SOAH DOCKET NO. 453-04-1167.M5
TWCC MR NO. M5-03-2747-01

JOSEPH F. WILSON, D.C.,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
V.	§	**OF**
	§	
TEXAS MUTUAL	§	
INSURANCE COMPANY	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

This case is an appeal by the Joseph F. Wilson, D.C. ("Petitioner"), from a decision of an independent review organization ("IRO") on behalf of the Texas Workers' Compensation Commission ("Commission") in a dispute regarding medical necessity for chiropractic treatment. The IRO found that the insurer, Texas Mutual Insurance Company ("Respondent"), properly denied reimbursement for physical therapy and related services that Petitioner provided from August 7, 2002, through October 2, 2002, to a claimant suffering from a compensable back injury.

Petitioner challenged the decision on the basis that the treatment at issue was, in fact, medically necessary, within the meaning of §§ 408.021 and 401.011(19) of the Texas Workers' Compensation Act ("the Act"), TEX. LABOR CODE ANN. ch. 401 *et seq.*

This decision agrees with that of the IRO, finding that reimbursement of Petitioner for the disputed services should be denied.

I. JURISDICTION AND VENUE

The Commission has jurisdiction over this matter pursuant to § 413.031 of the Act. The State Office of Administrative Hearings ("SOAH") has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003. No party challenged jurisdiction or venue.

II. STATEMENT OF THE CASE

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 ("ALJ") Mike Rogan presided. Petitioner represented himself and appeared by telephone. Respondent was represented by Scott Placek, Attorney. Both parties presented evidence and argument. The hearing was adjourned and the record closed on the same date.[1]

[1] The staff of the Commission formally elected not to participate in this proceeding, although it filed a general "Statement of Matters Asserted" with the notice of the hearing.

The record revealed that on _____, the claimant suffered a compensable injury to her back when she slipped and fell. She received rather extensive treatment from other providers B including passive chiropractic modalities and therapeutic exercise B before initially consulting with Petitioner on August 7, 2002. In response to the claimant's continued lower back pain, Petitioner administered additional physical therapy, including both active and passive modalities. When Petitioner subsequently billed Respondent (the insurer for the claimant's employer) for medical services in the case from August 7, 2002, through October 2, 2002, Respondent denied reimbursement on the grounds that the treatment had been medically unnecessary.

Petitioner sought medical dispute resolution through the Commission. The IRO to which the Commission referred the dispute issued a decision on September 12, 2003, concluding that Respondent had properly denied reimbursement for many of the services in dispute.[2] The IRO presented the following rationale for decision:

> The patient had an extensive trial of physical therapy which failed prior to the dates of the treatment in dispute. The records provided for this review describe using therapeutic activities while treating the patient, but no documentation was provided on what activities were used, and no results from the use of these activities was provided from the records provided for this review it appears that a home-based exercise program would have been appropriate for this patient.

The decision included similar comments about the use of vasopneumatic device in the claimant's treatment.

The Commission's Medical Review Division ("MRD") reviewed the IRO's decision and, on September 30, 2003, issued its own decision confirming that the disputed services were not medically necessary and should not be reimbursed. Petitioner then made a timely request for review of the IRO and MRD decisions before SOAH.

III. THE PARTIES' EVIDENCE AND ARGUMENTS

A. PETITIONER

Petitioner argued that the claimant in this case presented a "complicated diagnosis," which justified the extensive and varied treatment disallowed by the MRD. This treatment helped relieve the chronic pain experienced by the claimant, enabled her to retain employment, and contributed to her ultimate full recovery. It thus constituted the type of care guaranteed to injured workers by 408.021 of the Act. Petitioner also stressed that no absolute guidelines exist for determining the appropriate period for providing a patient with the type of treatments at issue in this case.

Petitioner submitted into evidence about 110 pages of medical records, most of which apparently had been provided previously to the IRO, but offered no witness testimony.

B. RESPONDENT

Respondent presented the testimony of, David Alvarado, D.C., who reviewed the records in this case. Dr. Alvarado noted that the pain associated with the claimant's injury had reached the

[2] The IRO directed the carrier to reimburse Petitioner for services with CPT Codes 97014, 99203, and 99213. Those services are not at issue in the present proceeding.

chronic stage by the time she first consulted with Petitioner, some 19 or 20 weeks after the injury. Passive modalities (other than physical manipulations) are of minimal benefit in such situations, Dr. Alvarado asserted, and this claimant had already "run the gamut" of such treatment before Petitioner even began to treat her. The general medical literature and Dr. Alvarado's own experience indicate that passive modalities' benefit for chronic pain is usually limited to the first four to six weeks following an injury, although in this case, where the patient's spine exhibited advanced degenerative conditions, eight to twelve weeks of such treatment could be beneficial. Dr. Alvarado concluded that by the time Petitioner first examined the claimant, a home exercise program would have been more appropriate and cost-effective than the therapy that Petitioner actually provided.

With respect to the active modalities employed in the claimant's treatment, Dr. Alvarado asserted that nothing in the record demonstrated a need for one-on-one supervision of exercises by a therapist. No changes in the patient's condition, problems with her cognition, or lack of cooperation on her part justified such close attention to her rehabilitation program. Indeed, despite her lengthy treatment, Dr. Alvarado noted, the claimant never missed work or had restrictions placed upon her work activities.

Finally, Dr. Alvarado stressed that home exercise offered advantages in addition to cost-effectiveness in a case like this. He contended that it tends to reinforce the patient's compliance with the overall care regimen prescribed by providers, prevents the patient's dependence upon physicians, and usually results in the patient's performing more frequent, more extended, and thus more effective exercise.

Respondent also presented the deposition testimony of Mark Miller, a licensed physical therapist and lecturer on treating spinal and musculoskeletal injuries. After reviewing the record in this case, Mr. Miller concluded that a lack of medical necessity for the disputed treatment was indicated by Petitioner's failure to document actual improvement in the claimant from the Petitioner's extended interventions,[3] as well as by Petitioner's failure to coordinate supervised therapy with a program of home exercise for the claimant. Mr. Miller also stated:

> The literature is also very clear on this, that people who have a home exercise program and exercise regularly throughout the day tend to do much better than those individuals in an intensive setting once or twice or three times a week.

According to Mr. Miller, the modalities at issue appear to have been applied to the claimant at random B apparently taking little account of the claimant's response to treatment, since the program remained basically unchanged throughout the relevant period. "There are times when she says she feels better," noted Mr. Miller. "There are times she states that she feels much worse B and, yet, the intervention is exactly the same."

IV. ANALYSIS

Petitioner bears the burden of proving that the factual basis or analytical rationale for the IRO's decision in this case was invalid. In the ALJ's view, he has not discharged that burden. The testimony and analysis presented by Respondent was considerably more persuasive than the

[3] Mr. Miller extended his criticism to Petitioner's allegedly consistent failure to make sufficient record of claimant=s response to any of the therapy in question, suggesting an inadequate assessment of such response by Petitioner.

unexplained sheaf of records submitted by Petitioner. Clearly, Petitioner has not demonstrated by a preponderance of the evidence, as legally required, that the prior decisions of the IRO and MRD in this case should be overturned.

Under § 408.021 of the Act, an injured worker is entitled to "health care reasonably required" to relieve the effects of the injury or to enhance the ability to continue working. However, care that provides only superficial improvement or relief at inordinate cost is not "reasonably" required. In the ALJ's view, the record in this case does not adequately demonstrate that Petitioner's day-to-day choice of modalities for the claimant's treatment bore any discernible relationship to her progress and eventual recovery - or that Petitioner was guided by any specific protocol or pattern of practice in administering those particular modalities. The evidence also strongly suggests that Petitioner opted for intensive, costly therapy, when a home exercise program might have been as efficacious (or more so) at significantly less cost.

The IRO and Respondent have asserted (with apparently credible support in empirical evidence or scientific literature) that the disputed types of treatment, in the context presented by this case, are not reasonable or necessary. Petitioner has failed to effectively rebut that position.

V. CONCLUSION

The ALJ finds that, under the record provided in this case, the medical services at issue have not been shown to be medically necessary. Reimbursement for these services should be denied, accordingly, as initially determined by the IRO.

VI. FINDINGS OF FACT

1. On _____, claimant suffered an injury to her back that was a compensable injury under the Texas Worker's Compensation Act ("the Act"), TEX. LABOR CODE ANN. § 401.001 *et seq*.

2. The claimant's injury produced persistent lower back pain, for which she received rather extensive treatment from other providers - including passive chiropractic modalities and therapeutic exercise - before initially consulting with Joseph F. Wilson, D.C. ("Petitioner") on August 7, 2002, some 19 to 20 weeks after suffering the injury.

3. Petitioner provided therapeutic treatment to the claimant for the injury noted in Finding of Fact No. 1, from August 7 through October 2, 2002.

4. Petitioner sought reimbursement for services noted in Finding of Fact No. 3 from Texas Mutual Insurance Co. ("Respondent"), the insurer for claimant's employer.

5. The Respondent denied the requested reimbursement.

6. Petitioner made a timely request to the Texas Workers' Compensation Commission ("Commission") for medical dispute resolution with respect to the requested reimbursement.

7. The independent review organization ("IRO") to which the Commission referred the dispute issued a decision on September 12, 2003 and concluded that part of the services provided by Petitioner had not been medically necessary, based upon failure to document the specific nature and the results of such services. Services which the IRO found unnecessary included

physical therapy (including passive and active modalities), message therapy, and the use of a vasopneumatic device.

8. The Commission's Medical Review Division reviewed and concurred with the IRO's decision in a decision dated September 30, 2003, in dispute resolution docket No. M5-03-2747-01.

9. Petitioner requested in timely manner a hearing with the State Office of Administrative Hearings ("SOAH"), seeking review and reversal of the MRD decision regarding reimbursement.

10. The Commission mailed notice of the hearing's setting to the parties at their addresses on November 13, 2003.

11. A hearing in this matter was convened on April 8, 2004, at the William P. Clements Building, 300 W. 15th St., Austin, Texas, before Mike Rogan, an Administrative Law Judge with SOAH. Petitioner and Respondent were represented.

12. At the time of the treatment noted above, claimant's spine exhibited advanced degenerative conditions, in addition to any effects of the compensable injury.

13. Standards of practice in chiropracty indicate that, in a case like that of the claimant, treatment of the type noted in Findings of Fact Nos. 3 and 7 provides minimal benefit for chronic pain after eight to twelve weeks from the date of injury.

14. Despite her injury, the claimant never missed work or had restrictions placed upon her work activities.

15. Nothing in the claimant's condition - including changes in status, problems with her cognition, or lack of cooperation on her part - justified a need for the type of intensive treatment noted in Findings of Fact Nos. 3 and 7 (including one-on-one supervision of exercises by a therapist), in preference to a self-directed home exercise program.

VII. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act ("the Act"), TEX. LABOR 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 § 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003.

3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TEX. ADMINISTRATIVE CODE ("TAC") § 133.305(g) and §§ 148.001-148.028.

4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN §§ 2001.051 and 2001.052.

5. Petitioner, the party seeking relief, bore the burden of proof in this case, pursuant to 28 TAC § 148.21(h).

6. Based upon the foregoing Findings of Fact, the treatments for the claimant noted in Findings of Fact Nos. 3 and 7 do not represent elements of health care medically necessary under § 408.021of the Act.

7. Based upon the foregoing Findings of Fact and Conclusions of Law, the findings and decisions of the IRO issued in this matter on September 12, 2003, and of the MRD, issued on September 30, 2003, were correct; Petitioner's request of reimbursement for services noted in Findings of Fact Nos. 3 and 7 should be denied.

ORDER

IT IS THEREFORE, ORDERED that the appeal of Joseph F. Wilson, D.C., seeking reimbursement for chiropractic services performed from August 7 through October 2, 2002, be denied, in accordance with the findings and decision of the independent review organization issued in this matter on September 12, 2003, which concluded that the disputed services had not been shown to be medically necessary.

SIGNED April 19, 2004.

_____

MIKE ROGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS