SOAH DOCKET NO. 453-04-8656.M5

SOUTHEAST HEALTH SERVICES, INC.,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
V.	§	**OF**
	§	
LUMBERMENS MUTUAL CASUALTY COMPANY,	§	
	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Southeast Health Services, Inc. (Provider), challenged the decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) denying reimbursement for office visits, joint mobilization, neuromuscular stimulation, and other physical medicine modalities provided to ___ (Claimant) from February 5, 2003, through May 12, 2003. Lumbermens Mutual Insurance Company (Carrier) is the responsible insurer.

The Administrative Law Judge (ALJ) finds that Provider is not entitled to reimbursement for any of the unpaid dates of service.

The hearing in this matter convened on March 14, 2005, in Austin, Texas, with ALJ Cassandra Church presiding. The record closed on March 23, 2005, to permit Provider to review and respond to materials submitted by Carrier at the hearing. Provider was represented by Jennifer Davidson, Provider's Claims Manager. Carrier was represented by Steve Tipton, Attorney. The Commission did not participate in the hearing.

The State Office of Administrative Hearings (SOAH) has jurisdiction to hear the case and notice was sufficient.

I. DISCUSSION

A. Treatment and Claim History

On ___, Claimant injured her low back and left hip in a fall. She suffered a lumbar strain, left inguinal strain, and left hip strain.[1] She may have also suffered transient, mild lumbar radiculopathy.[2] She was treated conservatively. During 2002 and early 2003, Claimant underwent extensive chiropractic care, physical therapy, some work hardening, and also some work conditioning sessions. She did not complete work hardening.[3] She was off work or worked irregularly in 2002.

By November 2002, Claimant demonstrated normal sensory, motor, and deep tendon reflexes. She had some degenerative disc disease, *i.e.*, spondylosis, in her low back.[4] She had no permanent neurological problems arising from the injury. MRI and nerve conduction (EMG/ENVC) tests performed on Claimant showed no abnormalities.

Claimant continued to report some low-back pain on her left side from February through May 2003. There was no evidence of exacerbation of her compensable injury or a change in her medical condition before February 2003.

Provider conducted a combined office visit and joint mobilization session on February 5, 2003, and also administered a series of treatments between April 23, 2003, and May 12, 2003. The April through May series included neuromuscular stimulation, joint mobilization, passive modalities, and office visits related to those treatments. On July 16, 2004, the MRD determined that none of the treatment between April 23, 2003, and May 12, 2003, was medically necessary and denied further reimbursement. Provider submitted no documentation to the MRD supporting the medical necessity of treatment on February 5, 2003, so the MRD denied reimbursement for that date.

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[1] Carrier Exh. 1, p. 8.

[2] Carrier Exh. 1, pp. 10-12.

[3] Carrier Exh. 1, p. 10.

[4] Carrier Exh. 1, pp. 3-4.

B. Evidence of Medical Necessity

Although Provider had the burden of proof in this case, it submitted no evidence regarding the medical necessity for these procedures. That in and of itself would be a sufficient basis to conclude Provider failed to carry its burden of proof and so deny reimbursement. However, the credible medical evidence in the record affirmatively found chiropractic care to be unnecessary during the period at issue.

In March 2003, Richard T. Chamblin, Jr., D.O., a peer reviewer for Carrier, concluded that no passive chiropractic treatment more than 10 weeks after the injury was medically necessary. He also noted that continued use of passive modalities so long after an injury of the type Claimant suffered fosters chronicity and a patient's dependence on care.[5]

On April 29, 2003, Jack Kern, M.D., an orthopedic specialist, examined Claimant as the independent medical examiner. He found no physical abnormality that could be causing her continuing back pain. He authorized her to return to full work activities without restriction. He also concluded that Claimant displayed no need for further diagnostic studies, physical therapy, chiropractic care, pain management, or surgical care.[6] He recommended that Claimant use over-the-counter anti-inflammatory medication or aspirin to relieve her back pain.

As there was no medical evidence in favor of treatment, this Decision need not reach the issue of the appropriate medical standard or guidelines to be applied in evaluating the necessity of particular treatments.[7]

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[5] Carrier Exh. 1, p. 11.

[6] Carrier Exh. 1, pp. 1-4.

[7] The parties differed sharply on the applicable standard. Carrier argued that the appropriate standards are the treatment standards set by the Center for Medicare and Medicaid Services (CMS policies) that were adopted for use in Texas effective May 25, 2001. Ms. Davidson contended that no carrier to whom she had submitted claims had or would have granted reimbursement under the CMS policies for any date of service before August 1, 2003. She said carriers used the coding and terms of the 1996 *Medical Fee Guideline* (MFG) during the period of these treatments. 28 TEX. ADMIN. CODE § 134.201. She questioned the fairness of subjecting a provider now to standards that were not, as a practical matter, in use during the period in dispute. Neither the IRO doctor nor the Carrier's reviewing physicians expressly referenced either the 1996 MFG or the CMS policies.

In sum, all credible medical evidence in the record supports a finding that no treatment was necessary. No further reimbursement should be paid.

III. FINDINGS OF FACT

1. On ___, ___(Claimant) injured her low back and left hip in a fall.

2. Lumbermens Mutual Insurance Company (Carrier) was the responsible insurer.

3. Claimant suffered a lumbosacral sprain with possible transient, mild lumbar radiculopathy, and also left inguinal area and left hip strains.

4. Claimant had no permanent neurological problems arising from the injury.

5. An X-ray examination in November 2002 showed minimal lumbar spondylosis, a degenerative disc disease, but no damage remaining from Claimant's February 2002 fall.

6. MRI and nerve conduction (EMG/ENVC) tests performed on Claimant showed no abnormalities.

7. Claimant was treated conservatively and underwent physical therapy during 2002.

8. She entered but did not complete a work hardening program in late 2002.

9. Claimant returned to work, at least part time, by September 2002, although was not working in April 2003.

10. In November 2002, Claimant had normal sensory, motor, and deep tendon reflexes.

11. Between late 2002 and February 2003, Claimant suffered no exacerbation of her compensable injury.

12. Staff at Southeast Health Services, Inc. (Provider), a chiropractic clinic, treated Claimant between February 5, 2003, and May 2, 2003.

13. On February 5, 2003, Provider conducted an office visit and performed joint mobilization.

14. Between April 23, 2003, and May 12, 2003, Provider administered a series of treatments comprising neuromuscular stimulation, joint mobilization, passive modalities, and office visits related to those treatments.

15. Provider did not demonstrate or explain the medical purposes for treatment it administered on February 5, 2003, and on dates between April 23, 2003, and May 12, 2003.

16. Passive chiropractic care was not necessary to treat Claimant's injury after the end of April 2003, *i.e.*, 10 weeks after the date of her injury.

17. On July 16, 2004, the Medical Review Division (MRD) determined that Provider had not documented the medical necessity of treatment on February 5, 2003, and denied reimbursement.

18. On July 16, 2004, the MRD, acting through an Independent Review Organization, ZiroC, determined there was no medical necessity for any of the health care Provider rendered between April 23, 2003, and May 12, 2003.

19. On August 4, 2004, Provider requested a hearing on the July 16, 2004, MRD Decision.

20. On August 31, 2004, the Commission issued a notice of hearing on the request for hearing that included the date, time, and location of the hearing, the applicable statutes under which the hearing would be conducted, and a short, plain statement of matters asserted.

21. On March 16, 2005, Administrative Law Judge Cassandra Church conducted a hearing on the merits. The record closed March 23, 2005, to permit Provider to review and respond to materials submitted by Carrier 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. LAB. CODE ANN. § 413.031 and TEX. GOV'T CODE ANN. ch. 2003.

2. Provider timely requested a hearing, as specified in 28 TEX. ADMIN CODE § 148.3.

3. Proper and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

4. Provider has the burden of proof, pursuant to TEX. LAB. CODE ANN. § 413.031, 1 TEX ADMIN. CODE § 155.41(b), and 28 TEX. ADMIN CODE § 148.21(h).

5. Provider failed to meet its burden of proof to show that the treatment sessions comprising neuromuscular stimulation, joint mobilization, passive modalities, and office visits that it provided to Claimant on February 5, 2003, and on dates between April 23, 2003, and May 12, 2003, were medically necessary to treat Claimant's compensable injury, within the meaning of TEX. LABOR CODE ANN. §§ 401.011(19) and 408.021.

ORDER

IT IS ORDERED that all requests by Southeast Health Services, Inc., for reimbursement for services provided to Claimant on February 5, 2003, and on dates between April 23, 2003, and May 12, 2003, are hereby denied.

SIGNED May 19, 2005.

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CASSANDRA J. CHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS