SOAH DOCKET NO. 453-05-3383.M5
MR NO. M5-05-3831-01

LIBERTY MUTUAL FIRE INSURANCE, **Petitioner**	'	**BEFORE THE STATE OFFICE**
	'	**OF**
V.	'	
JIMMY TODD RULAND, D.C., **Respondent**	'	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Liberty Mutual Fire Insurance (Carrier) challenges a decision of an independent review organization (IRO) on behalf of the Texas Workers' Compensation Commission[1] in a dispute regarding medical necessity for office visits and chiropractic treatment given by Jimmy Todd Ruland, D.C. (Provider). The IRO found that Carrier improperly denied reimbursement for the conservative care-examinations, chiropractic treatment, and physical therapy-provided from May 3, 2002, through January 13, 2003.[2] Carrier requested a hearing on the basis that these services were not medically necessary within the meaning of §§ 408.021 and 401.011(19) of the Texas Workers' Compensation Act (the Act), TEX. LABOR CODE ANN. ch. 401 *et seq*. The Administrative Law Judge (ALJ) finds that Carrier failed to meet its burden in part. Provider should be reimbursed for some of the disputed services.

I. STATEMENT OF THE CASE

The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2005. No party challenged jurisdiction or venue. ALJ Lilo D. Pomerleau convened the hearing in this docket on August 1, 2005, at SOAH facilities in the William P. Clements Building, 300 W. 15th Street, Austin, Texas. Carrier was

[1] Effective September 1, 2005, the functions of the Commission have been transferred to the newly created Division of Workers' Compensation at the Texas Department of Insurance.

[2] The IRO found that the Carrier properly denied for services given on October 30, 2002, and, during the period at issue, for all services provided under CPT code 97014. This decision was not appealed by Provider; therefore, these services are not in dispute.

represented by Kevin J. Franta, attorney, and Provider appeared *pro se*. The record closed that same day.

On ___, Claimant was removing a 90-pound axle frame and slipped on wet paint. He injured his cervical and lumbar spine, right knee and right elbow. Claimant received conservative medical care, x-rays, MRI, and a CT scan. He changed doctors on May 3, 2002, approximately four months after his injury, choosing Jonathan Goff, D.C., (with Provider) as his treating doctor. Claimant eventually had neck surgery on January 15, 2003. At issue are pre-surgical office visits, examinations, chiropractic treatments, and physical therapy provided from May 3, 2002, through January 13, 2003. The amount in dispute is $12,385.

II. THE EVIDENCE AND ARGUMENTS

A. Carrier

Carrier submitted into evidence medical records and argument previously submitted to the IRO and the testimony of N. F. Tsourmas, M.D.

Dr. Tsourmas commented on the June 17, 2002 examination of Claimant performed by William R. Culver, M.D., who found Claimant had complaints of pain in his cervical and lumbar spine and noted that Claimant had not received chiropractic treatment until the last three to four weeks. In his report, Dr. Culver stated that it would be reasonable for Claimant to have approximately 18 more sessions of chiropractic treatment for rehabilitation. Dr. Tsourmas agreed with Dr. Culver's statement, noting that Dr. Culver's opinion was based on the Occupational Disability Guidelines (ODG), which recommend up to 18 chiropractic sessions for muscular skeletal injuries in the acute states of treatment. Dr. Tsourmas stated that Claimant would have received more benefit (in the form of pain relief) if the chiropractic treatment had begun soon after the injury. Dr. Tsourmas took issue with the fact that Claimant received four to five months of conservative chiropractic treatment from Provider and that the treatment began four months after Claimant's injury.

Dr. Tsourmas also testified that the following groups of therapies were not medically necessary:

< Electrical stimulation, hotpacks, and myofacial release are passive modalities, which are useful only during the acute phase of the injury, not six months or more afterwards. These passive treatments are not required for a tender cervical spine.

< CPT code 97112 (neuromuscular education) is not useful for a group of spinal muscles.

< CPT code 97110 (one on one treatment) is not necessary after five to six months of therapy, because Claimant should then be able to perform exercises by himself.

< CPT code 99213 (office visit with chiropractic manipulations) is a passive therapy not necessary for use in the chronic state, six months post injury.

Dr. Tsourmas also testified that the IRO decision was incorrect in that the treatment in question did not conform to the ODG and the American College of Occupational and Environmental Medicine guideline. Dr. Tsourmas noted that Claimant showed no improvement from services provided pre-surgery.

Carrier contends that the determination of whether the disputed treatment was reasonable and necessary is a matter of opinion, noting that the majority of the doctors approving treatment in this case are chiropractors.

B. Provider

Provider submitted into evidence medical records and argument previously submitted to the IRO and the testimony of Dr. Ruland. Dr. Ruland testified that the services were reasonable and necessary because Claimant had complications, exacerbation from work, and multiple injuries. Moreover, the application of chiropractic manipulations after Claimant received epidural steroid injections is an acceptable and established treatment.

Provider argued that a number of doctors found the treatment in question to be medically reasonable and necessary. In a June 17, 2002 evaluation of Claimant, Dr. Culver stated that all treatment had been reasonable and necessary.[3] On June 21, 2002, approximately three to four weeks after Claimant began treatment with Provider, Daniel A. Lerma, D.C., a designated doctor, examined Claimant and found that he had not yet achieved maximum medical improvement. He stated that Claimant:

[3] Provider's Ex. B at 11.

> can expect to have exacerbations of pain, muscle spasm, and stiffness from time to time due to the severity of the injuries. It is apparent considering the impairment that damage has occurred to one or more motor units at the cervicothoracic spine; lumbosacral spine; right upper extremity; and right lower extremity. The patient will need supportive care with appropriate applications of active and passive (therapy, rehabilitation and manipulation) care including lifestyle modifications.[4]

Bryan S. Drazner, M.D., on August 6, 2002, prescribed injections and the continuation of rehabilitation, three times a week for four weeks.[5] Dr. Drazner, in notes to an August 13, 2002 follow-up exam performed on Claimant, stated that cervical epidural injections should continue. He acknowledged that Claimant was receiving chiropractic treatment from Provider. Dr. Ruland argued that, at the time of these notes, it was his opinion and the opinion of Drs. Drazner and Goff (the latter, the original treating chiropractic doctor at Provider's clinic) that active and passive therapy was beneficial to Claimant.

Dr. Ruland testified that pre-surgery, Claimant got great results from treatments applied to his lumbar spine, knee, and elbow. Claimant did not respond well in the cervical spine area but after neck surgery, Claimant had significantly improved in all areas. Provider argues that the guidelines call for conservative care, which was provided to Claimant. Because of that care, Claimant did not have additional surgeries.

III. ANALYSIS

At issue is whether Carrier showed by a preponderance of evidence that the disputed services were unreasonable or unnecessary. Carrier failed to meet that burden for the service provided from May 3, 2002, through October 3, 2002, but met that burden as to services that continued for another three months, October 7, 2002, through January 13, 2003.

There is some support for the contested chiropractic treatment in the following notes from treating doctors:

- Dr. Culver indicated in his report dated June 17, 2002, that Claimant had had several epidural steroid injections and chiropractic treatment. He noted the last injection did not appear to be necessary, as Claimant had not improved from these procedures. He

[4] Carrier's Ex. A at 124.

[5] Provider's Ex. A at 527.

did not comment on the efficacy of the chiropractic treatment other than to note that another 15 to 18 sessions would be reasonable.[6]

< Dr. Lerma stated on June 21, 2002, that Claimant would need "supportive care with appropriate applications of active and passive (therapy, rehabilitation and manipulation)."[7] He further noted Claimant had improved after Provider's care.

< As noted previously, on August 6, 2002, Dr. Drazner prescribed epidural injections and the continuation of physical therapy, three times a week for four weeks.

< On August 28, 2002 Dr. Drazner indicated that surgery might be a consideration because Claimant had ongoing pain, and that "patient should continue with his therapy along with Dr. Goff (Provider) at the present time."[8]

< Dr. R. Frank Morrison, M.D., stated in a September 11, 2002 EMG/NCS report that because Claimant was "responding nicely to conservative management, the examiner would be reluctant to tamper with his present treatment program . . . ."[9]

< Po Hing Wong, M.D., in a September 26, 2002 medical evaluation stated that Claimant should continue his physical therapy and work hardening.[10]

It appears that, although Carrier's testifying doctor, Dr. Tsourmas, an orthopaedic surgeon, did not find the care reasonable or necessary based on treatment guidelines that recommend a limited amount of passive therapy, other doctors, both medical and chiropractic, noted that Claimant benefited from the physical therapy and chiropractic treatment. As a caveat, the ALJ is not suggesting that each of these doctors focused specifically on the issue in question-whether these particular chiropractic services were reasonable and necessary.[11] Rather, their focus was a global one: what was wrong with Claimant, and what could be done to remedy his medical problems? The overall consensus of the treating and examining doctors was that Claimant needed some physical therapy.

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[6] Carrier's Ex. A at 116.

[7] Carrier's Ex. A at 124.

[8] Carrier's Ex. A at 158.

[9] Carrier's Ex. A at 162.

[10] Carrier's Ex. A at 166-170. The ALJ did not see additional references to work hardening in the record.

[11] Of course, the IRO doctor did focus on the issue of medical necessity. The IRO recites that the conservative care given by Provider was "rendered during the time additional medical opinions, tests, and treatments were sought and carried out" and further notes the series of epidural steroid injections. "All treatments were reasonable and necessary as they were designed to increase function and relieve symptoms so the patient could return to gainful employment." Provider's Ex. B at 5.

