

MEDICAL ASSOCIATES,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
LIBERTY MUTUAL FIRE	§	
INSURANCE COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This case involves the appeal by Medical Associates (Petitioner) from the decision of an Independent Review Organization (IRO) that found various passive treatments and therapies given the injured worker, _____ (Claimant), prior to his arthroscopic knee surgery were not medically necessary. The services had a MAR value of \$2,883. The decision agrees with the IRO, finding insufficient evidence to prove that the services were medically necessary to treat the Claimant's knee and back injuries.

I. PROCEDURAL HISTORY

On February 9, 2004, Barbara C. Marquardt, Administrative Law Judge (ALJ), convened the hearing on the 4th floor of the William P. Clements Building, 300 West 15th Street, Austin, Texas. Dr. A. J. Morris appeared telephonically *pro se* for Petitioner. Liberty Mutual Fire Insurance Company (Carrier) was represented by Kevin Franta, attorney. The record closed on the same day.

II. LEGAL STANDARDS

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 injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment.¹ "Health care" includes "all reasonable and necessary medical . . . services."²

¹TEX. LAB. CODE ANN. §408.021.

²TEX. LAB. CODE ANN. §401.011(19).

III. EVIDENCE

A. Basic Facts

On _____, the Claimant fell from an 18-wheeler tractor, injuring his left knee, left ankle, left shoulder, neck and lower back. The Claimant was a _____, and his job required him to use a higher than normal level of strength. For the first six months after the accident the Carrier disputed the compensability of the injuries to some of his body parts, but on about September 16, 2002, it was determined that treatment of all of the body parts mentioned was compensable.

On March 27, 2002, the Claimant had a physical therapy evaluation. Following that, Petitioner administered the following treatments to him: hot/cold packs, unattended electrical stimulation, massage, therapeutic procedure, and group therapeutic procedure. He had approximately 80 treatment sessions, and the Carrier reimbursed Petitioner for the sessions that took place from March through May 28, 2002. At issue in this case were the services the Claimant received from Petitioner (hot/cold packs, unattended electrical stimulation, massage, therapeutic procedure, and group therapeutic procedure) on the following dates in 2002: May 29 and 30; September 3, 4, 5, 23, 24, and 25; and October 1, 3, 7, 9, 10, 14, and 16.

On October 30, 2002, the Claimant had left knee arthroscopy to repair the chondromalacia of the patella (probably due to cartilage tearing behind the kneecap),³ which was followed up with post operative physical therapy. The Claimant was released to return to his job at full duty level on June 11, 2003.

B. IRO Decision

The IRO decision was written by a physician who is board-certified in family practice. The decision noted there were no concurrent reports documenting the patient's improvement, or lack of improvement, from the therapy. It found the therapies rendered at this non-acute phase of the Claimant's treatment should have been done through a home exercise program. Thus, it concluded that they were not medically necessary.

³Petitioner's Ex. 2 at 16.

C. Petitioner's Evidence and Argument

In essence, Dr. Morris testified the Claimant was treated for so long to prevent deconditioning and to help alleviate his knee and lower back pain. Dr. Morris testified that the Claimant did have a home exercise program, but that was intended to supplement the supervised therapy program at issue in this case.

Dr. Morris felt the Claimant's knee condition was a complicated problem. Further, he stated that the knee condition contributed to the Claimant's lower back problem. The treatments continued over this protracted period of time, in Dr. Morris's opinion, because the Carrier disputed compensability for so long. He stated that if the Claimant's surgery had been authorized at an earlier date, the therapy would not have been given for so long.

As part of his proof that the therapies were medically necessary, Dr. Morris cited a letter dated December 5, 2002, from the Claimant's orthopedic surgeon, Dr. Linden Dillin. In the letter, Dr. Dillin found the Claimant's condition had improved significantly compared to his pre-surgical condition.

The documentation Dr. Morris relied on to document pain relief is a series of forms on which the Claimant rated his pain level on a scale ranging from 1 B 10, and noted whether or not physical therapy decreased the pain. Most of the documentation concerns treatment beyond the dates of service at issue in the case. However, the documentation for the following dates of service in 2002 is relevant:

- § September 6: Patient reports that therapy "does help him for two to three hours, but he is still having pain in the left knee and left lower back."⁴
- § September 11: pain level 6, and physical therapy and medication decrease his pain levels.
- § September 20: pain level 4.
- § September 25: pain level 5, and physical therapy and medication decrease his pain levels.
- § October 18: pain level 3.

⁴Petitioner's Ex. 1 at 114.

D. Carrier's Evidence

Dr. Casey Cochran, who is board-certified in both family and occupational medicine and has a subspecialty in disability medicine, testified for the Carrier. A significant part of his practice involves treating knee and lower back injuries. According to Dr. Cochran, the MRI of the Claimant's lumbar spine was not only normal, but "quite good" for a 58-year old person. As of June 10, 2002, the Claimant's knee had a good range of motion, almost normal extension, and good flexion.

In Dr. Cochran's opinion, the passive treatments given the Claimant were appropriate for the first couple of weeks of his treatment. Beyond that point, however, passive treatments actually slow down recovery. Dr. Cochran testified that the passive modalities at issue in this case did not avoid deconditioning prior to the surgery. They were virtually worthless. Any exercises at that point in time could have been done by the patient at home.

Dr. Cochran also disputed Dr. Morris's claim that the knee injury and subsequent surgery on the Claimant were complicated. The knee injury was a mild one, and the surgical procedure was common. The 80 therapy sessions given the Claimant to "precondition" the knee prior to surgery were not necessary. The *only* therapy the Claimant needed would have been some quadriceps strengthening exercises, which he could easily have done at home. Dr. Cochran would have augmented the home exercise program with medication until the Claimant was able to have the knee surgery. Furthermore, nothing in the Claimant's records shows that he needed therapy for his lower back. In sum, Dr. Cochran testified that the therapy given this Claimant was "outstandingly out of line" with the standard of care.

E. Analysis and Conclusion

The ALJ finds that Petitioner did not meet its burden of proof. The Claimant's injuries were not particularly serious. For a 58-year-old man, his lumbar spine was in good condition. Nothing presented by Dr. Morris in testimony or in the medical records supports the medical necessity of these passive treatments beyond the acute stage of the Claimant's injury. Thus, there was no medical necessity for the contested treatments.

IV. FINDINGS OF FACT

1. On _____, _____ (Claimant) fell from an 18-wheeler tractor, injuring his left knee, left ankle, left shoulder, neck and lower back. The Claimant was a ____, and his job required him to use a higher than normal level of strength.
2. On March 27, 2002, the Claimant had a physical therapy evaluation by Medical Associates (Petitioner).
 - a. Following that, Petitioner administered the following treatments to the Claimant: hot/cold packs, unattended electrical stimulation, massage, therapeutic procedure, and group therapeutic procedure.
 - b. The Claimant had approximately 80 treatment sessions, and the Carrier reimbursed Petitioner for the sessions that took place from March through May 28, 2002.
3. On October 30, 2002, the Claimant had left knee arthroscopy to repair the chondromalacia of the patella (probably due to cartilage tearing behind the kneecap), which was followed up with post operative physical therapy.
4. The Claimant was released to return to his job at full duty level on June 11, 2003.
5. The therapy sessions described in Finding 2 were not medically necessary for the following dates in 2002: May 29 and 30; September 3, 4, 5, 23, 24, and 25; and October 1, 3, 7, 9, 10, 14, and 16.
 - a. The MRI of the Claimant's lumbar spine was not only normal, but "quite good" for a 58-year old person.
 - b. As of June 10, 2002, his knee had a good range of motion, almost normal extension, and good flexion.
 - c. The passive treatments given the Claimant were appropriate for the first couple of weeks of his treatment, but beyond that point they probably slowed down his recovery.
 - d. Basically, the only exercises necessary during the months prior to the Claimant's surgery were quadriceps strengthening exercises, which he could easily have done at home.
 - e. Nothing in the Claimant's medical records documents that he needed therapy for his lower back.
6. The therapy referenced in Findings 2 and 5 was not within the standard of care for the claimant's injuries.

V. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (the Commission) has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. §413.031.
2. 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.
3. As referenced in the Findings, the treatments at issue in the case were not medically necessary, because they neither promoted recovery nor enhanced the Claimant's ability to return to work. TEX. LAB. CODE ANN. §408.021.

ORDER

IT IS, THEREFORE, ORDERED that the Petitioner, Medical Associates, is not entitled to payment for the therapy sessions at issue in this case.

SIGNED this 14th day of April 2004.

BARBARA C. MARQUARDT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS