

<b>DR. WILLIAM W. SUMMERS,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
	§	
<b>HIGHLANDS INSURANCE</b>	§	
<b>CORPORATION,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Petitioner, William W. Summers, D.C. (Provider), challenged the Findings and Decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission<sup>1</sup> (TWCC) denying reimbursement from Highlands Insurance Corporation (Carrier) for medical services provided to an injured worker (Claimant). Provider disputes the conclusion of the Independent Review Organization (IRO) that these services were not medically necessary. The Administrative Law Judge (ALJ) concludes that Provider has not met its burden of proof with respect to all services in dispute provided to Claimant between December 29, 2003, and August 13, 2004. Thus, Provider should not be reimbursed.

**I. PROCEDURAL HISTORY**

ALJ Penny Wilkov convened a hearing in this case on November 28, 2005, at the State Office of Administrative Hearings (SOAH), Austin, Texas, and the record closed at the conclusion of the hearing on that day. Provider appeared *pro se*. Attorney Beverly L. Vaughn represented Carrier. No party contested notice or jurisdiction.

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<sup>1</sup> As of September 1, 2005, the functions of TWCC have been assumed by the Texas Department of Insurance-Workers' Compensation Division.

## II. DISCUSSION

### 1. Introduction

Claimant injured his neck and back on\_\_\_\_, when, while working on an oil derrick floor, he fell into a fifteen-foot substructure hole covered by a tarp. Claimant's emergency room records, following the accident, indicate that Claimant had minor abrasions with a "normal" chest, left hip, pelvis, and left elbow x-ray with no bone, joint, or soft tissue abnormality, and was advised to take Advil or Motrin for continued pain and discomfort.<sup>2</sup> At the emergency room, Claimant was diagnosed with a sprain,<sup>3</sup> although in 2004, a medical examination indicated herniated discs at L4-5 and L5-S1.<sup>4</sup> Claimant currently describes symptoms of moderate to severe spasms in his back and pelvis with pain radiating down the leg.<sup>5</sup>

Claimant was treated by Gilbert Gonzales, D.C., from approximately June 2000, until January 2001,<sup>6</sup> whereupon Claimant was sentenced to two years in prison for a crime committed prior to the injury.<sup>7</sup> Upon his release, Claimant began treatment with Provider on December 17, 2003. Since the accident, Claimant's history of treatments has included physical therapy, medications, chiropractic treatment, work hardening as well as diagnostic testing including multiple MRI's and x-rays.

Carrier denied payment for services rendered between December 29, 2003, and August 13, 2004, for chiropractic manipulation billed under CPT Codes 98941 and 98942.<sup>8</sup>

### B. Applicable Law

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<sup>2</sup> Respondent's Exhibit 1, pages 34-40. (Nahir Rasheed, M.D., Permian General Hospital).

<sup>3</sup> *Ibid.*

<sup>4</sup> Respondent's Exhibit 1, page 175. (Sripad Dhawlikar, M.D.)

<sup>5</sup> Petitioner's Exhibit 1, pages 2-4. (Nahir Rasheed, M.D., Permian General Hospital).

<sup>6</sup> The records are incomplete.

<sup>7</sup> Petitioner's Exhibit 1, page 2, does not provide information on the offense or dates of incarceration.

<sup>8</sup> CPT Codes 98941 and 98942 involve different regions of the spine.

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. Parties' Positions**

#### **1. Provider**

Provider disagrees with the Independent Review Organization (IRO) doctor's conclusion that the services rendered were medically unnecessary. Specifically, the IRO doctor, a chiropractor, stated that, "To receive continued treatment for his worker's compensation injury, there must be a direct link of his current complaints to his original injury on-\_\_\_\_. The medical record documentation does not give sufficient indication that there is a direct line between his current complaints and the original injury."<sup>9</sup>

Provider counters that upon Claimant's release from prison, Claimant's pain persisted from the original injury, with severe spasm through the thoracocervical area to the pelvis.<sup>10</sup> Provider points to Claimant's description of the pain at Claimant's initial visit, December 17, 2003, as "stabbing, dull, and burning." According to Provider, the pain was attributable to the deterioration of the original injury and lack of rehabilitative exercises while incarcerated. With Provider's strengthening and stabilizing exercises, however, Claimant has regained his strength and functionality which enabled Claimant to return to work in the oil fields. Provider attributes the lack of progress to Claimant's original chiropractor, Dr. Gonzales, whose treatment of light weights was ineffective.

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<sup>9</sup> Texas Medical Foundation, Independent Review Decision.

<sup>10</sup> On Respondent's Exhibit 1, page 147, Claimant confirmed that "I had to go to prison and didn't receive treatment while I was in prison".

Provider points to the physical therapist notes from November, 2000, whereby Claimant was released to return to work with the limitations of “ability to lift in the 60 lb. range,”<sup>11</sup> and the TWCC 73 form completed by Dr. Gonzales indicating a “medium duty” return to work status.<sup>12</sup> According to Provider, at the beginning of Provider’s treatment, “Aback extension was 120 lbs and rotation was 81 lbs., at the end of rehab back extension was 240 lbs., and rotation was 129 lbs.”<sup>13</sup> Provider counters that he designed a treatment plan to return Claimant to the “heavy work” category of physical exertion required by the oil fields, based upon the categories incorporated in the *Dictionary of Occupational Titles, U. S. Department of Labor, 4<sup>th</sup> Edition, 1991.*<sup>14</sup>

Lastly, Provider argues that Carrier paid for chiropractic treatments rendered from December 17, 2003, until December 29, 2003, thereby acknowledging that the current treatment is related to the compensable injury and medically necessary.

## **2. Carrier**

Carrier maintains that the treatments were not reasonable or necessary and supports the IRO’s conclusion.

Carrier argues that the initial injury was minor, a strain or sprain, which would have resolved in six months, with or without treatment. In this regard, Carrier references the impairment rating letter dated January 3, 2001, from Rick Gordon, P.T., confirming that the injury was a soft tissue

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<sup>11</sup> Respondent’s Exhibit 1, page156, signature illegible.

<sup>12</sup> Respondent’s Exhibit 1, page 48. (January 8, 2001).

<sup>13</sup> Petitioner’s Exhibit 1, page 2.

<sup>14</sup> Physical Exertion Requirements, 20 C.F.R §404.1567 (as adopted by the Social Security Administration):  
Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds.  
Medium work: Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds.  
Heavy work: heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds.  
Very Heavy work: very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more.

injury and that Claimant had reached maximum medical improvement.<sup>15</sup> Carrier also points to the emergency room physician's assessment of the injury as a sprain, treatable with Advil.<sup>16</sup>

Further, Carrier contends that passive therapy was not medically necessary. According to Carrier, passive therapy is normally administered during the acute stage of healing, two to four weeks after an injury, but not three years later. Further, Claimant had already undergone a work hardening program with Dr. Gonzales in 2001, which should have been the final treatment program before a return to work.

Lastly, Carrier disagrees that reimbursing for initial treatments was an acknowledgment of compensability and necessity of treatment. Carrier instead relies on a peer review conducted by John Braswell, D.C., wherein Dr. Braswell concurs that the effects of the injury had resolved by July 28, 2000, when Dr. Gonzales noted normal range of motion values, no radicular component, and no evidence that Claimant reported subjective symptoms in the left elbow or hip.<sup>17</sup> Dr. Braswell also observes that "Essentially, this appears to have been an uncomplicated soft tissue injury. Injuries such as this, routinely respond within four to eight weeks with or without treatment."

### **III. ANALYSIS**

Provider bears the burden of proof that the factual basis or rationale for the MRD's decision in this case was invalid. Here, it is clear that the records do not support the medical necessity for services rendered between December 29, 2003, and August 13, 2004.

The evidence established that the Claimant's emergency room records, following the accident, indicate that Claimant had minor abrasions with a normal x-ray of the chest, left hip, pelvis, and left elbow and was advised to take Advil or Motrin for continued pain and discomfort for the diagnosed sprain. Following six months of therapy, work hardening, and a release to return to work, Claimant was incarcerated.

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<sup>15</sup> Respondent's Exhibit 1, page 161.

<sup>16</sup> Respondent's Exhibit 1, pages 34-40. (Nahir Rasheed, M.D., Permian General Hospital).

<sup>17</sup> Respondent's Exhibit 1, pages 30-33.

The IRO chiropractor noted that “To receive continued treatment . . . there must be a direct link of his current condition to his original injury on \_\_\_\_.”<sup>18</sup> According to both the IRO chiropractor and the peer review chiropractor, Dr. Braswell, this link was not established by their review of the medical records in this case. Dr. Braswell, in particular, noted that “[Claimant] responded favorably to the physical therapy, medications and chiropractic treatments rendered through 7-28-01. At that point I believe the records fail to . . . support [the need] for continued supervised conservative treatment.” The IRO reviewer and Dr. Braswell both concurred, therefore, that six months of treatment and work hardening were sufficient treatment for the injury in 2001.

Based on the preponderant evidence, the ALJ agrees that an additional eight months of passive physical therapy, three years after the injury, has not been demonstrated as reasonable or necessary. Although Provider explained that Claimant had received poor chiropractic treatment in 2001, this alone cannot furnish sufficient justification, particularly where Claimant has completed a work hardening program and a release to return to work. Thus, the established evidence failed to show that the injury warranted any further treatment.

Lastly, the ALJ disagrees that payment of some of the services is a waiver of a dispute concerning a causal link between the injury and the disputed services. The initial treatment reimbursed by Carrier serves the purpose of gathering necessary information critical to determining the source of pain or weakness. However, this initial assessment period does not establish that eight months of additional services would be required.

Therefore, the ALJ determines that since there was no indication of medical necessity, Provider should not be reimbursed by Carrier for the medical services in dispute, rendered between December 29, 2003, and August 13, 2004.

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

1. An injured worker (Claimant) injured his neck and back on\_\_\_\_, when, while working on a derrick floor, he fell into a fifteen-foot substructure hole covered by a tarp.

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<sup>18</sup> Texas Medical Foundation, Independent Review Decision.

2. Claimant's emergency room records, following the accident, indicate that Claimant had minor abrasions with "normal" chest, left hip, pelvis, and left elbow x-ray with no bone, joint, or soft tissue abnormality, and was advised to take Advil or Motrin for continued pain and discomfort.
3. At the emergency room, Claimant was diagnosed with a sprain, although in 2004, a medical examination indicated herniated discs at L4-5 and L5-S1.
4. Claimant currently describes symptoms of moderate to severe spasms in his back and pelvis with pain radiating down the leg.
5. Claimant was treated by Gilbert Gonzales, D.C., from approximately June 2000, until July 2001.
6. Claimant was incarcerated for two years in prison where he did not receive treatment.
7. Upon his release, Claimant began treatment with William W. Summers, D.C. (Provider) on December 17, 2003.
8. Since the accident, Claimant's history of treatments has included physical therapy, medications, chiropractic treatment, work hardening, as well as diagnostic testing including multiple MRI's and x-rays.
9. At the time of the injury, Claimant's employer had its workers' compensation insurance through Highlands Insurance Corporation (Carrier).
10. Carrier denied payment for services rendered between December 29, 2003, and August 13, 2004, for chiropractic manipulation billed under CPT Codes 98941 and 98942.
11. Provider requested medical dispute resolution with the Texas Workers' Compensation Commission's (Commission) Medical Review Division (MRD).
12. An Independent Review Organization concluded that chiropractic treatments rendered from December 29, 2003, and August 13, 2004, were not medically necessary.
13. Provider filed a request for a hearing before the State Office of Administrative Hearings on April 6, 2005.
14. The Commission sent notice of the hearing to the parties on April 26, 2005. The hearing notice informed the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the statutes and rules involved; and the matters asserted.
15. Administrative Law Judge (ALJ) Penny Wilkov convened a hearing in this case on November 28, 2005, at the State Office of Administrative Hearings (SOAH), Austin, Texas, and the record closed at the conclusion of the hearing on that day. Provider appeared *pro se*. Attorney Beverly L. Vaughn represented Carrier.

16. The case was referred by the Commission and accepted by SOAH for hearing prior to September 1, 2005.
17. The initial injury was minor, a strain or sprain, which heals in six months, with or without treatment.
18. The effects of the injury had resolved by July 28, 2000, when Claimant had normal range of motion values, no radicular component, and no subjective symptoms in the left elbow or hip.
19. Passive therapy is normally administered during the acute stage of healing, two to four weeks after an injury, and not three years after the injury has healed.
20. Claimant had already undergone a work hardening program in 2001, which should have been the final treatment program before returning to work.
21. The initial treatment reimbursed by Carrier was required to gather information critical to determining the source of pain or weakness and does not establish the necessity for eight months of additional services.

## **V. CONCLUSIONS OF LAW**

1. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 413.073(b) and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003 and Acts 2005, 79<sup>th</sup> Leg., ch. 265, § 8.013, eff. Sept. 1, 2005.
2. Provider timely filed a request for hearing before SOAH, as specified in 28 TEX. ADMIN. CODE §148.3.
3. The parties received proper and timely notice of the hearing pursuant to TEX. GOV'T CODE ANN. ch. 2001 and 1 TEX. ADMIN. CODE §155.27.
4. Provider had the burden of proving the case by a preponderance of the evidence pursuant to 28 TEX. ADMIN. CODE §148.14.
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. Health care includes all reasonable and necessary medical services. TEX. LAB. CODE ANN. §401.011(19)(A).

7. Provider failed to establish that the treatment rendered to Claimant between December 29, 2003, and August 13, 2004, is reimbursable under TEX. LAB. CODE ANN. § §01.011(19) and 408.021(a).
8. Provider' s claim should be denied.

**ORDER**

**IT IS ORDERED** that William W. Summers, D.C., is not entitled to reimbursement by Highlands Insurance Corporation for all of the treatments rendered from December 29, 2003, and August 13, 2004.

**SIGNED January 23, 2006.**

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**PENNY WILKOV  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**