

STATE OFFICE OF RISK  
MANAGEMENT,  
Petitioner

V.

RICHARD STEPHENSON, D.C.  
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

### DECISION AND ORDER

The State Office of Risk Management (SORM) appeals a decision by the Texas Workers' Compensation Commission's Medical Review Division (MRD) regarding the medical necessity and documentation of chiropractic services for a workers' compensation claimant. MRD referred the medical necessity issue to an independent review organization (IRO), which found the services medically reasonable and necessary. MRD also found most of the services were properly documented. The total amount in dispute is \$716.09.<sup>1</sup> This decision finds that the disputed services were medically necessary and properly documented. Therefore, SORM is ordered to reimburse Richard Stephenson, D.C., in the amount of \$716.09.

#### I. JURISDICTION AND PROCEDURAL HISTORY

The Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE § 413.031. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing in this proceeding pursuant to TEX. LAB. CODE § 413.031(k) and TEX. GOV§T CODE ch. 2003. No party challenged jurisdiction or notice.

Administrative Law Judge (ALJ) Thomas H. Walston convened a hearing in this matter on April 7, 2005, at the SOAH hearing facilities in Austin, Texas. Attorney J. Redd Tripp represented SORM and Dr. Stephenson appeared by telephone. The hearing concluded and the record closed the same day.

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<sup>1</sup> SORM also denied additional payment of \$86.28 for services under CPT Code 97116. However, the MRD agreed with SORM on this denial and Dr. Stephenson did not appeal that decision. Therefore, it is not an issue in this proceeding.

## II. DISCUSSION

Claimant is a 30-year-old female who injured her right knee on \_\_\_\_, while restraining a youth at a \_\_\_\_ security facility. On October 29, 2003, Claimant underwent diagnostic arthroscopy of the right knee with anterior compartment debridement. Her surgeon diagnosed her condition as right knee medial plica [fold or groove] with anterior fibrosis.

Dr. Stephenson provided the disputed chiropractic treatments to Claimant between August 2, 2003, and January 9, 2004. His reimbursement claim totaled \$802.73. SORM denied payment for some of the services based on documentation issues and for others due to lack of medical necessity. Dr. Stephenson appealed to the TWCC MRD, which ordered SORM to pay \$716.09 of the charges. SORM requested a contested case hearing on the charges allowed by MRD, but Dr. Stephenson did not appeal the charges denied by MRD. At hearing, SORM relied on records it introduced into evidence but offered no testimony. Dr. Stephenson testified briefly and offered additional records into evidence.

### A. Documentation Issues

SORM denied payment of \$59.64 for electrical stimulation services provided by Dr. Stephenson between August 20-27, 2003 under CPT Code 97032. SORM argues that Dr. Stephenson had previously used CPT Code G0283 for “unattended” electrical stimulation but then changed to CPT Code 97032 for “attended” electrical stimulation without any documentation to explain the change. Dr. Stephenson testified that he attended all electrical stimulation sessions for Claimant. He stated that he had previously used the “not attended” CPT Code at SORM's request, but he then switched back to the “attended” CPT Code based on instructions from TWCC. In any case, however, Dr. Stephenson stated that he attended all such sessions and SORM offered no evidence to the contrary. Therefore, the ALJ denies SORM's appeal on this dispute and orders SORM to reimburse Dr. Stephenson \$59.64.

SORM also denied payment of \$98.88 for services billed under CPT Code 97530 (therapeutic activities, 15 minutes) on October 22, 24, and 27, 2003. In addition to these disputed services, Dr. Stephenson also provided services on those dates under CPT Codes 97035 (ultrasound, 15 minutes), 97124 (massage, 15 minutes), and CPT Codes 97116 (gait training, 15 minutes), for a total of 60 minutes of services each day.<sup>2</sup> SORM argues that Dr. Stephenson's total services each day exceeded the Medicare guidelines of 30-45 minutes, but he provided no explanation for the extra treatment. Therefore, SORM denied payment for the services under CPT Code 97530 because they exceeded the Medicare guidelines time limit without adequate documentation.

Dr. Stephenson did not address this issue. However, the ALJ notes that SORM also denied payment for services on these dates under CPT Code 97116 (gait training, 15 minutes). The MRD upheld SORM's denial of those claims. Therefore, the only remaining services are CPT Codes 97530 (in dispute), 97035, and 97124, which totaled 45 minutes per session. SORM offered no evidence why these 45-minute sessions are not allowable under the Medicare guidelines, which SORM acknowledges allow up to 45 minutes per session.<sup>3</sup> Therefore, the ALJ denies SORM's appeal concerning CPT Code 97530 and orders SORM to reimburse Dr. Stephenson \$98.88 for these services.

## **B. Medical Necessity Issues**

SORM denied payment of \$557.57 for all chiropractic services provided by Dr. Stephenson between December 3, 2003, and January 9, 2004, based on a peer review. These services included CPT Codes 98940 (chiropractic manipulation, 1-2 regions), 98941 (chiropractic manipulation 3-4 regions), 97530 (therapeutic activities), G0283 (unattended electrical stimulation), 97035 (ultrasound), and 99080 (special report).

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<sup>2</sup> SORM also denied payment for the gait training services under CPT Code 97116, but MRD upheld SORM's denial of that claim and Dr. Stephenson did not appeal the MRD's decision.

<sup>3</sup> SORM did not offer the Medicare guidelines or any evidence concerning them into evidence.

David Wagner, D.C., performed SORM's peer review. Dr. Wagner issued a report dated November 26, 2003, which noted that Claimant had surgery on October 29, 2003. He acknowledged that Claimant would need post surgical rehabilitation, but he disagreed with the type of therapy previously provided by Dr. Stephenson and thought more intensive rehabilitation should be provided.

In contrast, the MRD reviewer found that these services provided by Dr. Stephenson were medically reasonable and necessary to facilitate recovery in the post-surgical phase. She noted that Claimant's recovery was slow but stated that the treatments were necessary nonetheless. In addition, Dr. Stephenson testified that the treatments he provided were proper and were necessary to rehabilitate Claimant after her surgery.

The ALJ finds that the services provided by Dr. Stephenson to Claimant between December 3, 2003, and January 9, 2004, were medically reasonable and necessary. Even SORM's peer reviewer found that rehabilitation services were reasonable and necessary; he simply disagreed with the type of treatment Dr. Stephenson had previously provided. However, the statements in his report were conclusory and provided little rationale or support, and both the IRO doctor and Dr. Stephenson thought the treatments were appropriate. Under this state of the record, the ALJ finds that SORM did not satisfy its burden of proof to establish that the services were not medically reasonable or necessary. Therefore, SORM is ordered to reimburse Dr. Stephenson \$557.57 for these services.

### **III. FINDINGS OF FACT**

1. Claimant sustained a compensable injury to her right knee on \_\_\_\_, while restraining a youth at a \_\_\_\_ security facility.
2. The State Office of Risk Management (SORM) is responsible for workers' compensation coverage for Claimant
3. On October 29, 2003, Claimant underwent diagnostic arthroscopy of the right knee with anterior compartment debridement. Her condition was diagnosed as right knee medial plica [fold or groove] with anterior fibrosis.
4. Provider, Richard Stephenson, D.C., provided chiropractic treatments to Claimant for her compensable injury between August 2, 2003, and January 9, 2004.

5. Dr. Stephenson sought reimbursement from SORM for the services noted in Finding of Fact No. 4.
6. SORM denied payment of \$59.64 for electrical stimulation services provided by Dr. Stephenson between August 20-27, 2003, under CPT Code 97032 (attended electrical stimulation) based on improper documentation.
7. SORM denied payment of \$98.88 for services billed under CPT Code 97530 (therapeutic activities) on October 22, 24, and 27, 2003, based on improper documentation.
8. SORM denied payment of \$557.57 for all chiropractic services provided by Dr. Stephenson between December 3, 2003, and January 9, 2004, based on lack of medical reasonableness and necessity. These services included CPT Codes 98940 (chiropractic manipulation, 1-2 regions), 98941 (chiropractic manipulation 3-4 regions), 97530 (therapeutic activities), G0283 (unattended electrical stimulation), 97035 (ultrasound), and 99080 (special report).
9. Dr. Stephenson made a timely request to the Texas Workers' Compensation Commission (Commission) for medical dispute resolution with respect to the requested reimbursement.
10. The Commission referred the dispute concerning the services described in Finding of Fact No. 8 to an independent review organization (IRO). The IRO concluded that the disputed services were medically reasonable and necessary.
11. The Commission's Medical Review Division (MRD) concurred with the IRO's finding in a decision dated February 24, 2004, in dispute resolution docket No. M5-04-0735-01. MRD also determined that the services described in Findings of Fact Nos. 6 and 7 were adequately documented.
11. SORM timely requested a contested case hearing with the State Office of Administrative Hearings (SOAH), requesting denial of reimbursement for the disputed services.
12. A contested case hearing was held at SOAH on April 7, 2005, and the record closed the same day.
14. SORM and Dr. Richard Stephenson attended the hearing.
15. All parties received not less than ten days notice of the time, place, and nature of the hearing; 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.
16. All parties were allowed to respond and present evidence and argument on each issue involved in the case.

17. Dr. Stephenson adequately documented the services described in Findings of Fact Nos. 6 and 7.
18. The services described in Finding of Fact No. 8 were medically reasonable and necessary.

#### **IV. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission has jurisdiction related to this matter pursuant to 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. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TEX. ADMIN. 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. SORM, as the party seeking relief, bore the burden of proof in this case pursuant to 28 TAC § 148.21(h).
6. Based on Findings of Fact Nos. 17 and 18, SORM's request not to pay reimbursement for the services noted in Findings of Fact Nos. 6, 7, and 8 should be denied.

#### **ORDER**

**IT IS THEREFORE, ORDERED** that the State Office of Risk Management shall reimburse Dr. Richard Stephenson the additional sum of \$716.09 for chiropractic services provided to Claimant between August 2, 2003, and January 9, 2004, as described in this decision.

**Signed April 15, 2005.**

**THOMAS H. WALSTON  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**