SOAH DOCKET NOS. 453-02-2150.M4, 453-02-2801.M5, 453-02-3019.M5, & 453-02-3029.M5

FIRST RIO VALLEY MEDICAL, PA	**§**	**BEFORE THE STATE OFFICE**
PETITIONER	**§**	
	§	
V.	**§**	**OF**
	§	
UNIVERSITY OF TEXAS SYSTEM,	**§**	
RESPONDENT	**§**	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

I. Introduction

First Rio Valley Medical, PA (Provider) and University of Texas System (Carrier) have appealed four orders of the Texas Workers' Compensation Commission (TWCC) Medical Review Division (MRD) regarding services that Provider furnished to ___ (Claimant). The only disputed issues are:

- Whether the Carrier's objections to reimbursing the Provider for the July 11, 2002 services that Provider furnished to the Claimant are beyond the scope of this case because Carrier did not timely raise them in an Explanation of Benefits (EOB);
- Whether the other disputed services that Provider furnished the Claimant were medically necessary to treat the Claimant's compensable injury;
- Did Carrier properly raise that medical necessity dispute in its EOBs; and
- Who has the burden of proof concerning that medical necessity dispute.

As set out below, the Administrative Law Judge (ALJ) finds that:

- The Carrier's objections to the July 11, 2002 services are outside the scope of this case;
- The Carrier properly disputed the medical necessity of the other services;
- The Provider has the burden of proving those other disputed services were medically necessary; and
- The Provider failed to prove those other disputed services were medically necessary.

Accordingly, the ALJ orders the Carrier to reimburse the Provider $70 for the July 11, 2002 services and denies the Provider's request for reimbursement for the other disputed services.

II. July 11, 2001 Services

The Provider sent a bill, in the form of a health insurance claim form (HCFA-1500), to the

Carrier for the July 11, 2002 services. The Carrier received that bill on September 4, 2001.[1] There is no evidence that the Carrier sent an EOB to the Provider regarding those July 11, 2002 services. Instead, the Carrier repeatedly quibbled that the Provider was improperly seeking reconsideration and that the Carrier had not received the bill originally.[2]

A Carrier must take final action paying, denying or requesting reimbursement on a provider's bill withing 45 days of receipt.[3] Absent exceptional circumstances[4] not present here, an objection to reimbursement that was never raised in a carrier's EOB, hence not raised before MRD, is beyond the scope of the subsequent SOAH proceeding.[5]

The ALJ concludes that the Carrier should be ordered to reimburse the Provider the undisputed maximum allowable reimbursement (MAR), totaling $70, for the July 11, 2002 services.

II. December 22, 2000 and July 3 and 16, 2001 Services

The other services in dispute in this case are those that the Provider furnished to the Claimant on December 22, 2000 and July 3 and 16, 2001. In its EOBs, the Carrier maintained that the July 3 and 16, 2001 services were not adequately documented to show they were related to the compensable injury and the December 22, 2000 services were not medically necessitated by the compensable injury.

The Provider correctly notes that 28 TAC §133.304(C) requires an EOB to include a sufficient explanation to allow the provider to understand the reason for the carrier's denial. A generic statement that simply states a conclusion such as "not sufficiently documented" with no further description of the reason for the denial does not satisfy the requirements of that rule. The Provider complains that the Carrier's EOBs for the December 22, 2000 and July 3 and 16, 2001 services did not contain such a sufficient explanation. The ALJ disagrees.

While brief, the Carrier's EOBs explained that the Carrier could not understand from the Provider's documentation how these services were related to the compensable injury. That was sufficient to notify the Provider of the nature of the dispute, which was all the Carrier was required to do.

The Parties also argue over who has the burden of proof in this case. A Commission rule

---

[1]Ex. 4, p. 33.

[2]Ex. 4, pp. 32 and 50.

[3]TEX. LABOR CODE ANN. (Labor Code) § 408.027(d) (West 2002) and 28 TEXAS ADMINISTRATIVE CODE (TAC)§133.304 (a) and (b) (2002).

[4]See SOAH Docket No. 453-453-02-0247.M5 (Aug. 29, 2002, ALJ Newchurch).

[5]See SOAH Docket No. 453-99-2021.M5 (July 20, 2000, ALJ Rusch); SOAH Docket No. 453-99-3399.M5 (May 18, 2000, ALJ Pacey); SOAH Docket No. 453-96-1446.M4 (Nov. 12, 1996, ALJ Corbitt); SOAH Docket No. 453-97-0973.M4 (May 14, 1998, ALJ Card); and SOAH Docket No. 453-00-1570 (Oct. 20, 2000, ALJ Smith).

provides that the party seeking relief from an MRD decision has the burden of proof.[6] SOAH's governing statute, however, provides that SOAH's procedural rules govern SOAH hearings and the referring agency's procedural rules apply only to the extent that SOAH's rules adopt them by reference.[7] SOAH's rules do not adopt TWCC's burden-of-proof rule. However, SOAH's own burden-of-proof rule provides:

> If the burden is not ascertainable after reference to statute or consideration of referring agency policy adequately documented in the record in accordance with '155.53 of this title (relating to Consideration of Policy Not Incorporated in Referring Agency's Rules), the judge will place the burden of proof on a specific party or parties, considering such factors as the status of the parties (e.g., movant, applicant, appellant, respondent, protestant, intervenor); parties' relative access to and control over information pertinent to the merits of the case; and whether a party would be required to prove a negative.[8]

Based on that SOAH rule, the ALJ concludes that TWCC's burden-of-proof rule is to be considered as TWCC's policy, but it must be modified to consider the parties' access to and control over pertinent information and so that no party is required to prove a negative. The Provider did not prevail at MRD as to most of the disputed December 22, 2000 and July 3 and 16, 2001 services, hence it has the burden of proving that they should be reimbursed. The Carrier did not prevail at MRD as to the other services provided on those dates. However, the Carrier's objections to them are negative in character, *i.e.* that they were not documented as related to the compensable injury or not necessitated by the compensable injury. Because the Carrier may not be required to prove a negative and the Provider has far superior access to and control over the information regarding the need for the disputed services, which it furnished to its patient, the Provider also must bear the burden of showing that those other December 22, 2000 and July 3 and 16, 2001 services were medically necessitated by the compensable injury.

The evidence does not show that the December 22, 2000 and July 3 and 16, 2001 services were reasonably related to and medically necessitated by the Claimant's compensable injury. The Provider's expert witness, Sam J. Allen, D.C. (Dr. Allen), who provided or prescribed most of these services, summarily testified that they were necessitated by the compensable injury. However, he failed to adequately explain how he reached that conclusion. Several of the services addressed the Claimant's lumbar-pain complaints, yet her lumbar spine was not compensably injured.[9] Additionally, Dr. Allen indicated in contemporaneous documents that magnetic resonance imaging (MRI) showed no effect on the Claimant's nerve roots or spinal cord.[10]

---

[6] 28 TAC §148.21(h) (2002).

[7] TEX. GOV'T CODE ANN. (Gov't Code) § 2003.050 (a) and (b).

[8] 1 TAC § 155.41(b).

[9] Ex. 1, p. 60.

[10] Ex. 1, p. 58.

The Claimant's compensable injury did include a cervical strain,[11] and some of the December 22, 2000 and July 3 and 16, 2001 services arguable treated her cervical spine. However, the Claimant sustained the compensable injury on _____. Thus, these services were provided two-and-three-quarter to three-and-one-quarter years after the injury. Dr. Allen admitted that cervical strains routinely heal within two to four months.[12] The evidence does not indicate why or how the injury would have remained unhealed for so long.

Based on this evidence, the ALJ cannot conclude that the December 22, 2000 or the July 3 or 16, 2001 services were reasonably related to the Claimant's compensable injury. Consequently, he finds that the Provider's request to be reimbursed for them should be denied.

II. Findings of Fact

1. The Claimant sustained a work-related cervical strain injury on_____, while the University of Texas at _____ was her employer and the University of Texas System (Carrier) was its workers' compensation insurance carrier.

2. The Provider furnished medical services to the Claimant on the dates and with the Current Procedural Terminology (CPT) codes and descriptions set out below:

DATES	SERVIESS
12/22/00	99214: Office or other outpatient visit
12/22/00	99080 73: Special report
7/3/01	99214: Office or other outpatient visit
7/3/01	99080 73: Special report
7/11/01	99213: Office or other outpatient visit
7/11/01	99002: Handling, conveyance, and/or any other service in connection with the implementation of an order involving devices.
7/11/01	A4580: Foot orthotic casts
7/16/01	L0317: Flexible dorso-lumbar support
7/16/01	99070: Biofreeze and ice pack supplies
7/16/01	L0515: LSO, flexible, lumbo-sac surg support elastic type
7/16/01	E0943: Cervical pillow

3. The Provider sought reimbursement from the Carrier for the medical services.

4. The Carrier did not send an Explanation of Benefits (EOB) to the Provider regarding the July 11, 2002 services.

[11]Ex. 1, p. 60.

[12]Tape 1 of 10/23/02.

5. The Maximum Allowable Reimbursement (MAR) for the July 11, 2002 services totaled $70.

6. The Carrier sent EOBs to the Provider for the December 22, 2000 and July 3 and 16, 2001 services.

7. In its EOBs, the Carrier maintained that the December 22, 2000 services were not medically necessitated by the compensable injury and the July 3 and 16, 2001 services were not adequately documented to show they were related to the compensable injury.

8. Several of the December 22, 2000 and July 3 and 16, 2001 services addressed the Claimant's lumbar spine complaints.

9. The Claimant's lumbar spine was not compensably injured.

10. The remaining December 22, 2000 and July 3 and 16, 2001 services addressed the Claimant's cervical spine.

11. The Claimant's compensable injury included a cervical strain.

12. Cervical strains routinely heal within two to four months.

13. The December 22, 2000 and July 3 and 16, 2001 services were provided two-and-three-quarter to three-and-one-quarter years after the compensable injury.

14. The Provider filed requests for medical dispute resolution with the TWCC concerning the above medical services.

15. MRD ordered the Carrier to reimburse the Provider for the 99002 and A4580 services on July 11, 2001 and the 99070 and E0943 services on July 16, 2001.

16. MRD denied the Provider's request for reimbursement for the December 22, 2000 and July 3, 2001 services, the 99213 services on July 11, 2001 and the L0317 and L0515 services on July 16, 2001.

17. The Provider and the Carrier asked for a State Office of Administrative Hearings (SOAH) hearing on the MRD orders that were not in their favor.

18. Notice of an October 22, 2002 hearing in these cases was mailed to the Carrier, the Provider, and the TWCC Staff on August 6, 2002.

19. On October 22, 2002, William G. Newchurch, an Administrative Law Judge (ALJ) with SOAH held a hearing on the Carrier's appeal at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded and the record closed on that same day.

20. The Carrier appeared at the hearing through its attorney, William Maxwell.

21. The Provider appeared at the hearing through its attorney, Bradley D. McClellan.

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. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) (West 2002) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2001).

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

3. 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. Labor Code §408.021 (a).

4. SOAH's chief ALJ has jurisdiction to adopt procedural rules for SOAH hearings, and a referring agency's procedural rules govern a hearing only to the extent that SOAH's rules adopt them by reference. Gov't Code § 2003.050 (a) and (b).

5. A TWCC rule provides that the appealing party has the burden of proof. 28 TEX. ADMIN. CODE (TAC) §148.21(h) (2002).

6. The chief ALJ has not adopted TWCC's burden-of-proof rule, and no statute requires the use of that rule.

7. In determining the burden of proof, the referring agency's documented policy is to be considered, but it must be modified to consider the parties' access to and control over pertinent information and so that no party is required to prove a negative. 1 TAC § 155.41(b).

8. Based on the above Findings of Fact and Conclusions of Law, the Provider has the burden of proof in this matter.

9. A carrier must take final action paying, denying or requesting reimbursement on a provider's bill and send an EOB to the provider withing 45 days of receipt. Labor Code § 408.027(d) and 28 TAC § 133.304 (a) and (b).

10. Absent exceptional circumstances not present here, an objection to reimbursement that was never raised in a carrier's EOB, hence not raised before MRD, is beyond the scope of the subsequent SOAH proceeding.

11. Based on the above Findings of Fact and Conclusions of Law, the Carrier should be ordered to reimburse the Provider $70 for the July 11, 2002 services.

12. An EOB must include a sufficient explanation to allow the provider to understand the reason for the carrier's denial. A generic statement that simply states a conclusion such as "not sufficiently documented" with no further description of the reason for the denial does not satisfy the requirements of this section. 28 TAC §133.304(c).

13. Based on the above Findings of Fact, the Carrier sent EOBs to the Provider denying reimbursement for the December 22, 2000 and July 3 and 16, 2001 services and sufficiently explaining the reasons for those denials.

14. The above Findings of Fact do not show that the December 22, 2000 and July 3 and 16, 2001 services were reasonably related to and medically necessitated by the _____ compensable injury.

15. Based on the above Findings of Fact and Conclusions of Law, the Provider's request for reimbursement for the December 22, 2000 and July 3 and 16, 2001 services should be denied.

ORDER

IT IS ORDERED THAT:

1. The Carrier shall reimburse the Provider $70 for the July 11, 2002 services.

2. The Provider's request for reimbursement for the December 22, 2000 and July 3 and 16, 2001 services is denied.

Signed October 29, 2002.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

_____

WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE