SOAH DOCKET NO. 453-05-7364.M5
TWCC MR NO. M5-05-2075-01

CARL M. NAEHRITZ III, D.C. & ASSOCIATES, P.C.	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	**OF**
V.	§	
	§	
LIBERTY MUTUAL FIRE INSURANCE,	§	**ADMINISTRATIVE HEARINGS**
Respondent		

DECISION AND ORDER

Petitioner Carl M. Naehritz III, D.C. & Associates, P.C. (Provider) disagrees with the decision of an independent review organization (IRO) issued on behalf of the Texas Workers' Compensation Commission (Commission) Medical Review Division (MRD)[1] finding that medical services provided to Claimant from December 12, 2003, through May 21, 2004, were not medically necessary. Liberty Mutual Fire Insurance (Carrier) denied payment for these medical services in the amount of $4,320.46.[2]

After considering the evidence and arguments presented, the Administrative Law Judge (ALJ) finds that Provider failed to prove by a preponderance of the evidence that the disputed medical services were medically necessary. Therefore, Carrier is not required to reimburse Provider for the disputed treatments medical services provided to Claimant by Provider from December 12, 2003, through May 21, 2004.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

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

ALJ Catherine C. Egan convened the hearing on the merits on March 29, 2006, at the SOAH hearing facilities in Austin, Texas. Attorney Kevin Franta represented Carrier. Carl M. Naehritz III, D.C., appeared *pro se* on behalf of Provider. The record remained open until April 14, 2006, to permit the filing of additional evidence, at which time the record closed.

[1] Effective September 1, 2005, the functions of TWCC have been transferred to the newly created Division of Worker's Compensation at the Texas Department of Insurance.

[2] Carrier submitted an agreed table of disputed services on April 4, 2006. Provider had until April 14, 2006, to supplement or to file any objections and did not do so. The table was marked as Joint Ex. 1 and admitted into evidence on April 14, 2006, at which time the record closed.

II. BACKGROUND

On___, Claimant injured his right ankle and foot when a large container slipped and rolled over them. Claimant initially went to Concentra Medical Center (Concentra) and was treated with medications and physical therapy. Concentra also referred Claimant for an orthopedic consult and MRI. The MRI taken of Claimant's ankle on September 18, 2003, showed the following:

> 1.5 centimeter bone contusion of the lateral malleolar tip. No definite linear fracture.
> Likely tear of the anteroinferior tibiofibular ligament.
> Lateral malleolar ligaments tendinosis. No definite tear demonstrated.[3]

On October 7, 2003, Claimant was examined and evaluated by R. Craig Saunders, M.D., F.A.A.O.S.[4] Dr. Saunders reported that Claimant probably suffered from a crush injury with a hypersensitivity component, ordered a bone scan, and recommended that Claimant take Neurontin and anti-inflammatory medications. Dr. Saunders opined that Claimant's symptoms would resolve "on their own."[5]

On October 27, 2003, Claimant had a whole-body bone scan. The scan revealed an "abnormal uptake seen about the right lateral malleolus on delayed images."[6] On November 4, 2003, Dr. Saunders reviewed the bone scan and examined Claimant. According to Dr. Saunders, Claimant still had tenderness in the lateral malleolus, but Claimant's complaints of pain had reduced to a three out of ten. Dr. Saunders concluded that Claimant did not need additional physical therapy and could continue to work without restriction. As a result, Dr. Saunders dismissed Claimant from his care.[7]

On December 8, 2003, Claimant went to Bruce Prager, M.D., an orthopedic surgeon, for a consultation. Dr. Prager prescribed medications and recommended that Claimant be "in some physical therapy to work on strengthening his ankle."[8] According to Dr. Prager, the type of crush injury that Claimant sustained could take up to a year to resolve.[9]

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[3] Carrier Ex. 1 at A29.

[4] Carrier Ex. 1 at A38-39.

[5] Carrier Ex. 1 at A39.

[6] Carrier Ex. 1 at A61.

[7] Carrier Ex. 1 at A62.

[8] Carrier Ex. 1 at A71.

[9] *Id.*

On December 12, 2003, Dr. Naehritz began treating Claimant. The services in dispute occurred from December 12, 2003, through May 21, 2004, and included office visits (CPT Codes 99212, 99213 and 99215), prolonged report reviews (CPT Code 99358), manual therapy techniques (CPT Code 97140), therapeutic exercises (CPT Code 97110), neuromuscular reeducation (CPT Code 97112), therapeutic activities (CPT Code 97530), durable medical equipment (CPT Code E1399RR), and supplies and materials (CPT Code 99070).[10]

During this time, Claimant had a bone scan on February 20, 2004, which showed abnormal activity involving the right lateral malleolus. An MRI of Claimant's right foot taken on March 4, 2004, showed focal fluid collection consistent with tendon avulsion or avulsion fragment, as well as small ankle effusion.

Carrier requested a peer review of the treatment provided Claimant. On February 13, 2004, Larry Fenton, D. C., issued a report following his review of Claimant's medical record. Of significance to Dr. Fenton was the amount of physical therapy Claimant had received, at least eight sessions with Concentra and 12 sessions with Dr. Naehritz. Dr. Fenton found that the physical therapy provided through February 13, 2004, was medically necessary, but only recommended another 10 active therapy sessions through March 5, 2004, because of the age and severity of the injury.[11]

III. DISCUSSION

Dr. Naehritz testified that Claimant suffered a severe sprain to the ankle, ankle derangement, ligament damage, and avulsion fracture. Dr. Naehritz explained that this type of injury can take up to a year to heal. According to Dr. Naehritz, Claimant did well on this treatment program and was able to continue to work despite the injury. On April 15, 2004, Claimant reached maximum medical improvement with a 3 percent impairment rating. Claimant currently has very little pain in his ankle. In Dr. Naehritz's opinion, all the medical services he provided to Claimant were medically necessary.

Dr. Naehritz testified that the prolonged services without direct face-to-face patient contact (CPT Code 99358) billed on December 20, 21, and 24, 2003, February 24, 2004, and March 1, 2004, were medically necessary to review reports, including MRI reports and bone scans. Dr. Naehritz did

[10] The dates of service in dispute between December 12, 2003, through March 9, 2004, include only the following dates and services: December 20, 21, 24, 2003 (CPT Code 99358); February 24, 2004 (CPT Code 99358); March 1, 2004 (CPT Code 99358); March 2, 2004 (CPT Code 99213).

[11] Carrier' Ex. 1 at A104.

not detail how long it took to review these reports, whether he communicated with other professionals about his evaluation, or indicate in his records how his evaluation affected Claimant's treatment.

According to Dr. Naehritz, the office visit dated March 2, 2004, included manual therapy because Claimant was in pain; therefore, it was medically necessary. Similarly, on March 9, 12, 16, 18, 19, 23, 25, 30, April 1, 6, 13, 15, 16, 20, 22, 23, 27, May 7, 14, and 21, 2004, Dr. Naehritz treated Claimant with physical therapies during an office visit to relieve Claimant's pain so he could continue to work. Dr. Naehritz explained that on March 19, 2004, he conducted a re-examination of Claimant (CPT Code 99215), in an extended office visit. From April 23, 2004, through May 21, 2004, Dr. Naehritz explained he saw Claimant weekly for office visits. On April 12, 2004, Dr. Naehritz states that the supplies given to Claimant were for his EMS unit so he could have new pads to put on his ankle at home or work.

Carrier's expert, William D. DeFoyd, D.C., testified that after reviewing Dr. Naehritz's medical records for Claimant, it did not appear that Claimant's compensable injury was improving. Dr. DeFoyd noted that Dr. Naehritz's records were very generic and provided little information. On February 12, 2004, Claimant was experiencing more pain from Provider's treatment, which indicated that Claimant's condition was not improving. According to Dr. DeFoyd, Dr. Fenton's recommendation of 30 sessions of physical therapy was very generous because Medicare guidelines require a patient be converted to independent physical therapy within the first 60 days.

Dr. DeFoyd opined that after the March 4, 2004 MRI, Provider should not have treated Claimant with active therapy. Dr. DeFoyd maintains that exercise is counterindicated if Claimant had a tendon avulsion or avulsion fracture. Instead, the area should have been immobilized to let it heal. This position is consistent with the IRO's report. Claimant's treatment records do not indicate that Dr. Naehritz took the avulsion into consideration when treating Claimant.

The IRO issued a report on May 10, 2005, that was adopted by the MRD in its order dated May 12, 2005. The IRO found that the medical services provided from December 12, 2003, to May 21, 2004, were not medically necessary to treat Claimant's compensable injury. The IRO stated the following basis for the decision:

> The objective documentation supplied including the MRI reports and bone scan appear that there is an injury consistent with the tendon avulsion or an avulsion fragment, this is also reported in the rebuttal of the peer review by Dr. Naehritz on 5/17/04. With this type of injury manual therapy as well as strenuous active therapy exercises that the

> treating chiropractor was using is not objectively supported. The objective documentation supplied contradicts the type of therapy the treating chiropractor was utilizing. A sample active therapy date on 2/12/04 revealed the claimant was undergoing exercises such as a trampoline for 5 minutes, step exercises, calf raises and a wobble ball. The claimant reported a burning sensation in the right ankle during the calf raises. This type of strenuous exercise will be contraindicated in any avulsion style injury. These type of injuries should be completely healed prior to any conditioning style therapy.

Provider had the burden of proof to show that the disputed medical services were medically necessary. At the time Provider began treating Claimant, Claimant had already undergone physical therapy at Concentra. Nothing presented in evidence shows that Provider evaluated the effectiveness of the physical therapy Claimant had already received. Dr. Naehritz failed to show by a preponderance of the evidence that further treatment, particularly physical therapy, was medically necessary. Moreover, when the avulsion was identified in the March 4, 2004 MRI, further physical therapy was medically unnecessary.

As for the prolonged physician services billed under CPT Code 99358, Dr. Naehritz presented little evidence to explain why a prolonged evaluation was medically necessary. Although Dr. Naehritz testified that the prolonged physician services were billed for his review and evaluation of various MRI reports and bone scans, he provided little proof that he spent any significant time evaluating these reports or that his evaluation of these reports factored into his treatment protocol for Claimant. Therefore, the ALJ finds that Provider failed to show by a preponderance of the evidence that the disputed medical services were medically necessary. Neither party presented any evidence regarding the MRD's findings concerning a medical fee dispute, therefore the matter is waived. In addition, having found that the medical services were not medically necessary, the issue concerning a fee dispute is moot.

IV. FINDINGS OF FACT

On___, Claimant sustained a work-related injury to his right foot and ankle as a result of his work activities (compensable injuries).

At the time of Claimant's compensable injuries, Claimant's employer's workers' compensation insurance carrier was Liberty Mutual Fire Insurance (Carrier).

Claimant initially sought treatment at Concentra Medical Center where he received physical therapy.

On September 18, 2003, Claimant had an MRI taken of his right foot and ankle which showed a 1.5 centimeter bone contusion of the lateral malleolar tip, with no definite linear fracture; a likely tear of the anteroinferior tibiofibular ligament; and lateral malleolar ligaments tendinosis, with no definite tear demonstrated.

On October 7, 2003, and November 4, 2003, R. Craig Saunders, M.D., F.A.A.O.S., examined and evaluated Claimant's foot and ankle and found that Claimant no longer needed physical therapy because the injury would heal on its own and that Claimant could return to work without restrictions.
On December 8, 2003, Bruce Prager, M.D., an orthopedic surgeon evaluated Claimant's foot and ankle and recommended that Claimant be in some type of physical therapy to strengthen his ankle.
On December 12, 2003, Carl M. Naehritz III, D.C., who is associated with Carl M. Naehritz III, D.C. & Associates, P.C. (Provider) became Claimant's treating physician.

Dr. Naehritz diagnosed Claimant as suffering with a severe sprain to the ankle, ankle derangement, ligament damage, and avulsion fracture.
The disputed medical services provided by Dr. Naehritz between December 12, 2003, and May 21, 2004, included office visits (CPT Codes 99212, 99213 and 99215), prolonged report reviews (CPT Code 99358), manual therapy techniques (CPT Code 97140), therapeutic exercises (CPT Code 97110), neuromuscular reeducation (CPT Code 97112), therapeutic activities (CPT Code 97530), durable medical equipment (CPT Code E1399RR), and supplies and materials (CPT Code 99070).
Claimant's compensable injury did not substantially improve as a result of Provider's treatment.

Claimant's compensable injury would have resolved on its own without the treatment provided by Provider.
On March 4, 2004, Claimant had another MRI taken of his right foot which showed focal fluid collections consistent with tendon avulsion or avulsion fragment.

The use of physical therapy to treat an avulsion is counterindicated.
Provider requested reimbursement of $4,320.46 from Carrier for the disputed services. Carrier refused payment. Provider requested dispute resolution.
On May 10, 2005, an independent review organization (IRO) reviewed the disputed medical services and found that the services were not medically necessary.

Based on the IRO's findings, the Texas Workers' Compensation Commission's Medical Review Division (MRD) found that the Carrier did not owe Provider for the disputed medical services provided between December 12, 2003 and May 21, 2004.

17. After the MRD order was issued, Provider requested a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).

18. Required notice of a contested-case hearing concerning the dispute was mailed to the parties.

On March 29, 2006, SOAH ALJ Catherine C. Egan held a contested-case hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Attorney Kevin Franta represented Carrier. Dr. Naehritz represented Provider. The hearing remained open for the filing of additional evidence until April 14, 2006, at which time the record closed.

V. CONCLUSIONS OF LAW

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. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003.

Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§2001.051 and 2001.052.

Based on the above Findings of Fact and Gov't Code § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC)§ 155.41(b) (2004), and 28 TAC §§ 133.308(v) and 148.21(h) (2004), Provider has the burden of proof in this case.

An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed 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. Labor Code § 408.021(a).

Based on the above Findings of Fact and Conclusions of Law, the disputed medical services provided by Provider to Claimant between December 12, 2003, and May 21, 2004 were not medically necessary to treat Claimant's compensable injury.

ORDER

IT IS ORDERED THAT Liberty Mutual Fire Insurance is not required to reimburse Carl M. Naehritz III, D.C. & Associates, P.C. for the disputed medical services provided between December 12, 2003, and May 21, 2004.

SIGNED June 13, 2006.

CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS