

SOAH DOCKET NO. 453-04-5343.M5
TWCC MR NO. _____

DANA J. SANTELLI, D.C.	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	OF
	§	
AMERICAN HOME ASSURANCE CO.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Dana J. Santelli, D.C., Petitioner, sought reimbursement from American Home Assurance Co., Respondent, for office visits, myofacial release, hot/cold packs, electric stimulation, electric current therapy, durable medical equipment, and unattended electric stimulation delivered to the Claimant, ____, during the dates October 17, 2002, through February 26, 2003, in the amount of \$3,260.00.

Envoy Medical Systems, L.P., an Independent Review Organization (IRO), issued a letter dated December 24, 2003, in which the IRO agreed with the prior adverse decision of Respondent to deny reimbursement to Petitioner. The IRO based its decision on the failure of the treatment to provide relief of symptoms or improved function and that further treatment would be ineffective in relieving symptoms and improving function.

In a letter dated March 30, 2004, the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) denied the reimbursement, as well as reimbursement for three units of CPT Code 99080-73 during the period September 23, 2002, through October 7, 2002, in the amount of \$45.00 on the grounds that Petitioner failed to submit relevant information to support the delivery of services, based on inadequate documentation.

Petitioner requested a hearing to contest the Commission's decision. By letter dated May 4, 2004, the Commission issued a timely and adequate notice of hearing.

Administrative Law Judge (ALJ) Lilo Pomerleau convened the hearing in this matter on November 2, 2004. Petitioner represented himself, and Dan C. Kelley represented Respondent. The ALJ left the record open for the parties to provide a chart of disputed amounts, and Petitioner submitted his materials on November 2, 2004, after which the record closed.

On ____, the Claimant sustained a work-related injury. On February 23, 2000, Don A. Salyer, D.C., examined the Claimant and determined that she was at maximum medical improvement and noted her height as five feet, four inches and weight as 248 pounds. On February 12, 2001, the Claimant was examined by Kevin J. Pauza, M.D., who recommended that the Claimant continue working and that she should begin an aggressive independent weight reduction program and independent exercises. On June 11, 2001, Dr. Vladimir Golovchinsky, M.D., performed an upper extremity motor nerve conduction velocity test on the Claimant and found no abnormalities. On July 5, 2001, Dr. Golovchinsky performed a lower extremity electrodiagnostic test and found no abnormalities.

On April 4, 2002, the Claimant presented to Petitioner with lower back pain. At her next office visit, on April 19, 2002, she identified her pain level as 2 out of a possible 10. On May 10, 2002, the Claimant had another work-related injury on the premises of the same employer. On August 29, 2002, an unidentified physician performed a lumbar MRI on the Claimant and noted a slight Grade I degenerative spondylolisthesis, a 1-2 mm buldge from a disc, and mild discogenic spondylosis.

In December 2002, Dr. Pauza performed a neurotomy, at which time the Claimant reported a pain level of 6 out of 10. By December 30, 2002, the Claimant's pain had worsened to a 7 out of 10, and the Claimant's left leg had become numb. By September 3, 2003, the Claimant's pain was between a 4 and 6 out of 10.

In 2002 and 2003, the Claimant's treatment response and Petitioner's treatment regimen were reviewed in written reports written by Phillip Osborne, M.D., Bobby Enkvetchakul, M.D., John Gragnani, M.D., and Michael Hamby, D.C. In each of the reports, the physicians challenged the need for the continued treatment of the Claimant by Petitioner, given the Claimant's lack of improvement and lack of significant pathology. Dr. Hamby also testified to the same effect at the hearing.

Petitioner had the burden of proof at the hearing and did not refute the testimony of Respondent's evidence. The evidence reflects that Claimant suffered a work-related injury and that the Claimant suffered pain as the result of that injury. However, the evidence does not reflect that the Petitioner's treatment regimen provided the Claimant with relief of her pain or a cure of her condition. The ALJ finds that the disputed services were not medically necessary and denies the claim.

II. FINDINGS OF FACT

1. On ____, the Claimant, ____, sustained a work-related injury.
2. At the time of the injury, the Claimant's employer had workers' compensation insurance through American Home Assurance Company (the Carrier/Respondent).
3. On February 23, 2000, Don A. Salyer, D.C., examined the Claimant and determined that she was at maximum medical improvement and noted her height as five feet, four inches and weight as 248 pounds.
4. On February 12, 2001, the Claimant was examined by Kevin J. Pauza, M.D., who recommended that the Claimant continue working and that she should begin an aggressive independent weight reduction program and independent exercises.
5. In June and July 2001, Dr. Vladimir Golovchinsky, M.D., of Encino, California, performed an upper and lower extremity motor nerve conduction velocity test on the Claimant and found no abnormalities.
6. On April 4, 2002, the Claimant presented to Dan J. Santelli, D.C. (Petitioner) with lower back pain, and at her next office visit, on April 19, 2002, she identified her pain level as 2 out of a possible 10.
7. On _____, the Claimant had another work-related injury on the premises of the same employer.
8. On August 29, 2002, an unidentified physician performed a lumbar MRI on the Claimant and noted a slight Grade I degenerative spondylolisthesis, a 1-2 mm buldge from a disc, and mild discogenic spondylosis.
9. In December 2002, Dr. Pauza performed a neurotomy, at which time the Claimant reported a pain level of 6 out of 10.
10. By December 30, 2002, the Claimant's pain had worsened to a 7 out of 10, and the Claimant's left leg had become numb.
11. By September 3, 2003, the Claimant's pain was between a 4 and 6 out of 10.
12. In 2002 and 2003, the Claimant's treatment response and Petitioner's treatment regimen were reviewed in written reports written by Phillip Osborne, M.D., Bobby Enkvetchakul, M.D., John Gragnani, M.D., and Michael Hamby, D.C.

13. During the period of Petitioner's treatment of the Claimant, October 17, 2002, through February 26, 2003, the Claimant's physical condition did not improve, and the Claimant's physical condition did not require the treatment regimen administered by Petitioner.
14. Envoy Medical Systems, L.P., an Independent Review Organization (IRO), issued a letter dated December 24, 2003, in which the IRO agreed with the prior adverse decision of Respondent to deny reimbursement to Petitioner.
15. The IRO based its decision on the failure of the treatment to provide relief of symptoms or improved function and that further treatment would be ineffective in relieving symptoms and improving function.
16. In a letter dated March 30, 2004, the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) denied the reimbursement for Petitioner's services to the Claimant during the period October 17, 2002, through February 26, 2003.
17. Petitioner timely appealed the MRD decision on April 2, 2004.
18. By letter dated May 4, 2004, the Commission issued a timely and adequate notice of hearing.
19. A hearing was convened in this matter on November 2, 2004, and the Administrative Law Judge (ALJ) was Lilo Pomerleau. Petitioner represented himself at the hearing, and Dan C. Kelley represented Respondent. The record closed that same day.

III. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over 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.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.051 and § 2001.052.
3. Under 28 TEX. ADMIN. CODE §148.21(h), Petitioner has the burden of proof, pursuant to TEX. LAB. CODE ANN. §413.031.
4. Petitioner failed to prove by a preponderance of the evidence that the care provided during October 17, 2002, through February 26, 2003, was medically necessary.

ORDER

American Home Insurance Co. is not required to reimburse Dana J. Santelli, D.C. for the disputed services provided to the Claimant from October 17, 2002, through February 26, 2003.

SIGNED December 8, 2004.

**LILO POMERLEAU
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**