

____, § **BEFORE THE STATE OFFICE**
Petitioner §
§
V. § **OF**
§
LIBERTY MUTUAL FIRE §
INSURANCE COMPANY, § **ADMINISTRATIVE HEARINGS**
Respondent §

DECISION AND ORDER

____ (Claimant) challenges the decision by an Independent Review Organization (IRO) denying his request to receive reimbursement for membership in the Corpus Christi Athletic Club. Liberty Mutual Fire Insurance Company (Carrier) denied the request as medically unnecessary and the IRO upheld that decision. The Administrative Law Judge (ALJ) agrees with the IRO and concludes that Claimant’s request for reimbursement for membership in the Corpus Christi Athletic Club should be and is hereby denied.

I. JURISDICTION, NOTICE, & HEARING

ALJ Penny A. Wilkov convened a hearing in this case on June 2, 2005, at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Claimant represented himself, with the assistance of Commission Ombudsman Barton Levy. Carrier was represented by counsel, Charlotte Salter. The parties did not contest notice or jurisdiction. The record closed on June 2, 2005.

II. DISCUSSION

1. Background

Claimant sustained a compensable injury on ____, while working at a coffee company, when he lifted several heavy tables and developed pain in the lower lumbar spine with pain radiating down the left leg. Claimant has been diagnosed with post lumbar laminectomy syndrome at L5-S1 and disc protrusion and herniation at L5-S1.¹ Claimant describes symptoms of constant back pain radiating down to his calf with numbness in his left leg, reported as a subjective level of pain varying with activity, from six to ten on a scale of one to ten. Claimant’s history of treatments have included injections, a discectomy, disc nucleoplasty, post-operative physical therapy, and medications, and as well as diagnostic tools including an MRI, nerve conduction tests, a discogram, a myelogram, and x-rays.²

On January 6, 2004, Ryan N. Potter, M.D., Claimant’s treating physician, requested that Claimant receive reimbursement for Claimant’s membership to the Corpus Christi Athletic Club as medically necessary since [Claimant] has been going for physical therapy three to four times a week

¹Petitioner’s Exhibit 1, pages 26-28 (Jerjis J. Denno, M.D.).

²Petitioner’s Exhibit 1, pages 24-25 (Ryan N. Potter, M.D.).

and has been noting noticeable improvement.³ The request for reimbursement for the athletic club membership was subsequently denied by Carrier based on a lack of medical necessity.

2. Applicable Law

Under the workers' compensation system, an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment. TEX. LAB. CODE ANN. § 408.021. "Health care" includes "all reasonable and necessary medical . . . services." TEX. LAB. CODE ANN. § 401.011(19).

C. Medical Necessity of Athletic Club Membership

1. Claimant

Claimant argues that the membership to the Corpus Christi Athletic Club was medically necessary for several reasons. First, Claimant asserts that he suffered a serious injury as established in the November 2003 MRI showing that he has scar formation around the left S1 nerve root and tissue formation into the protruded disc.⁴ He experiences continual pain and requires on-going therapeutic exercise, such as offered at the athletic club, in order to prevent flare-ups, improve strength and flexibility, and build pain endurance. Second, although he has had extensive physical therapy and surgery to alleviate his symptoms, Claimant contends that it was the exercises that he performed at the Corpus Christi Athletic Club that enabled him to resume full-time employment. He testified that since he began exercising at the athletic club in May 2003, until July 2004, he had gradually increased his capacity to work from an initial three-hour period to a full eight-hour work day. Third, Claimant contends that his use of the athletic club enables him to work at his own pace, providing a convenient and effective method to attain results. He used the pool for therapy and used the indoor track to strengthen his muscles, enabling him to increasingly tolerate pain.

In this regard, Claimant presented the testimony of Dr. Potter, a comprehensive pain management specialist. Dr. Potter testified that there is a correlation between back pain and effective weight management and that the exercises performed at the athletic club enabled Claimant to keep his weight under control, lessening stress on his back. Also, Dr. Potter pointed out that the exercises performed strengthen the abdominal muscles which further alleviates back pain.

Lastly, Claimant argues that the club membership is appropriate since the therapeutic exercises foreclosed the need for further surgery.

2. Carrier

Carrier argues that the request for membership in the Corpus Christi Athletic Club is not appropriate or medically necessary. Carrier argues that the medical records do not support Claimant's contention that his condition significantly improved because of his club membership from

³ Petitioner's Exhibit 1, page 29.

⁴ Petitioner's Exhibit 1, pages 30-31 (Radiology Associates).

approximately May 2003 until June 2004. Carrier cites a psychological examination performed on February 5, 2004, wherein K. Eric DuBois, Ph.D., Claimant's treating psychologist, noted that [Claimant's] pain level is essentially unchanged... Further, in an update on May 10, 2004, Dr. DuBois again stated that The patient's pain experience has changed very little...⁵ Carrier also points to a report by Claimant's treating physician, Dr. Potter, who failed to note any progress, stating in June 2004, at the end of the club membership period, [Claimant] has noted increasing left radicular pains.⁶

Carrier also argues that Claimant could have gone to a community pool or performed home exercises to achieve the same result. Carrier points out that there is no testimony or evidence that the Corpus Christi Athletic Club offers any distinct benefit or exercises that are not offered at a less expensive facility or at home. Carrier instead counters that it is the devotion to regular exercise that is the key and not where the exercises are performed. Further, Carrier notes that the athletic club has no method to monitor activities such as recording types of exercises, amount of time performed, or any measures of improvement.

Lastly, Carrier contends that despite the thirteen months of membership at the Corpus Christi Athletic Club, Claimant has continued to require medication, including Ambien, Darvocet, and Bextra.

3. Analysis

Based on the evidence and testimony, the ALJ concludes that the membership in the Corpus Christi Athletic Club was not medically necessary. There is a paucity of evidence that Claimant discussed the athletic club activities or exercises with his doctors during the membership period of approximately May 2003 through June 2004. For instance, in June 2004, Dr. Potter noted that the epidural steroid injections were most likely responsible for Claimant's return to work and that he would seek approval for further injections.⁷ Further, on May 10, 2004, Dr. DuBois noted that [Claimant's] pain level is essentially unchanged, and it has been recommended to the patient that he make some adjustments in activity/rest schedule.

The ALJ further fails to find evidence that the same results could not have been accomplished with more economical methods. The testimony of Dr. Potter was that exercise was important to keep control of weight and to strengthen abdominal muscles but Dr. Potter did not provide specific testimony as to the necessity of pool therapy or weight machines at the more expensive Corpus Christi Athletic Club rather than a community pool or at home. Even the IRO reviewer, a certified specialist in pain management, who reviewed Claimant's notes, reports, and assessments, concurs that an athletic club membership is not medically necessary when this patient can continue to do exercises at home, which would be just as effective as doing them at an athletic club.

Therefore, the ALJ concludes that Claimant's request for reimbursement for membership in the Corpus Christi Athletic Club was not medically necessary and should not be reimbursed.

⁵ Petitioner's Exhibit 1, pages 18-23.

⁶ Petitioner's Exhibit 1, pages 16-17.

⁷ Petitioner's Exhibit 1, pages 16-17.

III. FINDINGS OF FACT

1. ___ (Claimant) sustained a compensable injury on February 5, 2001, while working at a coffee company, when he lifted several heavy tables and developed pain in the lower lumbar spine with pain radiating down the left leg.
2. Claimant has been diagnosed with post lumbar laminectomy syndrome at L5-S1 and disc protrusion and herniation at L5-S1.
3. Claimant describes symptoms of constant back pain radiating down to his calf with numbness in his left leg, reported as a subjective level of pain varying with activity, from six to ten on a scale of one to ten.
4. Claimant's history of treatments have included injections, a discectomy, disc nucleoplasty, post-operative physical therapy, and medications, as well as diagnostic tools including an MRI, nerve conduction tests, a discogram, a myelogram, and x-rays.
5. On January 6, 2004, Ryan N. Potter, M.D., Claimant's treating physician, requested that Claimant receive reimbursement for Claimant's membership to the Corpus Christi Athletic Club.
6. Liberty Mutual Fire Insurance Company (Carrier) denied Claimant's request for reimbursement for membership to the Corpus Christi Athletic Club as not medically necessary.
7. Claimant requested medical dispute resolution.
8. The Independent Review Organization (IRO) denied Claimant's request for reimbursement for membership to the Corpus Christi Athletic Club.
9. Claimant requested a hearing before the State Office of Administrative Hearings and requested approval of reimbursement for membership to the Corpus Christi Athletic Club.
10. The parties received not less than 10 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.
11. Administrative Law Judge Penny A. Wilkov convened and closed a hearing in this case on June 2, 2005, at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Claimant represented himself, with the assistance of Commission Ombudsman Barton Levy. Carrier was represented by counsel, Charlotte Salter.
12. Claimant failed to demonstrate that his condition significantly improved due to his membership in the Corpus Christi Athletic Club since there was no reported improvement in pain or reduction in necessity for prescription pain medication.
13. The Corpus Christi Athletic Club did not offer any method to monitor exercise activity such

as types of exercises, amount of time performed, or measures of improvement.

14. Claimant failed to establish that the exercises offered at the Corpus Christi Athletic Club were more effective than home exercises or exercises offered at a community pool or facility.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing, including the authority to issue a decision and order. TEX. LABOR CODE ANN. §413.031(k).
2. Both parties received proper and timely notice of the hearing. TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
3. Claimant has the burden of proof by a preponderance of the evidence pursuant to 28 TEX. ADMIN. CODE §148.21.
4. Claimant did not establish by a preponderance of the evidence that membership in the Corpus Christi Athletic Club was medically reasonable or necessary. TEX. LABOR CODE ANN. §§401.011(19) and 408.021.
5. Membership in the Corpus Christi Athletic Club was not medically necessary and should not be reimbursed.

ORDER

IT IS, THEREFORE, ORDERED that Claimant's request for reimbursement from Liberty Mutual Fire Insurance Company for membership in the Corpus Christi Athletic Club is **DENIED**.
SIGNED July 25, 2005.

PENNY A. WILKOV
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS