SOAH DOCKET NO. 453-04-5116.M5
TWCC MR NO. M5-04-0095-01

TEXAS MUTUAL INSURANCE COMPANY,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	**OF**
V.	§	
	§	
CRAIG A. THIRY, D.C.,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

I. DISCUSSION

Texas Mutual Insurance Company (TMIC) requested a hearing to contest the March 1, 2004 Findings and Decision of the Texas Workers' Compensation Commission (Commission) acting through MAXIMUS, an Independent Review Organization (IRO), allowing Craig A. Thiry, D.C. (Respondent), reimbursement, on the basis of medical necessity, for a sensory nerve conduction test somatosensory test, electric stimulation, joint mobilization, myofascial release and office visits from December 6, 2002, through April 9, 2003. Based upon the IRO decision, the Commission also ordered reimbursement for one unit of group therapeutic procedures,[1] two units of therapeutic activities,[2] and two units of therapeutic procedures[3] per day from December 6, 2002, through April 9, 2003. Also, based upon the IRO decision, the Commission denied Respondent reimbursement for all additional group therapeutic procedures and therapeutic exercises from December 6, 2002, through April 9, 2003.

The Commission's March 1, 2004 Findings and Decision (Commission Decision) also denied Respondent reimbursement for certain other services provided on March 14, 2003, based upon a fee dispute. Respondent did not request a hearing to contest any of the services for which reimbursement was denied.

This Decision and Order grants in part and denies in part the relief sought by TMIC.

The hearing convened on January 31, 2005, before Administrative Law Judge (ALJ) Howard S. Seitzman. Ryan Willett represented TMIC. William Maxwell represented Respondent. All exhibits and testimony were prefiled. The hearing adjourned on January 31, 2005, but the record remained open for the filing of two additional exhibits. The exhibits were filed on February 4, 2005, and the record closed on that date.

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[1] CPT Code 97150.

[2] CPT Code 97530.

[3] CPT Code 97110.

___ (Claimant) sustained a work-related injury on ___, when masonry fell approximately 20 feet and struck him. Following a series of diagnostic studies, physical therapy and injections, Claimant had surgery on October 14, 2002. Claimant underwent a total discectomy at L4-5 and L5-S1, preparation and harvesting of bone graft at L4-5 and L5-S1, installation of intervertebral prosthesis at L4-5 and L5-S1, installation of bone graft at L4-5 and L5-S1 and an intertransverse fusion at L4-5 and L5-S1. Respondent began treating Claimant for post-operative rehabilitation on November 19, 2002.

TMIC seeks, in this case, to impose a restriction on Respondent's provision of one-on-one therapy to Claimant.[4] TMIC contends that after Respondent properly instructed Claimant on the performance of the therapeutic exercises, and was satisfied Claimant properly performed the exercises, one-on-one exercises were not appropriate. TMIC did not, however, demonstrate the source for any such restriction. TMIC did not identify any such restriction in the CPT Codebook, in the Commission's guidelines or expressly in any other regulatory criteria. The ALJ will not deny one-on-one therapy on the basis requested by TMIC.

TMIC contends Claimant's care was excessive, overly intensive, of limited therapeutic benefit and failed to follow both Commission and general chiropractic protocols. However, the ALJ determines that the care provided by Respondent to Claimant was not inconsistent with an appropriate standard of care. TMIC's expert witnesses[5] were not in agreement amongst themselves as to the medical necessity of various treatments. TMIC's expert witnesses were not in agreement amongst themselves as to the lengths of time that a particular treatment was medically necessary. With one exception, the evidence presented by TMIC was not sufficient to prove by a preponderance of the evidence that the treatment services provided by Respondent to Claimant from December 6, 2002, through April 9, 2003, were not medically necessary.

The one area in which TMIC carried its burden of proof is the medical necessity of the office visits. Respondent was able to receive information regarding the Claimant's condition from individuals supervising Claimant during the one-on-one treatments. Although Respondent may bill for an office visit every time a conversation with the patient occurs,[6] the need for multiple office visits during the week is absent in this case.[7] The ALJ finds that one office visit per week was justified in this case based upon the Claimant's post-surgical condition. Respondent did not document any circumstance requiring more than one office visit per week. Based upon the Table of Disputed Services provided by the parties, of the 40 disputed office visits, Respondent is not entitled to reimbursement for CPT Code 99213 on the following 26 dates: (1) January 15, 22, 23, 27 and 29; (2) February 3, 6, 11, 12, 18, 19, 26 and 28; (3) March 4, 5, 12, 13, 14, 19, 20, 25 and 26; (4) April 1, 2, 8 and 9. Respondent is entitled to 13 office visits under CPT Code 99213 and one office visit under CPT Code 99214.

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[4] CPT Codes 97110 and 97530 both involve one-on-one supervision. Respondent testified that therapeutic procedures and therapeutic activities are essentially the same.

[5] N.F. Tsourmas, M.D., and David Alvarado, D.C.

[6] Exh. 12 at 17, lines 2-7 (Thiry Deposition).

[7] Dr. Alvarado testified that one office visit per week through February was justified. After February, he believed two office visits per month would suffice.

II. FINDINGS OF FACT

1. ___ (Claimant) sustained a work-related injury on ___, when masonry fell approximately 20 feet and struck him.

2. Following a series of diagnostic studies, physical therapy and injections, Claimant had surgery on October 14, 2002.

3. Claimant underwent a total discectomy at L4-5 and L5-S1, preparation and harvesting of bone graft at L4-5 and L5-S1, installation of intervertebral prosthesis at L4-5 and L5-S1, installation of bone graft at L4-5 and L5-S1 and an intertransverse fusion at L4-5 and L5-S1.

4. Craig A. Thiry, D.C. (Respondent), began treating Claimant for post-operative rehabilitation on November 19, 2002.

5. Asserting that the treatments were not medically necessary, Texas Mutual Insurance Company (TMIC) denied Respondent reimbursement for a sensory nerve conduction test somatosensory test, electric stimulation, joint mobilization, group therapeutic procedures, one-on-one therapeutic activities, one-on-one therapeutic procedures, myofascial release and office visits from December 6, 2002, through April 9, 2003.

6. There is no factual or legal basis to restrict one-on-one therapy to educational and/or safety purposes.

7. The care provided by Respondent to Claimant was not inconsistent with an appropriate standard of care.

8. Respondent was able to receive information regarding the Claimant's condition from individuals supervising Claimant during the one-on-one treatments.

9. Respondent did not document any circumstance requiring more than one office visit per week.

10. Based upon the Table of Disputed Services, of the 40 disputed office visits, Respondent is not entitled to reimbursement for CPT Code 99213 on the following 26 dates: (1) January 15, 22, 23, 27 and 29; (2) February 3, 6, 11, 12, 18, 19, 26 and 28; (3) March 4, 5, 12, 13, 14, 19, 20, 25 and 26; (4) April 1, 2, 8 and 9.

11. Respondent is entitled to reimbursement for 13 office visits under CPT Code 99213 and one office visit under CPT Code 99214.

12. MAXIMUS, an Independent Review Organization (IRO), in a February 24, 2004 decision concluded that Respondent was entitled to reimbursement for the following treatment services provided to Claimant beginning December 6, 2002, through April 9, 2003: (1) a sensory nerve conduction test; (2) somatosensory test; (3) electric stimulation; (4) joint mobilization; (5) myofascial release and (6) office visits. The IRO also concluded that Respondent was entitled to reimbursement for one unit of group therapeutic procedures, two

units of therapeutic activities, and two units of therapeutic procedures per day from December 6, 2002, through April 9, 2003. The IRO decision also concluded that no reimbursement was warranted for all additional group therapeutic procedures and therapeutic exercises from December 6, 2002, through April 9, 2003.

13. The Texas Workers' Compensation Commission (Commission), in a March 1, 2004 Findings and Decision (Commission Decision), required TMIC to reimburse Respondent for all services deemed medically necessary by the IRO.

14. The Commission Decision denied Respondent reimbursement for certain other services provided on March 14, 2003, based upon a fee dispute.

15. TMIC requested a hearing to contest the portion of the Commission Decision ordering reimbursement to Respondent.

16. Respondent did not request a hearing to contest any of the services for which reimbursement was denied.

17. The Commission issued a notice of hearing on May 6, 2004.

18. The hearing on the merits convened on January 31, 2005, before Administrative Law Judge (ALJ) Howard S. Seitzman. Ryan Willett represented TMIC. William Maxwell represented Respondent. All exhibits and testimony were prefiled. The hearing adjourned on January 31, 2005, but the record remained open for the filing of two additional exhibits. The exhibits were filed on February 4, 2005, and the record closed on that date.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. 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 TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T. CODE ANN. ch. 2003.

3. TMIC timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 102.7 and 148.3.

4. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. ch. 2001.

5. An employee who has sustained a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care 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. TEX. LAB. CODE ANN. § 408.021(a).

6. TMIC had the burden of proving by a preponderance of the evidence that the disputed services were not medically necessary. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41(b).

7. TMIC proved by a preponderance of the evidence that 26 office visits, CPT Code 99213, were not medically necessary.

8. With respect to the balance of the treatment services in dispute, TMIC failed to meet its burden of proof that the services were not medically necessary.

ORDER

THEREFORE IT IS ORDERED that Texas Mutual Insurance Company reimburse Craig A. Thiry, D.C., for the following treatment services provided to Claimant during the period December 6, 2002, through April 9, 2003: (1) a sensory nerve conduction test; (2) somatosensory test; (3) electric stimulation; (4) joint mobilization; (5) myofascial release; (6) 13 office visits under CPT Code 99213; and (7) one office visit under CPT Code 99214. **IT IS FURTHER ORDERED** that Texas Mutual Insurance Company reimburse Craig A. Thiry, D.C., for one unit of group therapeutic procedures, two units of therapeutic activities, and two units of therapeutic procedures per day from December 6, 2002, through April 9, 2003. All reimbursement ordered shall include interest, if applicable.

SIGNED April 5, 2005.

HOWARD S. SEITZMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS