SOAH DOCKET NO. 453-05-3359.M5
TWCC MR NO. M5-05-0306-01

AMERICAN CASUALTY COMPANY OF READING, PA., **Petitioner**	§	**BEFORE THE STATE OFFICE**
V.	§	**OF**
JACK BARNETT, D.C., **Respondent**	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

American Casualty Company of Reading, Pa. (Carrier) appealed the decision of the Texas Workers' Compensation Commission's (Commission) Medical Review Division (MRD) to adopt the decision of its designee, an independent review organization (IRO), which granted reimbursement for services provided a workers' compensation claimant (Claimant) by Jack Barnett, D.C. (Provider). Carrier claimed that the services were not medically necessary healthcare. This decision finds that Carrier should reimburse Provider only for one office visit and the passive modalities provided Claimant because the remaining services were improperly coded.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

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

The hearing in this matter convened July 21, 2005, at the State Office of Administrative Hearings, 300 W. 15th Street, Austin, Texas, with Administrative Law Judge (ALJ) Ann Landeros presiding. The record also closed that date. Attorneys Larry Trimble and Erin Shanley appeared and represented Dr. Barnett and Carrier, respectively. Commission Staff did not participate in the hearing.

II. DISCUSSION

A. Background Facts

In ___, Claimant sustained an injury to his arm that was compensable under the Texas Workers' Compensation Act (Act), TEX. LAB. CODE ANN. ch. 401 *et seq.* At the time of the compensable injury, Carrier was the workers' compensation insurer for Claimant's employer. In July 2003, Claimant underwent an MRI of his left elbow and shoulder. Dr. Barnett diagnosed Claimant with an elbow fracture and a left shoulder lesion and referred Claimant to orthopedic surgeon Lubor Jarolimek for a surgical evaluation. Dr. Jarolimek confirmed Dr. Barnett's diagnosis and recommended an active rehabilitation program that avoided elbow supination or pronation or activities that exacerbated pain. (Prov. Ex. 1, p. 31).

In July 2003, Dr. Barnett began treating Claimant with physical therapy exercises, passive modalities (ultrasound, massage, electrical stimulation), and weekly office visits. Carrier denied payment for office visits and treatments administered from September 17 through October 8, 2003, based on lack of medical necessity as found in the peer review by Dr. John Braswell done in August 2003. Dr. Braswell's peer review report was done without benefit of Dr. Barnett's or Dr. Jarolimek's medical records or the MRI.

Claimant received treatments from Dr. Barnett until December 2003. In January 2004, Dr. Barnett found Claimant at MMI and released him back to work. In his independent medical review in February 2004, orthopedic surgeon James Hood found the MRI showed no sign of pathology on the rotator cuff and that Claimant did not need further treatment. (Prov. Ex. 1, p. 10).

The IRO granted Dr. Barnett's appeal of Carrier's denial of reimbursement for Claimant's treatment. Carrier timely appealed the IRO decision.

B. Legal Standards

Petitioner has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE (TAC) §§ 148.21(h) and (i); 1 TAC § 155.41. Pursuant to the Act, 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). Health care includes all reasonable and necessary medical services, including a medical appliance or supply. TEX. LAB. CODE ANN. § 401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. § 401.011(31). To be entitled to payment from a carrier, a provider must submit a properly coded bill. See 28 TAC §§ 133.1(a)(3), 133.300, and 133.301

C. Evidence

1. Carrier

Along with the medical records submitted to the IRO, Carrier relied on Dr. Braswell's peer review report, Dr. Hood's IME, and the opinion of its testifying expert, Cynthia Tays, D.C. Dr. Tays stated she would not have undertaken to treat a patient with a fracture, but would have referred the case to an orthopedic surgeon. In her opinion, Dr. Hood was better qualified to interpret the MRI results than the radiologist-chiropractor who found the shoulder lesion so Dr. Tays gave greater weight to Dr. Hood's opinion that the shoulder did not have a problem. In her opinion, at most, the shoulder lesion was a very mild tear.

Dr. Tays stated the relevant guidelines[1] supported treatment with passive modalities only during the first 4-6 weeks post-injury, so because the disputed services were given more than 12 weeks after the date of injury, they were not appropriate treatment at that time.

Although she agreed that active physical therapy was appropriate for Claimant during this period, Dr. Tays found no indication that the physical therapy should have been administered in a one-to-one setting or billed under CPT 97110 because nothing in the record established that Claimant has a cognitive deficiency, needed instruction for new exercises, or could not safely

perform the exercises without constant, individual monitoring. She did not find documentation of

[1] American College of Occupational and Environmental Medicine guidelines and the Mercy Hospital guidelines.

Claimant's improvement in the medical records and did not understand why the ROM for Claimant's right shoulder, used as a baseline for his normal ROM, never changed.

Dr. Tays also found no documentation that extended office visits were appropriately billed weekly. She stated this type of office visit with an expanded evaluation was appropriate only once a month during the period at issue.

2. Provider

Dr. Barnett noted Dr. Braswell did not have his or Dr. Jarolimek's medical records and thus lacked any information about the shoulder lesion diagnosis. Because his medical records had been sent to Carrier along with the billings, Dr. Barnett could not understand why the Carrier did not forward those records to Dr. Braswell. As the peer review was predicated on incomplete medical records, Dr. Barnett asserted it should be disregarded.

Regarding the passive modalities, Dr. Barnett stated they were necessary auxiliaries to the active physical therapy because the passive modalities relieved pain and soreness caused by the active exercises. He cited to Dr. Jarolimek's September 25, 2003, report that recommended, after an examination of Claimant, continuing active rehabilitation, stretching, deep tissue massage and non-steroidal anti-inflammatories. (Carrier Ex. 1, p. 72).

Dr. Barnett testified that the one-on-one physical therapy sessions were necessary to keep Claimant from hurting himself by rotating his elbow improperly. Although he did not conduct the physical therapy sessions, the records indicated to him that it was done on an individual basis, not in a group. He admitted that Claimant did not have any cognitive impairment and did not need intensive instruction on how to perform the exercises, just monitoring as to form.

Dr. Barnett stated that the office visits were appropriately billed under CPT 99213 because he tested ROM (the expanded focused examination) and decided to continue the therapy (making a medical decision of low complexity) on those visits.

Dr. Barnett noted that on October 10, 2003, Dr. Aaron Levine performed an MMI examination on Claimant. At that time, Claimant stated physical therapy, cold packs, rest, and

massage relieved his pain. Testing the ROM, Dr. Levine found the left elbow normal but the left shoulder was restricted. Dr. Levine cited to the ___ x-rays and July 2003 MRI in his diagnosis but it was not clear that he saw the actual films. He did not dispute the shoulder lesion diagnosis. He estimated that Claimant would reach MMI at the end of February 2004 "allowing time (6 weeks) for further healing before possible surgery, surgery, recovery and rehabilitation." (Carrier Ex. 1, pp. 80-82).

D. Analysis

Carrier's reliance on Dr. Braswell's peer review and Dr. Hood's post-MMI evaluation was misplaced. As it was based on incomplete medical records, Dr. Braswell's peer review cannot be given much weight. As Dr. Hood's report issued after Dr. Barnett had placed Claimant at MMI and ended treatment, Dr. Hood's finding further treatment was not warranted was simply redundant of Dr. Barnett's opinion. Nor was Dr. Hood's failure to find anything remarkable on the July 2003 MRI of the shoulder significant. The radiologist-chiropractor's finding of a shoulder lesion was accepted by Dr. Jarolimek and the designated doctor, Dr. Levine, both of whom examined Claimant while he was symptomatic. Both the diagnostic and clinical findings established that Claimant had a shoulder lesion and, in any event, compensability was at issue for this case.

During the period in dispute, Dr. Barnett was treating Claimant in accordance with the recommendations of the orthopedic surgeon Dr. Jarolimek. While it is not clear that Dr. Levine actually recommended any sort of treatment, his findings that Claimant had not healed supported Dr. Jarolimek's prescription for further active rehabilitative therapy and modalities to relieve pain. Coupled with the medical records, there was sufficient evidence that both the active physical therapy and the passive modalities were medically necessary healthcare for Claimant in September and October 2003.

Although the services were medically necessary, Carrier did prove that certain services were billed under the wrong CPT code. Neither CPT 97110 for individual physical therapy nor

CPT 99213 for an expanded office visit each week were appropriate and those improperly billed services should not be reimbursed.

The main reasons for providing one-to-one therapy billable under CPT 97110 are: cognitive impairment, physical instability, or need for instruction. Dr. Barnett admitted Claimant did not have a cognitive impairment and as he had been doing the same exercises for weeks, Claimant did not need instructions. Although Dr. Jarolimek warned against pronation or supination of the elbow, there was no evidence that constant, individual monitoring was required to prevent those movements. The medical records did not did not establish Claimant was physically unable to safely perform the exercises in a group setting. Dr. Barnett's testimony that the individual monitoring was needed to avoid supination or pronation is simply speculative as he was not involved in the therapy sessions.

The medical records for the office visits billed under CPT 99213 were too sparse to support a bill for an expanded examination but as Dr. Tays admitted one expanded office visit a month was appropriate, one billing under CPT 99213 in the disputed period should be allowed. Dr. Barnett did not ask to be reimbursed at the appropriate lower rates, so no reimbursement will be ordered on those services inappropriately billed.

III. FINDINGS OF FACT

1. In ___, Claimant sustained a left arm and shoulder injury compensable under the Texas Workers' Compensation Act (Act), TEX. LAB. CODE ANN, ch. 401 *et seq*.

2. At the time of the compensable injury, Claimant's employer had workers' compensation insurance coverage with American Casualty Company of Reading, Pa. (Carrier).

3. As a result of the compensable injury, Claimant suffered a left elbow fracture and a lesion in his left shoulder.

4. In ___, after the left elbow fracture was diagnosed and treated by another physician, Jack Barnett, D.C., (Provider) became Claimant's treating physician and diagnosed the left shoulder injury.

5. Dr. Barnett referred Claimant to orthopedic surgeon Lubor Jarolimek, who confirmed Dr. Barnett's diagnoses and recommended conservative therapy.

6. From July to September 2003, Dr. Barnett provided Claimant with active physical therapy and passive modalities including ultrasound, massage, and electric stimulation.

7. Despite considerable treatment, Claimant continued to suffer from shoulder and elbow pain in September 2003.

8. On September 25, 2003, Dr. Jarolimek examined Claimant and prescribed continued active rehabilitation, stretching, deep tissue massage and non-steroidal anti-inflammatories.

9. From September 17 through October 8, 2003, Dr. Barnett provided Claimant with the active and passive therapies prescribed by Dr. Jarolimek and with weekly office visits.

10. During the period from September 17 through October 8, 2003, no more than one expanded examination office visit billable under CPT 99213 was appropriate for Claimant.

11. From September 17 through October 8, 2003, Claimant did not suffer from cognitive deficits, physical inability to safely perform physical therapy exercises, or lack of knowledge of how to perform the exercises that would have made one-to-one physical therapy billable under CPT 97110 appropriate.

12. Carrier denied reimbursement to Provider for the services rendered Claimant from September 17 through October 8, 2003.

13. Provider's appeal of the denial was considered by the Texas Workers' Compensation Commission's (Commission) designee, an Independent Review Organization (IRO).

14. Carrier appealed the IRO's decision to grant reimbursement to Provider.

15. The Commission Staff sent notice of hearing to the parties that stated the date, time, and location of the hearing and cited to the legal statutes and rules involved along with a short, plain statement of the factual matters involved.

16. Provider and Carrier were represented at the hearing held July 21, 2005, but the Commission Staff chose not to participate.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (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 § 413.031 of the Act 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 and 133.308.

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

5. Petitioner had the burden of proof in this proceeding. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41.

6. The IRO had authority to review the parties' positions and issue a decision pursuant to the Commission's rule at 28 TAC §§ 133.305 and 133.308.

7. Pursuant to the Act, 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).

8. Health care includes all reasonable and necessary medical services, including a medical appliance or supply. TEX. LAB. CODE ANN. §401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. § 401.011(31).

9. To be entitled to payment from a carrier, a provider must submit a properly coded bill. See 28 TAC §§ 133.1(a)(3), 133.300, and 133.301

10. Petitioner is entitled to be reimbursed under CPT 99213 for one of Claimant's office visits occurring from September 17 through October 8, 2003.

11. Petitioner is not entitled to reimbursement for physical therapy provided Claimant and billed under CPT code 97110 because, while the physical therapy was medically necessary, there was no justification for one-to-one physical therapy.

12. Petitioner is entitled to reimbursement for passive modalities provided Claimant under CPT codes 98943, G0283, 97035, and97124.

ORDER

It is ORDERED that American Casualty Company of Reading, Pa. reimburse Jack Barnett, D.C., for one office visit billed under CPT 99213 and for the passive modalities billed under

CPT 98943, G0283, 97035, and 97124 provided to Claimant from September 17 through October 8, 2003. It is further ORDERED that no reimbursement is due for active physical therapy billed under CPT 97110 provide Claimant from September 17 through October 8, 2003.

SIGNED August 4, 2004.

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ANN LANDEROS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS