

SOAH DOCKET NO. 453-04-2733.M5

CHAD WERSELL, D.C.,
Petitioner

V.

HARTFORD UNDERWRITERS
INSURANCE COMPANY,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. Introduction

Chad Wersell, D.C. (Provider) disputes a decision of an independent review organization (IRO) on behalf of the Texas Workers' Compensation Commission (TWCC). Hartford Underwriters Insurance Company (Carrier) had denied the Provider reimbursement for certain medical services that the Provider furnished to ___ (Claimant) from July 12, 2002, through September 6, 2002. The Carrier contended that the Provider had not shown those services were reasonably medically necessary to treat the Claimant's compensable injury. The IRO found that those services were not medically necessary for that purpose.

The amount in dispute is \$718.85. The only disputed issue is whether the services were medically necessitated by the compensable injury. As set out below, the Administrative Law Judge (ALJ) finds that they were not, and the denies the Provider's request for reimbursement.

II. Findings of Fact

1. On ___, the Claimant sustained a work-related injury to soft tissue in his back as a result of his work activities (Compensable Injury).
2. On the date of injury, the Claimant's employer was ___, and the Carrier was its workers= compensation insurance carrier.
3. Beginning on October 11, 2001, the Claimant was under the Provider's care.
4. When examined by the Provider on October 11, 2001, the Claimant's cervical-spine ranges of motion were normal and his lumbar-spine ranges of motion were 85 to 95 percent of normal.

5. The Compensable Injury should have resolved itself within ten weeks.
6. By January 2, 2002, at the latest, the Claimant had returned to work and was performing his job without restrictions.
7. The Provider furnished medical services to the Claimant on the dates and with the Current Procedural Terminology (CPT) codes shown below, and the Carrier denied some or all of the maximum allowable reimbursement (MAR) for each date of service as shown below:

CPT CODES	SERVICE DESCRIPTIONS	DATES	TOTAL MAR NOT REIMBURSED
97110	Therapeutic exercises	7/12, & 26/2002 8/2, 9, 16, 22, & 28/2002	\$213.50
97139	Physical medicine procedure	7/12, 19, & 29/2002 8/2, 9, 16, 22, & 28/2002 9/6/2002	\$267.75
97032	Electrical stimulation	7/12, 19, 26, & 29/2002 8/2, 9, 16, 22, & 28/2002	\$158.40
97213	Office/outpatient visit, est.	7/19/2002 8/9, & 22/2002	\$ 79.20
Total			\$718.85

8. The above-described services temporarily eased the Claimant ' s back pain and spasms.
9. The types of services described above are appropriate for a trial period of four to six weeks after an injury to ease a patient ' s pain and assist his recovery.
10. From six weeks after an injury onward, the types of services described above are not appropriate unless there is documented improvement in the patient ' s objective condition.
11. Pain is a subjective condition.
12. There is no documentation that the above-described services improved the patient ' s objective condition.

13. Before the above-described 97032 services were provided, the Provider had furnished and the Carrier had paid for a transcutaneous electrical nerve stimulator (TENS Unit) for the Claimant to use at home to relieve his pain.
14. A TENS Unit provides electrical stimulation to a patient ' s skin to relieve pain in essentially the same manner as the above-described 97032 services.
15. The above-described 97032 services were duplicative.
16. The Provider sought reimbursement from the Carrier for the above-described medical services.
17. The Carrier denied the requested reimbursement for the provided services, contending that the Provider had not shown that they were medically necessitated by the compensable injury.
18. The Provider filed a request for medical dispute resolution with the TWCC.
19. An independent review organization (IRO) reviewed the medical dispute and found that the disputed services were not medically necessary.
20. After the IRO decision was issued, the Provider asked for a contested-case hearing before a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).
21. Required notice of a contested-case hearing concerning the dispute was mailed to the Carrier and the Provider.
22. On May 27, 2004, SOAH ALJ William G. Newchurch held a contested-case hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded and the record closed on that same day.
23. The Claimant did not appear at the hearing.
24. The Carrier appeared at the hearing through its attorney, James M. Loughlin.
25. The Provider appeared at the hearing.

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. LABOR CODE ANN. (Labor Code) ' ' 402.073(b) and 413.031(k) (West 2004) and TEX. GOV ' T CODE ANN. (Gov ' t Code) ch. 2003 (West 2004).
2. Adequate and timely notice of the hearing was provided in accordance with Gov ' t Code ' ' 2001.051 and 2001.052.
3. Based on the above Findings of Fact and Gov't Code ' 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) ' 155.41(b) (2004), and 28 TAC ' ' 133.308(v) and 148.21(h) (2004), the Provider has the burden of proof in this case.
4. 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 that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. Labor Code ' 408.021 (a).
5. Based on the above Findings of Fact and Conclusions of Law, the disputed medical services were not reasonably medically necessitated by the Claimant ' s compensable injury.
6. Based on the above Findings of Fact and Conclusions of Law, the Provider ' s request to be reimbursed for the disputed services should be denied.

ORDER

IT IS ORDERED THAT the Provider ' s request to be reimbursed for the disputed services is denied.

Signed July 20, 2004.

**WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**