DOCKET NO. 453-05-1722.M5
TWCC MR NO. M5-03-2566-02

TRUMAN A. DAVIDSON, D.C.	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
VS.	§	**OF**
	§	
TEXAS MUTUAL INSURANCE	§	
COMPANY,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

This case is a dispute over whether reimbursement is appropriate for a physical therapy program rendered to Claimant by Truman A. Davidson, D.C. (Provider), between August 14, 2002, and November 8, 2002. Provider sought reimbursement from Texas Mutual Insurance Company (Carrier) for the treatment rendered to Claimant, which Carrier denied as not medically necessary. The Texas Workers' Compensation Commission (the Commission) Medical Review Division (MRD) adopted the findings of an Independent Review Organization (IRO) that held Provider was not entitled to reimbursement for the treatment rendered because the services were not medically necessary. In this Order, the Administrative Law Judge (ALJ) concludes Provider is not entitled to reimbursement for the treatment rendered.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction or notice. Therefore, those matters will be addressed in the findings of fact and conclusions of law without further discussion here.

A hearing convened and closed on June 28, 2005, before the State Office of Administrative Hearings (SOAH) with ALJ Steven M. Rivas presiding. Provider appeared and represented himself. Additionally, Ms. Erin Jeffries, an employee of Provider, was also present. Carrier appeared and was represented by Ryan Willett, attorney.

II. DISCUSSION

1. Background Facts

Claimant sustained a compensable back injury on ___, and immediately sought treatment with Provider beginning on August 14, 2002, and continuing through November 8, 2002. Provider initially diagnosed Claimant with leg and ankle pain and prescribed a physical therapy treatment plan that included office visits (CPT Code 99213), therapeutic exercises (CPT Code 97110), and aquatic therapy (CPT Code 97113). Provider billed Carrier for the treatment rendered, which was denied by Carrier as not medically necessary.

B. Applicable Law

The Texas Labor Code contains the Texas Workers' Compensation Act (the Act) and provides the relevant statutory requirements regarding compensable treatment for workers' compensation claims. In particular, the Act, as noted in § 408.021, provides that 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. Under the same statute, the employee is 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.

3. Evidence and arguments

Provider asserted that the treatment rendered to Claimant was medically necessary and cost-efficient because it allowed Claimant to return to light duty in a relatively short amount of time. Provider also testified he placed Claimant on an aquatic therapy program beginning August 19, 2002, because it was safe and limited the risk of re-injury. Provider testified that Claimant was subsequently placed on a land-based therapy plan that began on September 17, 2002, in order to increase Claimant's strength and agility. Provider presented documentation of his progress notes and bills.

Carrier's main argument was that Provider failed to adequately document the treatment plan rendered to Claimant by not adequately describing the exercises Claimant performed and by failing to document Claimant's progression. On cross-examination, Provider testified that Claimant was

treated by a physical therapist who followed a "protocol" for both the aquatic and land-based therapy.

According to Provider, the protocol for the aquatic therapy included a warm-up period, forward and reverse laps, the use of hand weights and floats, and a cool-down period. However, Provider admitted that based on the progress note for each date of service, he was unable to determine which activity was performed, the duration of any activity, and Claimant's response to any activity. The progress notes that were admitted reflected only a start and finish time for the entire session, which was always two hours. Furthermore, Provider testified the aquatic therapy program protocol was not specifically designed to treat Claimant's compensable injury, but was instead a general program that is administered to every patient. Provider asserted the intensity of the program increased and decreased but could not point to any documentation that supported this assertion.

The land-based therapy also had a protocol that included a warm-up period, stretching, cardiovascular exercises, the use of weights, and a cool down period. As with the aquatic therapy progress notes, Provider was unable to determine which activities were performed, the duration of any activity, or Claimant's response to any activity on each date of service. The progress notes again indicated only a start and finish time, which always reflected two hours. Provider billed these activities under CPT Code 97110, therapeutic exercises, which called for one-on-one supervision. Furthermore, Provider admitted that neither the protocol nor the progress note had a place on the form where he could choose group therapy instead of one-on-one supervision.

The only indication of Claimant's progress that Provider could point to from the documentation was under the assessment portion of the progress note, which was always marked "good" for every date of service. Provider asserted this notation meant Claimant was progressing well through the treatment plan.

Carrier presented Jarrod Cashion, D.C., who testified he reviewed Provider's treatment records and found the treatment rendered to Claimant was not medically necessary. Essentially, Dr. Cashion asserted the documentation of Provider's treatment plan did not support medical necessity because it was vague and inadequate, insufficiently describing the activities performed and Claimant's response. Dr. Cashion testified that he has prescribed aquatic therapy in the past and that Provider's protocol was "generic" and not tailored to treat Claimant's compensable injury. Dr.

Cashion did not dispute that aquatic therapy is useful to prevent re-injury, but asserted it is usually prescribed in cases where there is some evidence of instability, which he pointed out was not shown in this case. Dr. Cashion reiterated Provider's testimony that it was unclear from the progress notes what activities were performed during the warm-up period or how many laps Claimant swam. Additionally, Dr. Cashion continued that it was unclear from the notes what activities were performed with the hand weights and what was done during the cool-down period.

As for the land-based therapy, Dr. Cashion pointed out the protocol and progress notes were equally generic and unspecific. According to Dr. Cashion, the protocol listed stretching, strengthening, and cardiovascular exercises as part of Claimant's therapy plan, but the records did not reflect the specific type of exercises Claimant performed on any date of service. The only indication of the treatment plan was Provider's notation of its duration of two hours for each date of service. Dr. Cashion asserted the lack of specificity for this therapy does not support its medical necessity.

Additionally, Dr. Cashion pointed out Provider began administering the aquatic therapy on August 19, 2002, and the land-based therapy on September 17, 2002. However, Dr. Cashion noted, Provider did not discontinue the aquatic therapy sessions, but rather alternated aquatic therapy sessions and land-based therapy sessions. This, according to Dr. Cashion, was not normal because treatment plans usually seek to transition a patient from aquatic therapy to a land-based therapy plan. A land-based therapy program requires more stability from a patient, and Dr. Cashion testified the record fails to establish Claimant was unable to perform any of the land-based therapy exercises.

Still further, Dr. Cashion noted the land-based therapy program, which was billed under CPT Code 97110, was a one-on-one treatment plan, and Dr. Cashion testified the record failed to establish that Claimant required one-on-one supervision. Dr. Cashion concluded there was no evidence to suggest Claimant was unable to perform the prescribed exercises in a group setting or as part of a home exercise program.

4. Analysis and Conclusion

Provider is not entitled to reimbursement because the treatment rendered to Claimant was not medically necessary. The documentation insufficiently described the treatment plan rendered to Claimant. The protocol for the aquatic and land-based therapy was generic and not tailored to treat

Claimant's compensable injury. Although Claimant was released back to work following the disputed dates of service, Provider offered insufficient evidence that the prescribed treatment was necessary in order to treat the effects of Claimant's compensable injury. For the foregoing reasons, the ALJ believes Carrier should not be ordered to reimburse Provider for the treatment rendered.

III. FINDINGS OF FACT

1. Claimant suffered a compensable injury on ___, and was initially diagnosed with leg and ankle pain.

2. Truman A. Davidson, D.C. (Provider), treated Claimant from August 14, 2002, through November 8, 2002.

3. Claimant's treatment included office visits, aquatic therapy, and land-based therapy.

4. Provider billed Texas Mutual Insurance Company (Carrier) for the treatment rendered, which was denied as not medically necessary.

5. Provider filed a Request for Medical Review Dispute Resolution with the Texas Workers' Compensation Commission (the Commission), seeking reimbursement for the treatment rendered to Claimant.

6. The dispute was referred to an Independent Review Organization (IRO), which found Provider was not entitled any reimbursement because the treatment rendered was not medically necessary.

7. Provider timely appealed the IRO decision and filed a request for hearing before the State Office of Administrative Hearings (SOAH).

8. Notice of the hearing was sent November 29, 2004.

9. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

10. The hearing convened and closed on June 28, 2005, with Steven M. Rivas, Administrative Law Judge (ALJ) presiding. Provider appeared and represented himself. Carrier appeared and was represented by Ryan Willet, attorney.

11. Provider's records of the aquatic therapy program consisted of a general protocol and a progress note for each date of service.

12. The aquatic therapy protocol was not specifically tailored to treat Claimant's compensable injury.

13. The aquatic therapy progress notes did not indicate which activities were performed, the duration of each activity, and how Claimant responded to each activity.

14. Provider's records of the land-based therapy program consisted of a general protocol and a progress noted for each date of service.

15. The land-based therapy protocol was not specifically tailored to treat Claimant's compensable injury.

16. The land-based therapy progress notes did not indicate which activities were performed, the duration for each activity, and how Claimant responded to each activity.

17. The land-based therapy program was billed under CPT Code 97110, which required one-on-one supervision. Claimant did not require one-on-one supervision.

18. Provider presented insufficient evidence that the treatment in dispute was medically necessary to treat Claimant's compensable injury.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. ch. 401 *et seq*.

2. SOAH 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.

3. Provider timely filed its request for hearing as specified by 28 TEX. ADMIN. CODE § 148.3.

4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052 and 28 TEX. ADMIN. CODE § 148.4.

5. The Provider, as Petitioner, has the burden of proof in this matter under 28 TEX. ADMIN. CODE § 148.14 and 1 TEX. ADMIN. CODE § 155.41(b).

6. Under TEX. LAB. CODE ANN. § 408.021(a), an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment.

7. Provider's documentation of treatment rendered to Claimant was insufficient to support medical necessity.

8. Provider did not meet its burden of showing, by a preponderance of the evidence, that the treatment rendered to Claimant was medically necessary.

9. Pursuant to the foregoing Findings of Fact and Conclusions of Law, Provider is not entitled to reimbursement for the treatment rendered to Claimant.

ORDER

IT IS, THEREFORE, ORDERED that Provider, Truman A. Davidson, D.C., is not entitled to reimbursement from the Carrier, Texas Mutual Insurance Company, for the treatment rendered to Claimant from August 14, 2002, through November 8, 2002.

Signed August 26, 2005.

STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS