. Rather, it is Dr. Poortvliet's opinion that Claimant's lumbar strain-sprain was exacerbated 10 years after the initial incident because of the nature of the compensable injury. She explained that a lumbar strain-sprain will resolve and the tear will heal within months of the injury but that the tissue injured is replaced with a less elastic tissue. It is this less elastic tissue that Dr. Poortvliet believes resulted in structural changes to Claimant's spine and led to Claimant's chronic pain.

III. DECISION

The evidence presented suggests that Dr. Poortvliet's services were medically necessary for the treatment of Claimant's compensable injury. The only evidence entered into the record is the IRO decision and the testimony and medical records from Dr. Poortvliet. The IRO decision was issued by a licenced doctor of chiropractic medicine. This chiropractor found that Dr. Poortvliet's medical records more than adequately document the medical necessity of the treatment in dispute. Moreover, Dr. Poortvliet convincingly testified that the treatments were necessary to treat an acute exacerbation of a chronic condition caused by the compensable injury. She added that x-rays revealed Claimant's lumbar spine was not normal from a bio-mechanical standpoint and explained how a failure to appropriately address the bio-mechanical issues 10 years ago led to the weaknesses she found and treated. On cross-examination, Dr. Poortvliet stated that she did not believe Claimant's pain was related to diabetes, multiple sclerosis, or aging.

SORM had the burden of proof in this case and presented no expert testimony. The arguments offered by SORM's attorney were nothing more than speculation. The testimony from Dr. Poortvliet is credible and suggested the treatments she provided were medically necessary. Therefore, SORM should reimburse Dr. Poortvliet for the disputed services between December 16, 2003, and January 16, 2004, as well as for any interest accrued at the time of payment. In support of this determination, the ALJ makes the following findings of fact and conclusions of law:

IV. FINDINGS OF FACT

1. An injured worker (Claimant) suffered a compensable, work-related injury in ____.
2. Claimant's diagnosis was a mild strain-sprain to the lower back.
3. Claimant received treatment, which included x-rays, prescription pain-killers, and six weeks of physical therapy from October 1, 1993, to December 6, 1993, and was released to return to work with a 1% impairment rating.
4. The State Office of Risk Management (SORM) is the provider of workers' compensation insurance covering Claimant for the compensable injury.
5. On December 16, 2003, Claimant presented herself to Robynn M. Poortvliet, D.C., with chronic lower back pain.
6. After performing an exam and obtaining new x-rays on December 16, 2003, Dr. Poortvliet determined that Claimant's chronic pain was a result of her compensable injury, which she sustained in ____.
7. Dr. Poortvliet administered chiropractic services for treatment of Claimant's compensable injury, consisting of several sessions of modalities and manipulations to the spine between December 17, 2003, and January 16, 2004.
8. The total amount in dispute is \$1,435.00.
9. SORM denied reimbursement of the disputed services, asserting that they were not medically necessary.
10. Dr. Poortvliet requested medical dispute resolution by the Texas Workers' Compensation Commission (Commission) Medical Review Division (MRD), which referred the matter to an Independent Review Organization (IRO).
11. The MRD issued its decision on September 10, 2004. However, the record fails to show SORM received a copy of the decision.
12. The MRD ordered reimbursement to Dr. Poortvliet, based on the IRO physician reviewer's determination that the services in dispute were medically necessary for the treatment of Claimant's compensable injury from ____.
13. Upon request by SORM, the Commission issued a copy of the decision to SORM on January 14, 2004.

14. SORM requested a hearing on February 3, 2005, and the case was referred to the State Office of Administrative Hearings (SOAH).
15. Notice of hearing was sent by the Commission to all parties on February 24, 2005.
16. On September 15, 2005, the ALJ convened a hearing in this case. Both parties appeared: SORM appeared in person and Dr. Poortvliet appeared by phone.
17. At the hearing, Dr. Poortvliet alleged that SORM failed to timely request an appeal and moved for the matter to be dismissed for lack of jurisdiction.
18. On September 27, 2005, the ALJ issued Order No. 1, denying the motion to dismiss by Dr. Poortvliet on the basis that SORM did in fact file a request for appeal within 20 days of receipt of the MRD decision.
19. On October 13, 2005, a hearing was again convened. Both parties appeared, by phone and in person, and announced ready to proceed.
20. The hearing concluded and the record closed on October 13, 2005.
21. SORM provided no expert testimony to support its position.
22. Dr. Poortvliet examined Claimant, reviewed new x-rays of Claimant's spine, considered Claimant's medical history, and correlated present medical issues with the symptomatic profile of Claimant's compensable injury.
23. Claimant's lumbar strain-sprain resolved and the tear healed within months of her injury, but her repaired tissue was less elastic and resulted in chronic pain 10 years after the initial injury.
24. The medical services provided by Dr. Poortvliet were medically necessary for treatment of Claimant's compensable injury.

V. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act, specifically TEX. LABOR CODE ANN. §413.031(k), and TEX. GOV'T CODE ANN. ch. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, (TEX. GOV'T CODE ANN. ch. 2001) and 28 TEX. ADMIN. CODE ch. 148.
3. The request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE § 148.3.

4. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. SORM has the burden of proof. 28 TEX. ADMIN. CODE §§ 148.14 and 133.308(w).
6. SORM failed to show, by a preponderance of the evidence, that the disputed services provided from December 16, 2003, through January 16, 2004, were not medically necessary for the treatment of Claimant's compensable injury. SORM is liable for reimbursement to Dr. Poortvliet for the services provided to Claimant.

ORDER

IT IS, THEREFORE, ORDERED that the State Office of Risk Management shall reimburse Robynn M. Poortvliet, D.C., the sum of \$1,435.00 plus interest for services provided to Claimant between December 16, 2003, and January 16, 2004.

SIGNED December 12, 2005.

**TOMMY L. BROYLES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**