

DOCKET NO. 453-05-9251.M5
MR NO. M5-05-2297-01

AMERICAN HOME ASSURANCE § BEFORE THE STATE OFFICE
COMPANY §
V. § OF
ERIC VANDERWERFF, D.C. §
§ ADMINISTRATIVE HEARINGS
§

DECISION AND ORDER

American Home Assurance Company (Carrier) challenges the decision of the Independent Review Organization (IRO)¹ granting reimbursement for chiropractic treatments from June 21, 2004, to July 15, 2004, related to an injured worker (Claimant). After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that Carrier has shown the services in dispute were not medically necessary. Therefore, Carrier is not obligated to reimburse Eric Vanderwerff, D.C. (Provider) any amount for the disputed services.

I. BACKGROUND

On [redacted], Claimant suffered a compensable, work-related injury to his left leg and low back (although it was initially reported as a knee injury). An MRI of the lumbar spine revealed lordosis straightening possibly due to musculature pain or spasm and a 2 mm right paracentral discal substance herniation at L5-S1, that touched but did not indent the anterior thecal sac. Claimant received chiropractic therapy, lumbar traction, rehabilitative exercises, electrical stimulation, and neuromuscular re-education three to four times a week for eight weeks. Over the next several months, a variety of therapy was provided, including additional chiropractic adjustments, work hardening, and myofascial therapy and joint mobilization. The disputed services are therapeutic exercises, manual therapy, chiropractic manipulations, neuromuscular re-education, and group therapeutic procedures performed from June 21, 2004, through January 27, 2005 (disputed services).

¹ The IRO is the statutory designee of the Medical Review Division of the Texas Workers' Compensation Commission for purposes of resolving this dispute. 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.

Carrier declined to reimburse the physical therapy and related treatments during this time period, contending the treatment was not medically necessary. Provider sought medical dispute resolution through the Texas Workers' Compensation Commission (Commission), and the matter was referred to an IRO designated by the Commission for the review process. The IRO determined that the services were medically necessary treatment for Claimant's compensable injury. Carrier then requested a hearing before the State Office of Administrative Hearings. The hearing convened on May 2, 2006, and also on December 19, 2006, with ALJ Tommy L. Broyles presiding. The record closed on January 22, 2007. No party objected to notice or jurisdiction.

II. DISCUSSION AND ANALYSIS

This case involves a dispute over the necessity of numerous different therapeutic treatments performed on Claimant. Carrier argues that the disputed services exceeded the scope of what would be proper treatment for Claimant after his injury. Carrier presented the testimony of Dr. Michael Hamby, D.C., who conducted a physical evaluation of Claimant and testified that the treatment should have been no more than nine visits over an eight-week period, with Claimant then transferred to a home exercise program. Dr. Hamby testified that the diagnostic studies were normal, and if anything, showed an improvement when compared to the pre-injury MRI. He further noted that Claimant failed malingering tests, and that any minimal damage Claimant had to his back resolved within a couple of weeks after the date of injury.

In support of its position, Carrier also pointed to a retrospective review provided by Phillip Osborne, M.D. Dr. Osborne found Claimant's subjective pain levels remained at mild levels, despite continued treatment. He noted no improvement in any objective measures for loss of motion, strength, or function that justified the disputed services. Moreover, Dr. Osborne stated that even the treatment notes failed to indicate any significant objective benefit was received by Claimant for the services. Dr. Osborne found the disputed services to be excessive and without support from any known guideline or standard.

In response, Provider argues that Claimant's injury was very serious and complicated. Provider asserts that the first MRI that came back normal and the second, upright MRI, that came back with two bulging discs but no herniated discs, were mistaken. He argues instead that, judging from the pain level Claimant claimed to be experiencing and in light of the EMG results,² there was a herniated disc lesion.

Moreover, Provider argues that the injury was complicated because Claimant suffers from a retrolisthesis³ of the L4 vertebrae, which adversely affected the L4/5 disc lesion. According to Provider, this condition, coupled with Claimant's obesity, substantially prolonged the normal healing time. Provider further explained that due to the biomechanical instability and sheering forces being exerted upon the injured disc by the retrolisthesis and obesity, treatment of up to one year, post trauma, was appropriate. For these reasons, Provider asserts that the extended course of treatment was reasonable and necessary and that payment for the disputed services should be ordered.

After considering the evidence and arguments presented, the ALJ finds that Carrier has shown the services in dispute were not medically reasonable and necessary for treatment of Claimant's compensable injury. From reviewing the records, the ALJ finds a dearth of objective medical evidence supporting the extent of injury suggested by Provider. Claimant tested positive on malingering tests and the therapy notes are inconsistent on whether progress was being made. Finally, some statements made by Provider, while not wholly inaccurate, appear to be reaching. For instance, Provider states that in the second MRI, the L3/4 and L4/5 discs were seen to be bulging. He adds that this was quite a different picture than the one painted by the first MRI. Reviewing the evidence the ALJ finds that the impression on the second MRI is very similar to the first. There is no significant disc bulge or protrusion at any lumbar level; there is no mass effect on the thecal sac or nerve roots; and there is no significant central or foraminal stenosis.

² The EMG results included a finding of left L5/S1 radiculopathy.

³ The posterior displacement of one vertebral body on the subjacent vertebral body

All of the above factors lead the ALJ to find the testimony of Dr. Hamby and the statements of Dr. Osborne to be more credible. Accordingly, the ALJ finds that Provider is not entitled to reimbursement for the disputed dates of service in this case. In support of this determination, the ALJ makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. On [redacted] Claimant suffered a compensable, work-related injury to his left leg and low back.
2. American Home Assurance Company (Carrier) is the provider of workers' compensation insurance covering Claimant for his compensable injury.
3. Claimant received extensive physical therapy and other conservative treatment from Eric Vanderwerff, D.C. (Provider) after his injury.
4. The disputed services are therapeutic exercises, manual therapy, chiropractic manipulations, neuromuscular re-education, and group therapeutic procedures, performed from June 21, 2004, through January 27, 2005 (disputed services).
5. Carrier declined to reimburse Provider for the disputed services, contending the treatments were not medically necessary.
6. Provider sought medical dispute resolution through the Texas Workers' Compensation Commission (Commission).
7. The matter was referred to an Independent Review Organization (IRO) designated by the Commission for the review process.
8. The IRO determined that the services were medically necessary treatment for Claimant's compensable injury.
9. The Commission's Medical Review Division ordered reimbursement based on the IRO physician reviewer's determination that the disputed services were medically necessary.
10. On August 9, 2005, Carrier requested a hearing and the case was referred to the State Office of Administrative Hearings (SOAH).
11. Notice of the hearing was sent by the Commission to all parties on October 28, 2005. The hearing was subsequently continued at the parties' request.

12. The hearing convened on May 2, 2006, and also on December 19, 2006, with ALJ Tommy L. Broyles presiding. The record closed on January 22, 2007.
13. No party objected to notice or jurisdiction.
14. The services in dispute were not medically reasonable and necessary for treatment of Claimant's compensable injury.
15. Based upon the objective medical evidence, the injury should have resolved within eight weeks.
16. Claimant showed positive malingering tests.
17. Notes on whether progress was being made during the treatment were inconsistent.
18. The testimony of Dr. Hamby and Dr. Osborne is supported by the objective medical evidence.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act, specifically TEX. LABOR CODE ANN. §413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.
3. The request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE § 148.3.
4. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Carrier has the burden of proof. 28 TEX. ADMIN. CODE §§ 148.14(a) and 133.308(w).
6. Carrier has shown, by a preponderance of the evidence, that the disputed services provided between June 21, 2004, and January 27, 2005, were not medically necessary for treatment of Claimant's compensable injury.

ORDER

IT IS, THEREFORE, ORDERED that American Home Assurance Company is not liable to reimburse Eric Vanderwerff, D.C., for any of the disputed services in issue in this case.

SIGNED February 26, 2007.



TOMMY L. BROYLES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS