

ALTA VISTA HEALTHCARE, LP,
Petitioner

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BEFORE THE STATE OFFICE

V.

OF

ZURICH AMERICAN INSURANCE CO.,
Respondent

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Alta Vista Healthcare, LP (Alta Vista), requested a hearing to contest a decision by the Texas Department of Insurance, Division of Workers' Compensation (Division), Medical Review Division (MRD) that denied Alta Vista reimbursement for all services involving the claimant's right shoulder. MRD based its decision on a separate contested case proceeding before the Commission, which found that the claimant sustained a compensable injury to her cervical spine but not to her right shoulder. Alta Vista contends that nearly all of the treatment in question would have been the same even with a diagnosis limited to the cervical spine. The Administrative Law Judge (ALJ) finds that Carrier should pay Alta Vista \$7,969.25 for all disputed services except those provided for treatment exclusively to the right shoulder.

I. PROCEDURAL HISTORY

The hearing on the merits convened and closed on December 15, 2008, before ALJ Thomas H. Walston at the State Office of Administrative Hearings (SOAH), Austin, Texas. Alta Visa appeared through attorney Jason C. Spencer. Attorney Ricky D. Green represented the Carrier, Zurich American Insurance Company. Because no issues were raised concerning notice or jurisdiction, those matters are stated in the Findings of Fact and Conclusions of Law without further discussion.

II. DISCUSSION

A. Background

The claimant worked as a ____ for a _____. She sustained a compensable injury on ____, ____, when she slipped in a bathtub and caught herself by grabbing a rail. She continued working and first reported the injury on May 10, 2007. On _____, the claimant complained of cervical pain radiating to the right shoulder, and she was diagnosed with right shoulder and cervical strain. The claimant underwent conservative treatment, including medication and physical therapy, which she initially reported made her symptoms worse. Electro-diagnostic testing on November 8, 2007, was normal, and an MRI of the cervical spine on December 28, 2007, showed straightening of the cervical spine but no evidence of disc disease. Additional treatment included pain management and work hardening. The claimant was discharged from care as of March 26, 2008, and she returned to full time work (with lifting restrictions) at a _____. On April 28, 2008, a physician designated by the Division found that the claimant had reached maximum medical improvement as of March 26, 2008, with a one percent Whole Person Impairment for injury to the cervical spine and right shoulder.

Alta Vista provided the services in dispute to the claimant between September 27, 2007, and March 10, 2008. These services included individual and group psychological counseling, physical therapy, and work hardening. The Carrier preauthorized some of the services as medically necessary, while other services did not require preauthorization because Alta Vista is a CARF certified facility. However, even though it preauthorized some of the services as medically necessary, the Carrier disputed whether the claimant had sustained a compensable injury.

On July 7, 2008, in a separate compensability proceeding before the Division, the hearing officer issued a Decision and Order finding that Claimant sustained a compensable cervical sprain/strain injury on _____, but that the compensable injury did not include a right shoulder or right hand injury. The hearing officer made the findings in that Decision and Order based on an agreement made between the claimant and Carrier rather than on a contested evidentiary record.

After the Decision and Order of ____, Carrier denied Alta Vista's entire claim for reimbursement based on the argument that the claim included services provided for Claimant's right shoulder or hand, which had been found not to be part of the compensable injury. Alta Vista filed a request for medical fee dispute resolution, but on October 29, 2008, the Medical Fee Dispute Resolution Officer denied Alta Vista's request, based on the following:

A review of the CMS 1500 forms identify that the Requester billed with diagnosis codes of 847.0 (Neck sprain and strain) and 840.4 (Rotator cuff (capsule) sprain and strain). Both of these diagnosis codes are referenced in box 24-E of the CMS forms. In accordance with Rule 134.202 and 134.203, being that a non-compensable area (840.4) is being billed and referenced too, payment cannot be recommended.

Alta Vista made claims totaling \$8,158.05. However, at the hearing it agreed to waive claims for services provided solely to the claimant's right shoulder. After deducting these amounts, Alta Vista now claims \$7,969.25 for services related to the claimant's cervical spine. The Carrier continues to deny liability.

