

SOAH DOCKET NO. 453-04-2781.M5R

DANA J. SANTELLI, D.C.,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
PACIFIC EMPLOYERS	§	
INSURANCE COMPANY	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This case is an appeal by the Dana J. Santelli, 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, Pacific Employers Insurance Company (“Respondent”), properly denied reimbursement for physical therapy that Petitioner administered between October 7, 2002, and May 8, 2003, to a claimant suffering from a wrist 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.

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.

STATEMENT OF THE CASE

The hearing in this docket was convened on March 30, 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 Javier Gonzalez. 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 reported a compensable injury to her hands, resulting from repetitive motion on the job. (The claimant was employed at assembling rather intricate equipment.) In consequence, she underwent carpal tunnel decompression surgery in both hands, on June 19 and 28, 2001.

Petitioner provided chiropractic treatment for the claimant's condition both before and after the surgery. When Petitioner subsequently billed Respondent (the insurer for the claimant's employer) for medical services in the case from October 7, 2002, through May 8, 2003, Respondent denied reimbursement on the grounds that the treatment had been medically unnecessary.²

Petitioner sought medical dispute resolution through the Commission. The IRO to which the Commission referred the dispute issued a decision on December 10, 2003, concluding that the medical necessity for the services in dispute was "not supported by available documentation or current standards of care." Citing findings from nine "objective neurodiagnostic studies," the IRO declared, "Generally accepted scientific data does not support the treatment level, duration and frequency for chiropractic care submitted from 10/7/02 to 5/8/03 for these conditions at this phase of care."

The Commission's Medical Review Division ("MRD") reviewed the IRO's decision and, on December 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.

THE PARTIES' EVIDENCE AND ARGUMENTS

A. PETITIONER

Petitioner argued that the treatment at issue helped relieve the chronic pain experienced by the claimant in the wake of her surgery and enabled her to continue working.³ It thus constituted the type of care guaranteed to injured workers by § 408.021 of the Act. Petitioner added that the failure of claimant's surgery to restore her to full, pain-free functioning certainly should not preclude her from receiving further care to manage her pain.

Petitioner testified that the disputed treatment also satisfied the requirements of 28 TEX. ADMIN. CODE ("TAC") § 133.1(a)(3)(E)(I), in that it was supported with documentation that included SOAP ("subjective, objective, assessment, plan") notes describing the patient's progress.

² The underlying dispute between the parties continues to encompass considerably more dates of service than October 7, 2002, through May 8, 2003, but because (for reasons not fully explained) the Commission referred only those dates to an IRO for dispute resolution, SOAH likewise has jurisdiction at this time over only the services associated with those dates of service.

³ The IRO described the medical services in dispute as "chiropractic services (office visits, prolonged office visits, office visit with manipulation, ultrasound, DME supplies, myofascial release, electrical stimulation, x-rays, hot and cold pack therapy and reports). . ."

The notes indicated that the claimant typically obtained some temporary pain relief from visits with Petitioner.

B. RESPONDENT

Respondent presented the testimony of Timothy J. Fahey, D.C., who performed a peer review in this case on June 24, 2002. Based upon a perceived lack of objective support in the record, Dr. Fahey concluded that the extended post-surgical care in dispute did not constitute “health care reasonably required” by the claimant’s injury, as addressed in § 408.021 of the Act.

Dr. Fahey reiterated the findings of his peer review report, which stated that further treatment with conservative modalities would not be appropriate and concluded:

The condition was treated with surgery which is considered the only definitive cure for the condition. The patient should be transitioned to a self directed personalized home based exercise program for continued strengthening and maintaining flexibility.

Such treatment became even less justifiable, Dr. Fahey added, after Thomas Butler, D.C., certified the claimant at maximum medical improvement for her carpal tunnel condition on June 13, 2002 B almost four months prior to any of the treatment at issue in this proceeding.

On cross examination, Dr. Fahey explained that while the disputed treatment may have given the claimant some relief from discomfort, it did not do so in a reasonably cost-effective way, consistent with contemporary medical literature and standards of practice. Such “palliative relief” B providing a respite from pain for 12-18 hours B does not justify protracted treatment. Instead, said Dr. Fahey, most carpal tunnel patients are prescribed some fairly simple post-surgical therapy that they can do at home without supervision.

According to Dr. Fahey, chiropractic does not work well for resolving chronic carpal tunnel pain. Indeed, extended use of passive modalities in such an effort is often counter-productive, fostering in the patient chronic pain syndrome, as well as inappropriate dependence upon the physician.

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. As Dr. Fahey’s presentation was somewhat more persuasive than that of the Petitioner as a witness, Petitioner clearly has not demonstrated by a preponderance of the evidence that the prior decisions of the IRO and MRD in this case should be overturned.

In the ALJ’s view, the Petitioner’s testimony at the hearing - which consisted principally of his legal interpretations, rather than any focused explanation of the medical need for the disputed care - did not make Petitioner’s case any more convincing than did the information he apparently provided previously to the IRO. In addition, the court decision cited by Petitioner at the hearing -

Travelers Insurance Co. v. Wilson, 28 S.W. 3d 42 (Tex. Civ. App. - Texarkana 2000) - merely observes (at p. 46) that “[o]ne of the types of service that is reasonably required are those treatments that are necessary to give reasonable relief from pain.” The court, however, does not address the issue in this case - *i.e.*, what is “reasonable” care and does it extend to indefinite efforts to relieve pain through chiropractic modalities?

The IRO and Respondent have asserted (with credible support in evidence or scientific literature) that chiropractic treatment in the context presented by this case is not reasonable or necessary. Petitioner has failed to effectively rebut that position.

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.

FINDINGS OF FACT

1. On ____, claimant reported an injury to her hands 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 ultimately necessitated carpal tunnel decompression surgery in both hands, performed on June 19 and 28, 2001.
3. Dana J. Santelli, D.C. (“Petitioner”) provided chiropractic treatment to the claimant for the injury noted in Finding of Fact No. 1, both before and after the claimant’s surgery. Treatment included office visits, prolonged office visits, office visits with manipulation, ultrasound, DME supplies, myofascial release, electrical stimulation, x-rays, hot and cold pack therapy and reports.
4. Petitioner sought reimbursement for services noted in Finding of Fact No. 3 - including care provided on dates of service from October 7, 2002, through May 8, 2003 - from Pacific Employers 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 December 10, 2003 - addressing only dates of service from October 7, 2002, through May 8, 2003 -and concluded that the medical necessity of the services in dispute was “not supported by available documentation or current standards of care.”

8. The Commission's Medical Review Division reviewed and concurred with the IRO's decision in a decision dated December 30, 2003, in dispute resolution docket No. M5-.
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 February 4, 2004.
11. A hearing in this matter was convened on March 30, 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. Thomas Butler, D.C., certified the claimant at maximum medical improvement for her carpal tunnel condition on June 13, 2002 B almost four months prior to any of the treatment at issue in this proceeding.
13. Under current standards of care, most carpal tunnel patients are prescribed relatively simple, self-directed therapies for relief from post-surgical discomfort, which also helps to preclude the development of physician-dependence.
14. Merely "palliative relief" - providing a respite from pain for 12-18 hours B does not reasonably justify intensive and protracted chiropractic treatment.

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 § 408.021 of the Act.
7. Based upon the foregoing Findings of Fact and Conclusions of Law, the findings and decisions of the IRO issued on December 10, 2003, and of the MRD, issued in this matter on December 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 Dana J. Santelli, D.C., seeking reimbursement for chiropractic services performed from October 7, 2002, through May 8, 2003, be denied, in accordance with the findings and decision of the independent review organization issued in this matter on December 10, 2003, which concluded that the disputed services had not been shown to be medically necessary.

SIGNED April 7, 2004.

**MIKE ROGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**