SOAH DOCKET NO. 453-04-0366.M5
TWCC MR No. M5-03-2674-01

TRUMAN DAVIDSON, D.C., **Petitioner**	:	**BEFORE THE STATE OFFICE**
V.	:	**OF**
TEXAS MUTUAL INSURANCE COMPANY, **Respondent**	:	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Truman Davidson, D.C. (Provider) requested a hearing to contest an Independent Review Organization (IRO) decision that the aquatic therapy provided to an injured worker (Claimant) from July 22, 2002, through September 7, 2002, was medically unnecessary. Provider argued that the aquatic therapy was medically necessary because it provided the safest and quickest means to rehabilitate the injured areas of Claimant's body. The Administrative Law Judge (ALJ) concludes that the aquatic therapy was not medically necessary.

A hearing convened on February 23, 2004, before ALJ John Beeler at the State Office of Administrative Hearings, Austin, Texas. Erin Jeffries, of Diversified Solutions,[1] appeared for Provider. Patricia Eads, attorney, appeared for Texas Mutual Insurance Company (Carrier). There were no issues of jurisdiction. However, Provider stated that the date provided on the notice of hearing was February 24, 2004, not February 23, 2004, and asked that the hearing be recessed to permit Dr. Davidson to appear and testify the next day. Carrier did not object as long as Carrier's expert could be recalled at a later time.

The hearing continued on February 24, 2004, and after the receipt of Provider's evidence was recessed to schedule a time for Carrier's expert to testify. The hearing reconvened on August 9, 2004, before ALJ Catherine Egan, and closed the same day.

[1] Diversified Solutions handles the collections for Dr. Davidson.

I. Background and Evidence

On____, Claimant ____ , a 36-year-old man, sustained a work-related back injury when he slipped and fell on a concrete floor while working as a lead mechanic. He was diagnosed with cervical and thoracic sprain/strain. The disputed services, one-on-one aquatic therapy, were provided from July 22, 2002, though September 7, 2002, and were billed under CPT Code 97113. At the time the aquatic therapy began, the physical therapist (P.T.), Orson Miller, had not conducted a functional capacity evaluation (FCE) on Claimant. Consequently, the medical record did not contain a baseline of Claimant's physical abilities before beginning the aquatic therapy and any established goals. The total amount in dispute is $7,592.00.

According to Dr. Davidson, the reason Claimant was referred to aquatic therapy was to prevent the jarring of the spine that occurs with land-based physical therapy. In his opinion, aquatic therapy offered Claimant the safest and most expedient method of rehabilitating his spinal injuries. The first FCE was conducted on August 3, 2002. According to P.T. Miller, Claimant meets critical physical demands of the pervious [sic] position of employment.@[2] P.T. Miller recommended that Claimant undergo four to six weeks of active aggressive rehabilitation@ to increase his range of motion, flexibility, strength, endurance and coordination he did not recommend aquatic therapy.[3]

On January 18, 2003, P.T. Miller conducted a second FCE on Claimant. This time Claimant exhibited a decreased range of motion and flexibility in his shoulder, and exhibited a decrease in tolerance. P.T. Miller reported that Claimant met the light duty critical physical demands of his position and recommended Claimant continue working with home exercises.[4]

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[2] Res. Ex. A at 62.

[3] Res. Ex. A at 62.

[4] Res. Ex. A at 71.

Carrier denied payment asserting the services were not medically necessary and that the treatment/services exceeds medically accepted utilization review criteria and/or reimbursement guidelines established for severity of injury, intensity of service, and appropriateness of care.@[5] Judy Cirullos, P.T., testified by deposition, and explained that aquatic therapy is an appropriate form of physical therapy when a patient is unable to tolerate and/or perform activities on land because it is so painful or the patient has poor endurance or poor balance.[6] Provider's records do not indicate that any of these situations existed.

P.T. Cirullos was troubled by P.T. Miller's failure to perform an FCE before starting the physical therapy program on the Claimant. According to P.T. Cirullos, it is a requirement that the physical therapist establish a plan of treatment for the patient before initiating physical therapy. Without an FCE, the physical therapist does not know the status of the patient's physical functioning ability and has no baseline upon which to measure progress.[7] P.T. Cirullos opined that the Claimant's medical records did not indicate that Claimant could not perform exercises on land; that Claimant needed aquatic therapy; or what supervision Claimant received during each two-hour session of aquatic therapy.[8]

William Defoyd, D.C., Carrier's expert, reviewed Claimant's medical records and noted that the records: (1) failed to assess Claimant's condition as it pertained to the type of physical therapy used to rehabilitate Claimant; (2) failed to monitor Claimant's progress; and (3) failed to document what services were provided during each session. In Dr. Defoyd's opinion, monitoring a patient's progress is essential to the effective treatment of the patient.

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[5] Res. Ex. A at 18.

[6] Res. Ex. B at 14.

[7] Res. Ex. B at 19.

[8] Res. Ex. B at 25.

According to Dr. Defoyd, prior to this dispute, Claimant had 46 visits for passive treatment without any noted progress. Claimant was then referred to aquatic therapy. The documents used to support Provider's claim that one-on-one aquatic therapy was provided to Claimant were entitled Work Hardening,@ and included a code for aquatic therapy at the bottom of the sheet with a place to insert the amount of time aquatic therapy was provided. Multiple dates were handwritten on each document reflecting the different dates that the services were provided. The record is void of any information about what exercises were done in the water, what supervision was provided, or how the Claimant progressed.

In addition, Dr. Defoyd explained, the first FCE (August 3, 2002) was confusing. Although Claimant had already started aquatic therapy, P.T. Miller did not mention that Claimant was in aquatic therapy or how Claimant was progressing. In fact, P.T. Miller recommended that Claimant undergo an aggressive active rehabilitation program, which, Dr. Defoyd clarified, is usually a weight bearing program, not aquatic therapy. Nothing in the FCE explained why it was medically necessary to put Claimant into an aquatic therapy program.

Dr. Defoyd testified that the one-on-one aquatic therapy code is used when the physical therapist is teaching a patient how to do certain exercises. As the patient progresses, the goal is to reduce the amount of supervision a patient needs, so the patient can become independent. Dr. Defoyd concurred with P.T. Curillos, that in this case there was no medical need to treat Claimant with aquatic therapy. Because humans function on land with gravity, Dr. Defoyd opined, land based therapy is preferable to aquatic therapy. Moreover, Dr. Defoyd explained, the neck area does not benefit from the resistance of the water, as would a patient's lower back, hip, or knee.

For all of these reasons, Carrier maintains that the aquatic therapy was not medically necessary and requests that the Provider's appeal be denied.

Employees have a right to necessary health treatment 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."

On August 5, 2003, the IRO issued a determination that the aquatic therapy was not medically necessary. According to the IRO, the Arecords provided consisted of dates of service and charges, along with two functional assessment reports; therefore, there is no information to validate these therapies. Without knowing the mechanism of injury, the structures involved and the extent of damage to the involved regions, attempting to analyze the treatment is most difficult. On August 11, 2003, the Medical Review Division notified the parties that based on the IRO decision, it found the disputed services were not medically necessary. Provider filed an appeal on August 28, 2003.

II. Analysis

This case involves a dispute over the medical necessity of one-on-one aquatic therapy provided in two-hour blocks for 20 sessions. Carrier argues that four months after a cervical and thoracic sprain/strain, it was medically unnecessary to do physical therapy in the water. Claimant could have obtained the same benefits through a home exercise program. The medical records offered into evidence provided scant information and failed to explain why aquatic therapy was necessary, what services were actually delivered, and why Claimant required one-on-one supervision during each two-hour session. Carrier also raised an issue over the benefits of aquatic therapy on Claimant's compensable injury his shoulder and neck areas. Provider failed to respond and explain how aquatic therapy benefitted the compensable injury. Although Dr. Davidson testified at the hearing, his testimony offered only conclusions and no detailed information explaining why aquatic therapy was medically necessary to treat Claimant's compensable injury.

The ALJ agrees with Carrier that the medical evidence does not support the medical necessity for two hours of one-on-one aquatic therapy in 20 sessions from July 22, 2002, through September 7, 2002. In fact, the medical records are so scant it is not clear what services were provided during this time, or why Claimant needed one-on-one supervision for two hours during each therapy session. Carrier is therefore not liable to pay for the treatments.

III. Findings of Fact

1. Claimant ____ sustained a work-related injury to his cervical and thoracic spine when he fell backward on ____.

2. Claimant's diagnosis is cervical sprain/strain and thoracic sprain/strain.

3. The disputed services involve the one-on-one supervised aquatic therapy given in two-hour sessions (eight increments) on July 22, 24, 27, 29, 31, August 3, 5, 7, 10, 12, 14, 16, 19, 21, 24, 26, 28, 31, September 4, 7, 2002, for a total of $7,592.00.

4. The workers compensation insurance carrier for the Claimant's employer, Texas Mutual Insurance Company (Carrier), denied payment of the services in dispute.

5. Truman Davidson, D. C. (Provider) requested medical dispute resolution.

6. On August 5, 2003, an independent review organization concluded that the services were not medically necessary.

7. Provider timely requested a hearing after receiving notice of the IRO decision.

8. All parties received not less than 10 days notice of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

9. The hearing in this docket was convened on April 8, 2004, at SOAH facilities in the William P. Clements Building, 300 W. 15th St., Austin, Texas. Administrative Law Judge (AALJ@) Catherine C. Egan presided. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.

10. For the dates of service in dispute, Provider failed to document what aquatic exercises were done; what supervision was provided; why one-on-one supervision was necessary, and how Claimant progressed.

11. Provider failed to show why aquatic therapy was medically necessary to treat Claimant's compensable injury.

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. Provider has the burden of proof in this case. 1 TEX. ADMIN. CODE (TAC) § 155.41; 28 TAC §148(h).

3. Notice of the hearing was proper and timely. TEX. GOV'T. CODE ANN. '' 2001.051 and 2001.052.

4. Provider failed to prove that the services in dispute were medically necessary. TEX. LAB. CODE ANN. ' 408.021(a).

5. Carrier is not required to pay for the aquatic therapy provided to claimant from July 22, 2002, through September 7, 2002.

ORDER

IT IS THEREFORE ORDERED that Truman Davidson's claim against Texas Mutual Insurance Company for services provided to the Claimant from July 22, 2002, through September 7, 2002, for aquatic therapy be denied.

SIGNED October 7, 2004.

CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS