

DOCKET NO. 453-04-0781.M5

JEFFREY S. STANDIFER, D.C.,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
VS.	§	OF
	§	
LIBERTY MUTUAL INSURANCE	§	
COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This case involves the appeal by Jeffrey S. Standifer, D.C. (Petitioner), from the decision of an Independent Review Organization (IRO) that found chiropractic services to the injured worker, ____ (Claimant), were not medically necessary. The services had a MARS value of \$8,483.70. The decision agrees with the IRO, finding insufficient evidence to prove that the services were medically necessary to treat the Claimant's bilateral carpal tunnel syndrome.

I. PROCEDURAL HISTORY

On January 13, 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. Petitioner appeared telephonically *pro se*. Liberty Mutual 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

The Claimant developed carpal tunnel syndrome in both wrists due to repetitive strain from performing computer work as a document specialist, and the putative date of injury was _____. Petitioner started treating the Claimant on _____. The Carrier reimbursed Petitioner for 61 sessions of chiropractic treatment prior to the contested dates of service.

On April 17, 2002, Thomas B. Sato, D.C., did a peer review of the Claimant's file. Based on the carpal tunnel syndrome diagnosis, Dr. Sato found that up to 24 chiropractic treatments would be appropriate for the Claimant.

The Claimant was evaluated by a neurologist, Dr. Nosnik, on April 23, 2002. She reported to Dr. Nosnik that her symptoms (pain, numbness, paresthesia, and weakness) were progressing, and that they caused her to wake up during the night.³ Dr. Nosnik's EMG nerve conduction velocity testing revealed evidence of acute and chronic bilateral carpal tunnel syndrome. An MRI on May 10, 2002, confirmed that the Claimant had carpal tunnel syndrome in both wrists with tearing of the fibrocartilage.

William R. Culver, M.D., examined the Claimant and her records on June 4, 2002. He determined that she did not have carpal tunnel syndrome. At most, he felt she had wrist sprain/strain. Additionally, he opined that she had symptom magnification. As to the chiropractic treatment she had received, Dr. Culver found it should not have exceeded 18 sessions. Therapy beyond that, in his opinion, would have been of no curative benefit and went beyond the standards set by the American Academy of Orthopedists, the Mercy Conference Guidelines, and the Therapy Associates National Survey standard. Thus, he concluded her chiropractic therapy should have ended by the middle of April 2002.

The Claimant was evaluated by an orthopedist, Dr. Driggs, on June 21, 2002. Dr. Driggs prescribed medications (Medro and Daypro) and then reevaluated the Claimant on July 9. Because

³Carrier's Ex. 1 at A0020.

that conservative treatment failed, Dr. Driggs then scheduled the Claimant for surgery. She had surgery on her right wrist on August 1, 2002, and surgery on the left wrist on November 11, 2002. Dr. Driggs prescribed additional therapy by Dr. Standifer for the Claimant on these dates: in 2002 B September 3, October 8, November 18, December 20; and January 24, 2003. Dr. Driggs examined the Claimant on February 28, 2003, and found she was doing well; he released her to return to regular work on March 3, 2003.

B. IRO Decision

The IRO decision was written by a chiropractic doctor. At issue was the passive chiropractic treatment given to the Claimant between June 10, 2002, and February 19, 2003. The services included: electric stimulation, office visits, ultrasound, paraffin baths, myofascial release, and neuromuscular reeducation.

According to the IRO decision, if four weeks of chiropractic care does not produce significant progress, the treatment has failed, and another type of treatment should be given. Relying on Dr. Sato's peer review as well as Dr. Nosnik's determination that the Claimant's condition was actually worsening as of April 23, 2002, the IRO found that further treatment beyond June 10 was not justified. Additionally, the IRO noted that the treatments at issue were passive, and passive care in the chronic phase of treatment is contraindicated.

C. Additional Medical Evidence

1. Dr. Standifer

In essence, Dr. Standifer testified he treated the Claimant with passive modalities for so long to help alleviate her pain and symptoms. He testified that the chiropractic philosophy is to avoid surgery if at all possible, even in the case of carpal tunnel syndrome. In his opinion, that type of care can be cheaper than more radical treatments.

Dr. Standifer testified that surgery can cause scar tissue, adhesions, and arthritis. He stated that patients who have had carpal tunnel surgery often come to him in significant pain and with ugly scars. To an extent, he believes that this case represents a philosophical difference between the

chiropractic view of treatment and the medical doctor's view, which emphasizes surgery and pain medication.

Dr. Standifer described the benefits of the therapies he used on the Claimant as follows:

- § *Ultrasound*- increases blood flow to deep tissue, reduces inflammation and muscle spasms, and locally sedates pain.
- § *electric muscle stimulation* -restores muscle tone, reduces spasms and edema, and retards disuse atrophy.
- § *myofascial release* -a form of massage that can lead to a cure of early stage carpal tunnel syndrome; accelerates the elimination of metabolic waste products and lactic acid; reduces soreness, tension, and pain.
- § *spinal manipulation* -releases pinched or irritated nerves and helps restore more normal movement of spinal segments.
- § *hot packs* -promote relaxation and pain relief, increase local circulation, reduce muscle tension, and facilitate tissue healing.
- § *paraffin baths* -therapeutically deep-heats joints, muscles, and soft tissues to provide pain relief.

According to Dr. Standifer, the Claimant wanted to avoid surgery, if possible. Once it was determined she would have surgery, it took significant time before the surgery was scheduled. Dr. Standifer believes that his treatment was efficient. He stated that for the usual patient with bilateral carpal tunnel syndrome, it takes about two years before their treatment is complete. In this case, the Claimant was released to work 13 months after he began treating her. Dr. Standifer believes that his aggressive use of chiropractic modalities was very instrumental in her ability to return to regular work duties so quickly.

As to the temporary reduction in pain levels achieved from his treatments, Dr. Standifer testified that after each treatment the Claimant indicated her pain was reduced. Dr. Standifer admitted that those results were not documented. In fact, none of the SOAP notes describing the Claimant's treatment were introduced into evidence, and Dr. Standifer admitted that he had no documentation showing that the Claimant's symptoms improved from his treatments.

2. The Claimant

The Claimant testified that the treatments Dr. Standifer administered to her hands, neck and

shoulders helped “get her through the day.” In particular, after each treatment she was less likely to wake up in the night from symptoms.

On cross examination, the Claimant admitted that prior to surgery she had reached the point that her hand was too numb upon awakening to comb her hair. The surgery did improve her condition. She stated that she is now back at work and “doing fine.”

3. Dr. Nicholas Tsourmas

Dr. Tsourmas is an orthopedic surgeon. He completed his residency in 1983, and he works in private practice. He treats carpal tunnel syndrome frequently and has done many carpal tunnel release surgeries, which are outpatient procedures, over the past 20 years.

According to Dr. Tsourmas, carpal tunnel syndrome is a common, ordinary disease of modern life. Repetitive motion causes compression of the nerve in the wrist area, giving rise to symptoms like pain, tingling and numbness extending from the wrist into the fingers. Because it is a chronic (not acute) injury, the passive modalities Dr. Standifer used on the Claimant (*e.g.*, ultrasound, paraffin baths, electric stimulation, myofascial release, and massage) were not effective more than a week or two after they began. Furthermore, Dr. Tsourmas testified that without SOAP notes there is no way to gauge the plan of treatment or the progress made by the Claimant during the treatment.

Overall, Dr. Standifer’s treatments beyond the first 61 sessions were too frequent and too intense, in Dr. Tsourmas’s opinion. He stated that the surgeries the Claimant had were for mild forms of carpal tunnel syndrome. They were not done under general anesthesia, but under a regional block, and each probably lasted no more than 15 minutes.

Dr. Tsourmas testified that once this type of surgery is over, the normal course of treatment is to remove the stitches in a week and possibly to splint the wrist for a couple of weeks. His standard instructions postoperatively are for the patient to do massage at home. In reviewing Dr. Driggs’ operative reports and treatment notes, Dr. Tsourmas testified the Claimant’s surgeries were simple

and “garden variety,” without complications. Dr. Tsourmas concluded there was simply no need for the Claimant to undergo electric stimulation, myofascial release, paraffin baths, and office visits after her surgeries. Furthermore, Dr. Tsourmas testified there was no need for the patient to undergo neuromuscular reeducation.

In all of the years he has performed carpal tunnel release surgeries, Dr. Tsourmas has only ordered postoperative physical therapy in a “handful” of cases, when patients had significant pain, loss of motion, or loss of strength. In between 90% and 95% of his carpal tunnel surgeries, the patients have little or no residual pain after they heal. Usually, they are “back to normal” within six weeks.

D. Conclusion

The ALJ agrees with Petitioner that Dr. Culver’s evidence that the Claimant did not have carpal tunnel syndrome and only needed 18 sessions of chiropractic treatment was not convincing, when viewed in the context of the entire record. Although the orthopedist, Dr. Driggs, prescribed additional therapy by Dr. Standifer after the carpal tunnel surgeries, nothing in the record explains those prescriptions or negates Dr. Tsourmas’s convincing testimony that the post surgical treatments were unnecessary. The Claimant’s testimony that Petitioner’s treatments gave her brief, temporary relief from her symptoms was not convincing. Instead, the ALJ finds that her testimony was that of a patient who was grateful for the personalized attention she received.

Overall, Petitioner did not meet the burden of proof that the contested treatments were medically necessary for these reasons:

Petitioner knew that the Claimant’s problem was carpal tunnel syndrome as of April 23, 2002, when she was examined by the neurologist. At that point, despite the extensive chiropractic treatments she had received, her symptoms were progressing.

Petitioner produced no SOAP notes that might have verified a plan of treatment and documented progress, if any, caused by the chiropractic treatments.

Dr. Tsourmas confirmed the IRO doctor’s opinion that once four weeks of chiropractic treatments had occurred without significant progress, another type of treatment should have been started.

Petitioner's treatments were passive, and passive care in the chronic phase of treatment is contraindicated.

Petitioner's goal to avoid surgery by use of passive chiropractic modalities did not work, as the Claimant had surgery.

The carpal tunnel surgeries were simple, and the Claimant had no problems post surgery. At most, she needed to do massage at home B not visit Petitioner for office visits, electric stimulation, myofascial release, and paraffin baths.

IV. FINDINGS OF FACT

1. ___ (Claimant) developed carpal tunnel syndrome in both wrists due to repetitive strain performing computer work as a document specialist, and the putative date of injury was ___.
2. Jeffrey S. Standifer, D. C. (Petitioner), started treating the Claimant on February 13, 2002.
 - a. The Carrier, Liberty Mutual Insurance Company, reimbursed Petitioner for 61 sessions of chiropractic treatment prior to the contested dates of service.
 - b. At issue are the following passive chiropractic treatments Petitioner gave the Claimant between June 10, 2002, and February 19, 2003: electric stimulation, office visits, ultrasound, paraffin baths, myofascial release, and neuromuscular reeducation.
3. On April 23, 2002, a neurologist determined from EMG nerve conduction velocity testing that the Claimant had acute and chronic bilateral carpal tunnel syndrome.
 - a. At that point in time, the Claimant's symptoms (pain, numbness, paresthesia, and weakness) were progressing, and they were causing her to wake up during the night.
 - b. An MRI on May 10, 2002, confirmed that the Claimant had carpal tunnel syndrome in both wrists with tearing of the fibrocartilage.
4. After conservative treatment with the medications Medro and Daypro prescribed by an orthopedist between June 21 and July 9, 2002, did not improve the Claimant's condition, she was scheduled for surgery.
 - a. The Claimant had surgery on her right wrist on August 1, 2002, and surgery on the left wrist on November 11, 2002.

- b. The surgeries the Claimant had were for mild forms of carpal tunnel syndrome. They were done under a regional block, and each probably lasted no more than 15 minutes.
 - c. There was nothing unusual about the Claimant's healing process post surgery. Thus, the proper treatment post surgery would have been wearing a splint on each wrist for a couple of weeks and possibly for the Claimant to have done massage at home.
 - d. As of February 28, 2003, the Claimant was doing well, and she was released to return to regular work on March 3, 2003.
- 5. If four weeks of chiropractic care does not produce significant progress, the treatment has failed, and another type of treatment should be given.
 - 6. Because carpal tunnel syndrome is a chronic injury, the passive modalities Petitioner used on the Claimant were contraindicated.

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. (Vernon 2003)
- 3. The Claimant's treatments referenced in Finding 2b were not medically necessary, because they did not cure her injury, promote recovery, or enhance her ability to return to work. TEX. LAB. CODE ANN. §408.021.

ORDER

IT IS, THEREFORE, ORDERED that Jeffrey S. Standifer, D.C., is not entitled to payment for the chiropractic services he rendered to ___ between June 10, 2002, and February 19, 2003.

SIGNED this 12th day of March 2004.

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