B. Parties' Arguments and Positions

Both parties introduced documentary evidence into the record, but neither party offered testimony. Alta Vista notes that the Carrier's Explanations of Benefits (EOBs) denied payment based only on the lack of a final decision on whether the claimant sustained a compensable injury. However, it stresses that the Decision and Order of ____, found that the claimant did sustain a compensable cervical sprain/strain injury; consequently, it argues that the Carrier must pay for all services provided for the claimant's cervical sprain/strain. As noted previously, Alta Vista waived its claim for services provided exclusively to the claimant's shoulder, but it argues that the Carrier must reimburse it for all other services related to the claimant's cervical sprain/strain. Alta Vista also emphasizes the written statement from Dr. Donald Dutra, contained in the records admitted into evidence, which states that "whether [the claimant's] right shoulder was injured or not, she would have required the same treatment for her cervical spine." Dr. Dutra pointed out that work hardening is a program for the entire body to improve functional capacity and stamina, and the same exercises would have been performed in the work hardening program no matter which part of the body was

injured.

Concerning the Carrier's arguments that the treatment was excessive and unnecessary, Alta Vista responds that the Carrier either preauthorized the treatments as medically necessary, or preauthorization was not needed because Alta Vista is CARF certified. Further, it points out that the Carrier did not assert lack of medical reasonableness and necessity in the Carrier's EOBs or during the Medical Fee Dispute Resolution proceeding. Therefore, Alta Vista argues that the Carrier cannot raise that issue now.

The Carrier stresses that the Division's Decision and Order of ____, found that the claimant did not sustain a compensable injury to her right shoulder or hand, and it also found that the claimant was disabled only for the period May 13 through July 6, 2007. With the claimant having only a cervical sprain/strain, a short period of disability, and no compensable shoulder or hand injury, the Carrier argues that the services provided by Alta Vista were excessive and were not medically reasonable and necessary. The Carrier also notes that even though Alta Vista is CARF accredited, it still must follow the treatment and coding guidelines, and it emphasizes that the Workers' Compensation Division denied the claim. Therefore, the Carrier contends that Alta Vista's claim for reimbursement should be denied in its entirety. Alternatively, the Carrier requests a reduction of the claim by half because the codes used by Alta Vista showed treatment for both the shoulder and cervical areas, but the compensable injury was limited to a cervical sprain/strain.

C. Analysis

The ALJ finds that the Carrier should reimburse Alta Vista for services provided to the claimant for her cervical strain/sprain, which has been found to be a compensable injury. The Carrier did not assert in its EOBs or at the MRD that the treatment provided by Alta Vista was not medically reasonable or necessary. Rather, the only reason asserted by the Carrier in its EOBs for denying reimbursement was: "W11- Entitlement to benefits. Not finally adjudicated." However, the Division's Decision and Order of ____, found that the claimant did sustain a compensable cervical strain/sprain injury, so the compensability of the claimant's injury has now been finally adjudicated in the claimant's favor.

Because the Division's Decision and Order also found that the claimant's compensable injury was limited to her cervical spine, and specifically did not include her right shoulder or hand, the question raised in this case concerns which services were provided for the claimant's cervical spine and which were provided for her shoulder or hand. Alta Vista introduced into evidence a report from Dr. Donald Dutra, which stated that the services would have been the same even with a diagnosis limited to a cervical spine injury:

. . . [T]he main point that has to be seen is the following: whether [the claimant's] right shoulder was injured or not, she would require the same treatment for her cervical spine injury. The treatments were reasonable and necessary per *ODG Treatment Guidelines* and the carrier's own utilization review. Were upper extremity exercises that include lifting and carrying included in [the claimant's] work hardening program? Yes they were. Work hardening is a program for the entire body to improve functional capacity and stamina. Those exercises would be performed in the work hardening program no matter what part of the body was injured. Since the treatments provided [to the claimant] were reasonable and necessary treatment for her compensable cervical spine injury, I expect the carrier to pay appropriated for said services. . . ."

Alta Vista agreed at the hearing that a small portion of the treatment provided to the claimant was for her shoulder only. The removal of those services reduced Alta Vista's claim from \$8,158.05 to \$7,969.25. Alta Vista relies on the report from Dr. Dutra for its position that the remaining services should be reimbursed as reasonable and necessary medical treatment for the claimant's cervical spine. The Carrier offered no evidence that the treatments for which Alta Vista now seeks reimbursement were not related to the claimant's compensable cervical strain/sprain. Instead, it simply suggests that the claim should be reduced by half since the original diagnosis included both the cervical spine and the right shoulder. Likewise, the Carrier argued that Alta Vista's services were not medically reasonable or necessary, but it did not assert lack of medical reasonableness or necessity in its EOBs or at the MRD as a reason for denying Alta Vista's claim, so it cannot raise that issue in this proceeding.

Based on the evidence presented, the ALJ finds that the Carrier should reimburse Alta Vista for the services provided for the treatment of the claimant's cervical spine. Although the original diagnosis included both claimant's cervical spine and right shoulder, Alta Vista provided evidence

that the same treatment would have been provided even with a diagnosis limited to the cervical spine. Indeed, most of the disputed services involved group and individual psychological counseling and work hardening, which are not directed to a specific part of the body. Although the evidence is sparse, the ALJ finds that it is sufficient to support Alta Vista's claim. Therefore, the ALJ concludes that the Carrier should reimburse Alta Vista \$7,969.25 for services provided to treat the claimant's compensable cervical spine injury.

III. FINDINGS OF FACT

1. The claimant sustained a compensable injury on ____, when she slipped in a bathtub and caught herself by grabbing a rail, while working as a ____ at a ____.
2. At the time of the claimant's injury, Zurich American Insurance Company (Carrier) provided workers' compensation insurance coverage for the claimant's employer.
3. The claimant underwent conservative treatment, including medication, physical therapy, pain management, and work hardening. The claimant was discharged from care as of March 26, 2008.
4. On April 28, 2008, a physician designated by the Texas Department of Insurance, Division of Workers' Compensation (Division) found that the claimant reached maximum medical improvement as of March 26, 2008, with a one percent Whole Person Impairment for injury to the cervical spine and right shoulder.
5. Alta Vista Healthcare, LP (Alta Vista) provided the services in dispute to the claimant between September 27, 2007, and March 10, 2008. These services included individual and group psychological counseling, physical therapy, and work hardening.
6. Carrier preauthorized some of the services provided by Alta Vista as medically necessary, while others did not require preauthorization because Alta Vista is a CARF certified facility. Even though it preauthorized some services as medically necessary, the Carrier continued to dispute whether the claimant had sustained a compensable injury.
7. On ____, in a separate compensability proceeding before the Division, the hearing officer issued a Decision and Order, finding that Claimant sustained a compensable cervical sprain/strain injury on ____, but also finding that the compensable injury did not include a right shoulder or right hand injury.
8. After the Decision and Order of ____, Carrier denied Alta Vista's claims for reimbursement based solely on the argument that the claims included services provided for Claimant's right shoulder or hand, which had been found not to be part of the compensable injury.
9. Alta Vista filed a request for medical fee dispute resolution, but on October 29, 2008, a

Division Medical Fee Dispute Resolution Officer denied Alta Vista's request for reimbursement.

10. The Medical Fee Dispute Resolution Officer based her determination on the Decision and Order issued on _____, as described in Finding of Fact No. 7, which found that the claimant's compensable injury did not include a right shoulder or right hand injury.
11. In its Explanation of Benefits (EOBs) and at the Medical Fee Dispute Resolution proceeding, Carrier did not assert lack of medical reasonableness or necessity as a reason to deny Alta Vista's claim for reimbursement.
12. Alta Vista timely appealed the decision described in Finding of Fact No. 9.
13. All parties received notice of the hearing that contained a statement of the time, place, and nature of the hearing; 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.
14. The hearing on the merits convened and closed on December 15, 2008, before ALJ Thomas H. Walston at the State Office of Administrative Hearings (SOAH), Austin, Texas. Alta Vista appeared through attorney Jason C. Spencer. Attorney Ricky D. Green represented the Carrier, Zurich American Insurance Company.
15. Alta Vista previously requested a total reimbursement of \$8,158.05 for the services provided to the claimant. At the hearing, Alta Vista waived claims for services provided solely to the claimant's right shoulder. After deducting these amounts, Alta Vista now claims \$7,969.25 for services related to the claimant's cervical spine.
16. Most of the disputed services provided to the claimant involved group and individual psychological counseling and work hardening, which were not directed to a specific part of the body.
17. Although the original diagnosis included both claimant's cervical spine and right shoulder, Alta Vista would have provided most of the same treatment to claimant even with a diagnosis limited to the cervical spine.

IV. CONCLUSIONS OF LAW

1. 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. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T. CODE ANN. ch. 2003.
2. Notice of the hearing was proper and timely. TEX. GOV'T. CODE ANN. §§ 2001.051 and 2001.052.
3. Carrier should reimburse Alta Vista in the amount of \$7,969.25 for services provided to the claimant related to her cervical spine injury and that were not provided solely to the

ORDER

IT IS THEREFORE ORDERED that Zurich American Insurance Company shall pay \$7,969.25, plus any applicable interest, to Alta Vista Healthcare, LP for the services Alta Vista provided to the claimant between September 27, 2007, and March 10, 2008, that were related to the claimant's cervical spine injury and were not provided solely to the claimant's right shoulder,.

Signed February 9, 2009.

**THOMAS H. WALSTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**