

**SOAH DOCKET NO. 453-05-9356
MDR NO. M5-05-2460-01**

MARK SHERROD, D.C., PETITIONER	§	BEFORE THE STATE OFFICE
	§	
	§	
V	§	OF
	§	
AMARILLO INDEPENDENT SCHOOL DISTRICT, RESPONDENT	§	ADMINISTRATIVE HEARINGS
		DECISION AND ORDER

Mark Sherrod, D.C., requested a hearing to contest an independent review organization (IRO) opinion and Texas Workers' Compensation Commission¹ Medical Review Division decision that certain services he provided to an injured worker (Claimant) from May 12, 2004, through November 4, 2004, were not medically necessary. This decision concludes that Dr. Sherrod proved the services were medically necessary and that Amarillo Independent School District (Carrier) should pay for the services.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing convened on June 13, 2006, at the State Office of Administrative Hearings offices in the William P. Clements Building, 300 West 15th Street, Austin, Texas, before the undersigned Administrative Law Judge. Dr. Sherrod appeared *pro se* by telephone. The Carrier appeared through Employers Claims Adjustment Services, Inc., which was represented by a licensed adjuster, Neal Moreland, Director of TWCC Services. Because there were no notices or other jurisdictional issues, those matters are stated in the findings of fact and conclusions of law without further discussion here. The hearing closed on June 13, 2006.

II. DISCUSSION

A. Background

The Claimant was a _____ in her _____ who was injured on _____, while walking and carrying several objects to her office. She bent forward to pick up items that had fallen and then fell

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

backwards, injuring her lower back, neck, and head. Dr. Sherrod treated her from October 3, 2003, through January 19, 2004. Her condition improved dramatically by February 17, 2004, at which time she received an MMI/Impairment Rating Examination from Michael D. Barnett, D.C., P.A., indicating she had no pain, no positive findings from lumbar and cervical spine examinations, and no palpable tenderness. He assigned her a zero percent impairment rating.²

The Claimant again presented to Dr. Sherrod in May 2004 with complaints of mild low back pain and moderate neck pain.³ He saw her on May 14 and 18, June 4, 18, and 22, and November 4, 2004. The disputed services include, office visits, chiropractic manipulation, ultrasound, electrical stimulation, and manual therapy.

Employees have a right to necessary health care under TEX. LABOR CODE ANN. §§408.021 and 401.011. Section 408.021(a) provides, "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. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment." Section 401.011(19) of the Labor Code provides that health care includes "all reasonable and necessary medical . . . services."

As the party requesting the hearing, Dr. Sherrod has the burden of proof.⁴

B. Analysis

This decision concludes the services were medically necessary based on evidence that the Claimant exacerbated her ___injury, resulting in the disputed services being provided by Dr. Sherrod. Dr. Sherrod testified and his office notes indicate that an exacerbation occurred.⁵

The Carrier argued that the Claimant's pain in May 2004 did not result from her compensable _____ injury. It contended her condition had completely resolved in February, when

2 Ex. 1 at 4-5.

3 Ex. 1 at 17.

4 1 TEX. ADMIN. CODE (TAC) § 155.41(b); 28 TAC § 148.14(a).

5 Ex. 1 at 15 *et seq.*

she had no pain, a zero impairment rating, and examinations of her lumbar and cervical spine revealed no positive findings or palpable tenderness. A February 14, 2004, peer review by R. A. Buczek, D.O., D.C., FACO, DAAPM, opined that further chiropractic treatment was medically unnecessary.⁶ As indicated in the MRD order,⁷ an IRO found the services were not medically necessary.

Although the Carrier's evidence carried weight, Dr. Sherrod's testimony was more persuasive. He testified it is very common for a soft-tissue back injury to appear to resolve and later be revived by an exacerbating event. He argued that unlike other areas of medicine, the workers' compensation system does not seem to recognize the possibility of an exacerbation. Yet, every expert witness he has questioned has acknowledged that exacerbations of old injuries can and do happen. He said an exacerbation is a common rather than an unusual occurrence.

Dr. Sherrod's testimony was persuasive-it is certainly believable that soft-tissue back injuries are subject to exacerbation. The occurrence of an exacerbation in the Claimant's case is supported by Dr. Sherrod's testimony that the location of her May 2004 and October 2003 complaints was identical, compression tests in May 2004 for her cervical spine joints and nerve root structures were positive, she told him she had not suffered a new injury, and an exacerbation of a neck injury was consistent with her work activities, which involve frequent head flexion.

Except as implied by the IRO doctor's paper-review opinion that the services were not medically necessary, there was no evidence that an exacerbation did not occur in this case. Overall, the preponderant evidence supports Dr. Sherrod's position.

IV. FINDINGS OF FACT

1. The injured worker (Claimant) was a _____ in her early _____ who was injured on _____, while walking and carrying several objects to her office.
2. The Claimant bent forward to pick up items that had fallen and then fell backwards, injuring her lower back, neck, and head.

⁶ Ex. 1 at 11. Dr. Buczek said future treatment should consist of over-the-counter anti-inflammatory medications on an as-needed basis and an aggressive home-based exercise and stretching program. *Id.*

⁷ Ex. 1 at 30-31. The IRO decision was not introduced into evidence.

3. Mark Sherrod, D.C., treated the Claimant from October 3, 2003, through January 19, 2004.
4. The Claimant's condition resolved by February 17, 2004, at which time she received an MMI/Impairment Rating Examination from Michael D. Barnett, D.C., P.A., indicating she had no pain, no positive findings from lumbar and cervical spine examinations, and no palpable tenderness.
5. Dr. Barnett assigned her a zero percent impairment rating.
6. The Claimant again presented to Dr. Sherrod in May 2004 with mild low back pain and moderate neck pain.
7. Dr. Sherrod saw the Claimant on May 14 and 18, June 4, 18, and 22, and November 4, 2004.
8. The disputed services include office visits, chiropractic manipulation, ultrasound, electrical stimulation, and manual therapy (CPT codes 98941, 97035, 99212-25, G0283, and 97140-52).
9. The Claimant's employer's workers' compensation insurance carrier, Amarillo Independent School District (Carrier), denied Dr. Sherrod's claim.
10. Dr. Sherrod requested medical dispute resolution.
11. An independent review organization found the services at issue were not medically necessary.
12. The Texas Workers' Compensation Commission Medical Review Division (MRD) issued an order concluding the services were not medically necessary.
13. Not more than 20 days after receiving notice of the MRD order, Dr. Sherrod filed a request for hearing.
14. Notice of the hearing was issued on November 3, 2005.
15. The notice contained a statement of the time, place, and nature of the hearing; a statement of 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.
16. The Claimant exacerbated her ___injury and went back to Dr. Sherrod in May 2004.
17. It is common for a soft-tissue injury to resolve and later be revived by an exacerbating event.
18. The location of the Claimant's May 2004 and October 2003 complaints, at her cervical spine, was identical.
19. Compression tests in May 2004 for the Claimant's cervical spine joints and nerve root structures were positive.
20. The Claimant did not suffer a new injury after___.

21. An exacerbation of a neck injury was consistent with the Claimant's work activities, which involve frequent head flexion.

V. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §402.073(b) and 413.055 and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
3. Dr. Sherrod has the burden of proof in this proceeding. TEX. LAB. CODE ANN. §413.055; 28 TEX. ADMIN. CODE (TAC) §148.14(a).
4. Dr. Sherrod proved the disputed services were medically necessary.
5. The Carrier should pay Dr. Sherrod for the disputed services.

ORDER

IT IS THEREFORE, ORDERED that Amarillo Independent School District pay Mark Sherrod, D.C., for disputed office visits, chiropractic manipulation, ultrasound, electrical stimulation, and manual therapy (CPT codes 98941, 97035, 99212-25, G0283, and 97140-52) that Dr. Sherrod provided to the Claimant on May 14 and 18, June 4, 18, and 22, and November 4, 2004.

SIGNED June 20, 2006.

**JAMES W. NORMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**