

RICKY LEE HANKS, D.C.,
Petitioner

v.

AMERICAN HOME ASSURANCE
COMPANY,
Respondent

' **BEFORE THE STATE OFFICE**
'
'
' **OF**
'
'
' **ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

I. SUMMARY

Ricky Lee Hanks, D. C., (Provider) appealed the decision of an independent review organization denying reimbursement for medical services provided to Claimant. This decision orders that American Home Assurance Company (Carrier) is not required to reimburse the Provider for the amount claimed.

The Administrative Law Judge (ALJ) convened and closed a hearing on April 22, 2004. Provider appeared *pro se*, and attorney James Sheffield appeared for Carrier.

II. EVIDENCE AND BASIS FOR DECISION

The issue presented in this proceeding is whether Carrier should reimburse Provider for chiropractic services provided from August 7, 2002, through May 21, 2003. The services consisted of manipulation, cyotherapy, kinetic activity, range of motion exercises, interferential, and traction. Carrier argued that the medical services provided to Claimant were not medically necessary or reasonably required to treat the compensable injury.

Claimant injured his neck and lower back on ____, when he slipped and fell on a wet floor and was first seen by provider on June 4, 2002. Carrier agreed to reimbursement for the first nine weeks of treatment but denied payment for the next nine months. Carrier argues that the services were excessive and that Claimant did not show improvement during the period in question. Provider argues that the injuries were complex and extensive and that Claimant recovered as a result of the disputed services.

Provider testified concerning the complexity of (claimant's) injuries. The condition was difficult to treat but Claimant showed improvement as a result of his care. Recovery was slower than hoped for, but, given the nature of the injury, the care provided was the best plan of treatment. Claimant had undergone back surgery several years earlier and Provider=s plan was to avoid another surgery.

Dr. Bill Timberlake, D.C., testified for Carrier. He has been a Chiropractor since 1964, and is the medicare consultant for Texas and Virginia. He is the former president of the Texas Chiropractic Association and past chairman of the American Chiropractic Association. Dr. Timberlake reviewed (claimant's) medical records and Provider=s documentation and determined that the services in dispute were not medically necessary. He testified that there was no evidence in the documentation that would tend to demonstrate that Provider=s services were of any benefit to Claimant.

Both parties offered extensive documentary evidence. A review of the documents reveals that Claimant did not improve as a result of during Provider=s services. The documents also show that, when Claimant did not improve after the first few weeks of treatment, other approached to treatment should have been considered.

Based on the evidence, the ALJ concludes that the treatment provided to the Claimant from August 7, 2002, through May 21, 2003, was not medically necessary or otherwise reasonably required to treat (claimant's) injury. Further, Claimant did not improve during Provider=s care.

III. FINDINGS OF FACT

1. On ____, Claimant suffered a compensable injury to his neck and back.
2. (claimant's) injury is covered by worker=s compensation insurance written for (claimant's) employer by American Home Assurance Company (Carrier).
3. Ricky Lee Hanks, D. C., (Provider) provided Claimant with manipulation, cyotherapy, kinetic activity, range of motion exercises, interferential, and traction for a period of eleven months.
4. (claimant's) condition did not improve during the time of Provider=s treatment.
5. Carrier denied reimbursement for the final nine of treatment as not being medically necessary.
6. Provider timely requested dispute resolution by the Medical Review Division (MRD) of the Texas Workers= Compensation Commission (TWCC).
7. On October 20, 2003, an independent review organization certified by the Texas Department of Insurance, issued its decision finding that the medical services referred to in Finding of Fact No. 3 were not medically necessary, and Provider timely appealed this decision.
8. TWCC sent notice of the hearing to the parties on January 2, 2004. The hearing notice informed the parties of the matter to be determined, the right to appear and be represented by counsel, the time and place of the hearing, and the statutes and rules involved.

9. The hearing convened and closed April 22, 2004, before John H. Beeler , Administrative Law Judge. Provider appeared *pro se* and Carrier was represented by James Sheffield, attorney.

IV. CONCLUSIONS OF LAW

1. The Texas Workers= Compensation Commission (TWCC) has jurisdiction to decide the issues presented pursuant to TEX. LABOR CODE ' 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. LABOR CODE ' 413.031 and TEX. GOV=T CODE ch. 2003.
3. Based on the above Findings of Fact the Notice of Hearing issued by TWCC conformed to the requirements of TEX. GOV=T CODE ' 2001.051 and ' 2001.052.
4. Provider has the burden of proving by a preponderance of the evidence that he should prevail in this matter. TEX. LABOR CODE ' 413.031.
5. The services in dispute were not medically necessary pursuant to TEX. LABOR CODE ' 408.021.
6. Based on the above Findings of Fact, Provider failed to prove that reimbursement for treatment should be ordered.

ORDER

IT IS, THEREFORE, ORDERED that Ricky Lee Hanks, D. C., is not entitled to reimbursement from American Home Assurance Company for the disputed services provided to Claimant.

SIGNED June 18, 2004.

**JOHN H. BEELER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**