

SUHAIL S. AL-SAHLI, D.C.,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
VS.	§	OF
	§	
ZURICH AMERICAN INSURANCE CO.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Suhail S. Al-Sahli, D.C. (Dr. Al-Sahli) appeals a decision by the Texas Workers' Compensation Commission's (TWCC)¹ Medical Review Division (MRD) that denied reimbursement for chiropractic services provided to a workers' compensation claimant (Claimant) between November 17, 2003, and August 12, 2004. Zurich American Insurance Company (Carrier) denied reimbursement based on lack of medical necessity. MRD referred the dispute to an independent review organization (IRO), which found the services were not medically necessary to treat Claimants compensable injury.² This decision also finds that the disputed services were not medically necessary; therefore, it denies Dr. Al-Sahli's request for reimbursement.

I. JURISDICTION AND PROCEDURAL HISTORY

The Commission (or its successor agency) has jurisdiction over this matter pursuant to TEX. LAB. CODE § 413.031. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing in this proceeding pursuant to TEX. LAB. CODE § 413.031(k) and TEX. GOV'T CODE Ch. 2003. No party challenged jurisdiction or notice.

¹ Effective September 1, 2005, the functions of TWCC were transferred to the newly created Division of Workers Compensation of the Texas Department of Insurance.

² The IRO found that one or two office visits per month were medically reasonable and necessary until Claimant reached maximum medical improvement (MMI). However, Claimant reached MMI prior to the disputed dates of service.

Administrative Law Judge (ALJ) Thomas H. Walston convened a hearing in this matter on October 11, 2005, at the SOAH hearing facilities in Austin, Texas. Attorney Steve Tipton attended the hearing and represented Carrier; Dr. Al-Sahli appeared by telephone. The hearing concluded and the record closed the same day.

II. DISCUSSION

A. Introduction

Claimant is a _____ male who injured his neck and low back in an automobile accident on____, while working as a _____ representative. Claimant received treatment from multiple providers but never had surgery and never missed any work. Dr. Al-Sahli provided chiropractic and physical medicine services to Claimant between April 24, 2003, and August 12, 2004. Carrier paid Dr. Al-Sahli for his services until November 17, 2003, but denied reimbursement thereafter. The amount in dispute totals \$4,998.28.

Dr. Al-Sahli appealed Carrier's denial of payment to the TWCC MRD, which referred the dispute to an IRO. The IRO issued a decision on February 2, 2005, that upheld Carrier's denial of payment except for follow-up office visits prior to maximum medical improvement (MMI). The IRO reviewing chiropractor stated his rationale as follows:

I find that mechanical traction (97012), therapeutic exercises (97110), chiropractic manual treatment-spinal (98940), ultrasound (97035), massage therapy (97124), chiropractic manipulation (98941), manual therapy technique (97140), and neurological re-education (97112) are not medically reasonable and necessary after 6/13/03 or 6-8 weeks post injury and further treatment beyond this time frame could be considered excessive. I form this decision using the Official Disability Guidelines 8th Edition, which allows up to 18 chiropractic treatment[s] over 6-8 weeks for a cervical and lumbar intervertebral disc without myelopathy. It would have seemed reasonable for the claimant to be referred for co-management with medications to help speed recovery after two weeks of trial care. The Official Disability Guidelines 8th Edition is a guideline of specific conditions which uses a major source being the "Mercy Guidelines," the consensus document created by the American Chiropractic Association in conjunction with the Congress of State Chiropractic Associations, entitled Guidelines for Chiropractic Quality Assurance and Practice Parameters, Proceedings of the Mercy Center Consensus Conference. It is from these Guidelines I form my decision for the above reference claimant.

It would seem reasonable for the claimant to follow up with his treating physician 1-2 times monthly to monitor the claimant's progress with home treatments and make appropriate referrals as necessary. Therefore, office visit (99212/99213) is reasonable and necessary until the claimant attains maximum medical improvement.

In a decision issued February 4, 2005, the MRD concurred with the IRO decision. Dr. Al-Sahli timely requested a contested case hearing at SOAH to challenge the MRD and IRO decisions.³

B. Parties' Evidence and Arguments

Both First Rio and Respondent introduced various records into evidence. Dr. Al-Sahli testified in his own behalf, and Dr. Kevin Tomsic testified for Carrier.

Records: The records include a report from Dr. Bob Maxcey, dated July 19, 2003, concerning an MRI of Claimant's lumbar and cervical spine. The report noted mild straightening of the cervical spine typical for muscle spasm. It also showed a 3-4 mm disc bulging at C5-6 with the spinal cord abutted and effaced along the adjacent anterior 15% of its margin. The lumbar spine had normal alignment with 1-2 mm posterior disc bulges at L1-2, L2-3, L3-4, and L4-5; and a 3 mm bulge in the midline of L5-S1.

Alonzo Mcleod, D.O., performed a Designated Doctor Evaluation on Claimant on October 22, 2003. Dr. Mcleod noted that Claimant had then received about six months of physical therapy and chiropractic treatment and three or four injections. No surgery had been performed on Claimant and none was planned. Claimant reported pain in his neck, mid back, upper back, and head and rated the pain on the day of the examination as 4 on a scale of 1-10. After reviewing the MRI and examining Claimant, Dr. Mcleod concluded that Claimant had a 0% whole person impairment and had reached MMI effective October 22, 2003.

Dr. Al-Sahli co-managed Claimant's treatment with Masroor Ahmed, M.D., of Texas Pain Solutions. The record is not clear, but it appears that on September 2, 2003, Dr. Ahmed gave Claimant facet joint injections; and on October 29, 2003, he provided radio frequency lesioning of

³ Carrier sought clarification of the decision concerning approval of monthly office visits until Claimant reached MMI, as all of the disputed services occurred after MMI. However, MRD made no modification or clarification concerning the office-visit issue.

the cervical medial branch. Immediately prior to and during the time of the disputed services, Dr. Ahmed's office notes indicated the following:

10-31-03: The patient is not using any medications, working fulltime and doing his exercises on a regular basis. Pain is minimal, off and on he feels stiffness for which he uses medication. Patient is sleeping well.

11-21-03: Patient reports his pain is at tolerable level and he is tolerating movement well. Patient is not taking medication, using muscle relaxants on p.r.n. basis; patient is working full time. Off and on patient has stiffness, but his pain is not bothering him anymore. Patient is able to lift and maintain his physical activity levels.

12-19-03: Patient came for follow up, reporting he is still doing good, feeling better with his pain, his pain is minimal, off and on he feels some soreness. Patient is very active with his daily life activities, also doing a lot of physical activities including gym activities that he does while exercising and feeling good. Patient reports stiffness and restriction is almost gone and he is feeling much better than before. Patient is still working full time, patient is using medication only as needed and mostly he uses muscle relaxer for tenderness which also helps with the pain. Patient is sleeping well, denies any side affects [sic] from medication, patient is stable.

2-11-04: Patient states that he has a herniated disc which is causing him a pain level of 3 on a scale of 0-10 VAS. This patient has recently completed an RFL and cervical facet blocks, which seem to help him and has reduced his pain, but he continues to have pain in the low back. I am going to renew his medications and then follow up with him in 30 days.

3-10-04: The patient came in for follow up reporting his neck pain is under good control with occasional flare up depending on his physical activity level and the weather. Otherwise, he is doing well, there is no radiculopathic symptom. Patient had only one episode where his head started hurting, but it went away. Patient is doing his exercises on a regular basis at home, he is also involved at the gym and reports he is working on his posture, which is also helping him. Patient is working full time. He denies any side affects [sic] from medication which he uses only as needed basis.

An EMG and nerve conduction study performed January 20, 2004, by Sunil Vachhani, D.C., was normal and showed no evidence of lumbar or cervical radiculopathy.

Dr. Al-Sahli: Dr. Al-Sahli testified that he treated Claimant in coordination with other physicians and according to Medicare Guidelines, and that his treatment enabled Claimant to keep his employment. Dr. Al-Sahli stressed that treatment can continue after a claimant reaches MMI, yet the IRO physician seemed to base his decision on denying all treatment after MMI. Dr. Al-Sahli complained that the IRO physician relied on the Mercy Conference Guidelines, but those guidelines are no longer in effect or accepted.

Dr. Al-Sahli stated that the treatments were medically reasonable and necessary, and Claimant progressed and continued working. He also stated that an MRI provided objective evidence that Claimant had cervical and lumbar disc injuries.

On cross examination, Dr. Al-Sahli explained that Claimant was injured in an automobile accident on____, and he first treated Claimant on April 24, 2003. The treatments included lumbar and cervical chiropractic manipulation, soft tissue mobilization, cold packs, massage therapy, and electric stimulation. Claimant received these treatments daily for two weeks; then three times per week for another two weeks. During the second two weeks, Claimant began to receive less passive therapy and perform more active therapy such as cardiovascular and range-of-motion exercises.

Dr. Al-Sahli testified that Claimant received essentially the same treatment regimen during June - August 2003. At one point, he reduced the frequency of treatments to two times per week but returned to three times per week when the Claimant showed lack of progress. Claimant also began mechanical traction (CPT code 97012) in August. This was done with a "Spinalator," which uses large rollers to stimulate the back. Claimant was also placed in a neck harness to pull on the neck and low back.

According to Dr. Al-Sahli, Claimant was gradually moved to more active and less passive therapy during September - November 2003. Claimant continued with three visits per week, and he continued to receive chiropractic manipulation at each visit. Essentially the same treatments continued from November 17, 2003, through August 12, 2004, which are the disputed dates of service.

Dr. Al-Sahli acknowledged that Claimant never missed any work due to his injury. However, in Dr. Al-Sahli's view, the treatments Claimant received enabled him to continue working.

In argument, Dr. Al-Sahli complained that the IRO reviewer based his decision on the erroneous premise that all care ends with MMI. Dr. Al-Sahli argued that he should be reimbursed because he provided appropriate treatment and objective documentation, and the patient reported that he was improving. He also pointed out that the doctor who gave Claimant injections (Dr. Ahmed) recommended that Claimant continue with physical medicine treatments, and that Claimant had flare-ups that needed treatment. Further, Dr. Al-Sahli argued that his treatments enabled Claimant to continue working at two jobs, which satisfied the requirements of Tex. Lab. Code § 408.021. In his view, the treatments were medically reasonable and necessary and improved Claimant's condition. Therefore, he requests that Carrier be ordered to pay reimbursement.

Carrier: Dr. Kevin Lee Tomsic testified for Carrier. He graduated from chiropractic school in 1993, worked in a rehabilitation clinic until 2001, and continues to see patients. Dr. Tomsic reviewed Claimant's records but did not actually examine him. He also prepared peer reviews for this case in June and October 2003.

In his June 2003 peer review, Dr. Tomsic noted that Claimant had a lower extremity injury, neck pain, and a thoracic strain/sprain. At that time, Claimant had gone to nineteen chiropractic office visits. An MRI showed degenerative changes in the lumbar and cervical spine, but these were not clinically correlated to Claimant's compensable injury. And an EMG was completely normal, indicating no radiculopathy. In Dr. Tomsic's opinion, there was no medical necessity to extend Claimant's treatments beyond three months after his soft tissue injury. He noted that the Official Disability Guidelines allow only 18 treatments during a six to eight week period, but he was more lenient and agreed to treatment through July.

Dr. Tomsic also noted that in October 2003, Dr. Alonzo Mcleod performed a designated doctor evaluation for TWCC and concluded that Claimant had a 0% whole body impairment and had reached MMI effective October 22, 2003.

Dr. Tomsic testified that the Mercy Guidelines cited by the IRO are not officially accepted by the Texas Chiropractic Association. However, he added that these guidelines are the most lenient, and the Texas guidelines are identical to the Mercy Guidelines relating to treatment.

Dr. Tomsic prepared a second peer review in October 2003. At that time, he concluded that Claimant's chiropractic treatments should have terminated during August 2003. He acknowledged that Dr. Al-Sahli reported some improvements after that date, but he explained that these were based solely on subjective statements by Claimant and generally occurred after Claimant received injections from a medical doctor.

Dr. Tomsic also questioned whether the Spinalator used by Dr. Al-Sahli qualified as mechanical traction. In his view, a Spinalator is more of a massage table. Further, Dr. Tomsic testified that one-on-one supervision was not required after the first six months of treatment. In particular, he noted that Claimant was working at two jobs and needed no training on activities of daily living. He also did not need training on home exercises as he had already been trained for them.

In summary, Dr. Tomsic testified that chiropractic treatments and therapy should have ended within three months with Claimant transitioned to self-directed therapy. He stated that Dr. Al-Sahli's continuation of the same musculo-skeletal treatment was not medically reasonable or necessary for Claimant.

On cross-examination, Dr. Tomsic agreed that he saw subjective statements of improvement in Claimant's records, but he added that no objective pain scale was noted in the records. He also agreed that the designated doctor only examined Claimant's cervical spine, but he stated that Claimant was not making any complaints about his lumbar spine at that time. However, Dr. Tomsic testified that he would have rated Claimant with 5% impairment instead of the 0% impairment given by the designated doctor.

Dr. Tomsic explained that Dr. Al-Sahli's treatments in dispute did not meet the requirements of Tex. Lab. Code ' 408.021 because Claimant had already received six months of conservative care, he did not miss any work, and his pain level actually worsened in September 2003, which showed Claimant was not achieving any long-term cure or relief. Although ' 408.021 authorizes treatment that enables a claimant to retain employment, Dr. Tomsic stated that Claimant would have retained his employment even without the chiropractic treatments provided by Dr. Al-Sahli.

Dr. Tomsic also criticized the care Dr. Al-Sahli provided to Claimant because there was no change in the treatment plan. He said the same treatment continued for an excessive amount of time without any documented improvement. He agreed that slow progress would be acceptable if it were objectively documented, but in this case the records only include unreliable subjective reports of pain that varied from day to day.

Dr. Tomsic acknowledged that care can be medically necessary for a claimant even after reaching MMI. And he agreed that one to two office visits per month were reasonable for medical management after Claimant received injections. However, Dr. Tomsic also stated that Claimant had no need for supervised rehabilitation after receiving injections as he was already trained on home exercises and was able to work two jobs.

In response to Dr. Al-Sahli, Carrier argued that to be reimbursable under ' 408.021, the disputed treatments had to be reasonably required for Claimant to obtain or keep employment. Here, Carrier argued, Claimant continued working, but it was not due to the continued treatments provided by Dr. Al-Sahli. In Carrier's opinion, the IRO physician and Dr. Tomsic correctly cited the various treatment guidelines, which all indicate that Dr. Al-Sahli's physical medicine services should have ended after three months, considering the nature of Claimant's injury. Carrier stressed that the Claimant never missed any work and that Dr. Al-Sahli's treatments were not needed to keep Claimant at work.

Carrier also pointed out that Medicare Guideline N4BR3 provides that pain alone is not sufficient to authorize chiropractic manipulation, and it limits those services to a maximum of three months for even the worst cases. Carrier also cited Guideline Y13BR9, which provides that patients should be moved to self-directed care as soon as possible. As Claimant was working full time, so Carrier argued there was no reason why Claimant was not capable of performing exercises or manual traction at home. In addition, Carrier complained that Dr. Al-Sahli billed for office visits on the same day as therapy was provided, but he did not document that the office visits were unrelated to the therapy, which is required for such a separate billing. In Carrier's view, the office visits were all part of the same course of treatment and therapy.

In short, Carrier argued that the disputed services between November 17, 2003, and August 12, 2004, were not medically reasonable or necessary to treat Claimant's compensable injury.

C. ALJ's Analysis and Decision

The ALJ finds that Dr. Al-Sahli did not prove by a preponderance of the evidence that the disputed services were medically necessary to treat Claimant's compensable injury. Therefore, the ALJ upholds the IRO decision. The evidence established that Claimant sustained a soft tissue injury on April 22, 2003, that did not require surgery or cause Claimant to miss any time from work. Indeed, Dr. Ahmed's records show that by November 2003, Claimant was working two jobs, was fully able to perform all activities of daily living, was engaged in a home exercise program, and worked out at a gym. Further, he had minimal pain, if any, that was alleviated with pain medication (which he rarely needed), he slept well, and simply had no problems remaining from his accident that required further chiropractic treatment after November 17, 2003.

In addition, both Dr. Tomsic and the IRO chiropractor stated that normally only six to eight weeks of chiropractic treatment are appropriate for Claimant's condition. Dr. Tomsic granted that up to three months of such treatment might be required in serious cases, but in the present case Dr. Al-Sahli provided nearly seven months of treatments before Carrier stopped reimbursing him.

Dr. Al-Sahli's primary complaint is that the IRO chiropractor seemed to conclude that all treatment should cease with Claimant reaching MMI. The ALJ agrees that medical care can continue after MMI, but Dr. Al-Sahli nevertheless had the burden of proof to establish that such care was medically reasonable and necessary. Under the facts of this case, the ALJ finds that Dr. Al-Sahli did not prove that chiropractic care was medically reasonable and necessary for Claimant after November 17, 2003, some seven months after Claimant's injury.

The IRO decision caused some confusion in that it approved office visits until Claimant reached MMI, but all of the disputed services occurred after MMI. Thus, a literal reading of the IRO decision does not require any reimbursement by Carrier. Further, Dr. Al-Sahli did not establish that additional office visits were necessary after Claimant reached MMI. The evidence showed that Claimant continued to see Dr. Ahmed for regular follow-up visits at least through March 2004, and Dr. Al-Sahli did not show that additional office visits with him were also necessary.

Therefore, the ALJ upholds the IRO decision and finds that Dr. Al-Sahli did not establish by a preponderance of the evidence that he is entitled to reimbursement for the services in dispute.

III. FINDINGS OF FACT

1. Claimant is a ____ male who injured his neck and low back in an automobile accident on ____, while working as a ____ representative.
2. Zurich American Insurance Company (Carrier) is responsible for workers' compensation coverage for Claimant's injury.
3. Between April 24, 2003, and August 12, 2004, Suhail S. Al-Sahli, D.C., (Dr. Al-Sahli) provided office visits, chiropractic treatments, and therapy for Claimant. These included mechanical traction (97012), therapeutic exercises (97110), chiropractic manual treatment-spinal (98940), ultrasound (97035), massage therapy (97124), chiropractic manipulation (98941), manual therapy technique (97140), neurological re-education (97112), and office visits (99212/99213).
4. Carrier paid for the services provided by Dr. Al-Sahli until November 17, 2003, but denied reimbursement thereafter based on lack of medical necessity. The amount in dispute for services provided by Dr. Al-Sahli on or after November 17, 2003, totals \$4,998.28.
5. Dr. Al-Sahli appealed Carrier's denial of reimbursement to the TWCC MRD, which referred the matter to an Independent Review Organization (IRO). The IRO issued a decision on February 2, 2005, that upheld Respondent's denial of payment, finding that chiropractic services were medically necessary after June 13, 2003, or six to eight weeks after Claimant's injury. The IRO did find that office one or two office visits per month would be reasonable until Claimant reached Maximum Medical Improvement (MMI).
6. Claimant reached MMI on October 22, 2003. All of the disputed services were provided by Dr. Al-Sahli to Claimant after Claimant reached MMI.
7. In a decision issued February 4, 2005, the MRD concurred with the IRO decision.
8. Dr. Al-Sahli timely requested a contested case hearing at the State Office of Administrative Hearings to challenge the MRD decision.
9. A contested case hearing was held at SOAH on October 11, 2005, and the record closed the same day.
10. Dr. Al-Sahli attended the hearing by telephone. Carrier attended the hearing through its attorney, Mr. Steve Tipton.

11. All parties received not less than ten days notice of the time, place, and nature of the hearing; 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.
12. All parties were allowed to respond and present evidence and argument on each issue involved in the case.
13. Claimant did not miss any work due to his compensable injury.
14. By November 17, 2003, Claimant was working two jobs, was fully able to perform all activities of daily living, was engaged in an exercise program, and worked out at a gym. He had minimal occasional pain, which was alleviated with pain medication (which he rarely needed), he slept well, and he had no problems remaining from his accident that required further chiropractic treatment.
15. Office visits with Dr. Al-Sahli were not medically necessary after November 17, 2003. Claimant continued to see Dr. Ahmed for regular follow-up visits at least through March 2004, and redundant office visits with Dr. Al-Sahli were not necessary.
16. The disputed services provided by Dr. Al-Sahli to Claimant between November 17, 2003, and August 12, 2004, were not medically reasonable and necessary for the treatment of Claimant's compensable injury.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction related to this matter pursuant to 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. § 413.031(k) 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. Dr. Al-Sahli, as the party seeking relief, bore the burden of proof in this case pursuant to 28 TAC §148.21(h).
6. Dr. Al-Sahli did not establish by a preponderance of the evidence that the services he provided to Claimant between November 17, 2003, and August 12, 2004, were medically reasonable and necessary to treat Claimant's compensable injury.

7. Based on the above Findings of Facts and Conclusions of Law, Carrier should not be required to reimburse Dr. Al-Sahli for services provided to Claimant between November 17, 2003, and August 12, 2004.

ORDER

IT IS, THEREFORE, ORDERED that the claim made by Dr. Suhail S. Al-Sahli is DENIED, and the Zurich American Insurance Company is not liable to reimburse Dr. Al-Sahli for the disputed services provided to Claimant between November 17, 2003, and August 12, 2004.

Signed November 29, 2005.

**THOMAS H. WALSTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**