Dr. Drazner, a treating doctor, also noted that Claimant's condition had not improved overall, supporting Carrier's argument that the lengthy treatment was the same, without improvement. But Claimant claimed "demonstrable symptomatic improvement" from Provider's therapy.[12] Moreover, Dr. Ruland testified that Claimant got great results. Overall, the evidence indicates that Claimant received good care from Provider.

What remains a question is whether Claimant needed the disputed weekly therapy for eight months. Dr. Tsourmas testified convincingly that passive, one-on-one treatment is not medically necessary after approximately six weeks (18 sessions). In rebuttal, Dr. Ruland noted some reasons why Claimant needed more therapy: chiropractic treatment is beneficial, and such treatment was prescribed, after Claimant's epidural steroid injections. Also, Claimant exacerbated his injury at work, as noted on soap notes dated August 19, 2002.[13] Dr. Ruland's testimony that chiropractic manipulations were needed after epidural steroid injections was not refuted by Dr. Tsourmas. However, his general testimony that care were needed because Claimant got "great results" failed to address why expensive therapeutic care was necessary well after the initial injury and weeks after the last injection.

The evidence shows that, on August 6, 2002, Dr. Drazner prescribed physical therapy (chiropractic treatment) following an injection given Claimant. The last cervical epidural steroid injections were given on August 21, 2002.[14] Using Dr. Drazner's prescriptive guideline of therapy three times a week for four weeks, treatment could have reasonably and necessarily continued until the end of September 2002.[15] Claimant stopped working on September 4, 2002-the conservative treatment given since May 3, 2002, did not appear to help him continue working. Although Dr's. Morrison and Wong suggested as late as September 2002 that Claimant was responding nicely to the conservative management given him and should continue, with no apparent improvement in the daily soap notes there is very little direct, objective evidence to support a finding that care beyond September 2002 was medically necessary.

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[12] Claimant stated his improvement to R. Frank Morrison, M.D., as noted in Dr. Morrison's report dated October 4, 2002. Carrier's Ex. A at 172.

[13] Provider's Ex. A at 271.

[14] Provider's Ex. A at 371, Dr. Culver's notes dated July 28, 2005.

[15] Claimant had a flare-up, noted by Dr. Ruland, on October 1, 2002, which appeared to continue with specific, radiating pain on October 3, 2002. The ALJ therefore includes these dates of service as being medically necessary. *See* Provider=s Ex. A at 275.

Under § 408.021 of the Act, an injured worker is entitled to "health care reasonably required" to relieve the effects of the injury or to enhance the ability to continue working. However, care that provides only superficial improvement or relief at inordinate cost is not "reasonably" required. In this case, the ALJ found objective support for a large portion of the contested therapy based on Claimant's condition, a number of treating doctors who recommended therapy, reviewing doctors who found the therapy helpful, and Dr. Ruland's testimony that chiropractic manipulations are useful after steroid injections. But there is simply not enough direct and convincing evidence to support the medical necessity of continued treatment, including one-on-one therapy, for months and months after the last epidural steroid injection, especially with Claimant exhibiting little overall improvement.

The ALJ concludes that Carrier failed to meet its burden of proving that the services provided from May 3, 2002, through October 3, 2002, were unreasonable and unnecessary. However, services from October 7, 2002, through January 13, 2003, were not reasonable and medically necessary.

IV. FINDINGS OF FACT

1. On ___, Claimant was removing a 90-pound axle frame and slipped on wet paint. He injured his cervical and lumbar spine, right knee and right elbow. The injury was a compensable injury under the Texas Worker's Compensation Act (the Act), TEX. LABOR CODE ANN. § 401.001 *et seq*.

2. Claimant first presented to Jonathan Goff, D.C., on May 3, 2002, then to Jimmy Todd Ruland, D.C. (Provider).

3. From May 3, 2002, through January 13, 2003, Claimant received examinations, chiropractic treatment, and physical therapy for the injury noted in Finding of Fact No. 1.

4. Provider sought reimbursement for the office visits, chiropractic treatment, and therapeutic exercises from Liberty Mutual Fire Insurance (Carrier), insurer for Claimant's employer.

5. Carrier denied the requested reimbursement.

6. Provider made a timely request to the Texas Workers' Compensation Commission (Commission), now known as the Texas Department of Insurance, Division of Workers' Compensation, for medical dispute resolution with respect to the requested reimbursement.

7. The independent review organization (IRO) to which the Commission referred the dispute issued a decision on September 10, 2004, and concluded that office visits, chiropractic treatments, and therapeutic exercises for dates of service May 3, 2002, through January 13, 2003, were medically necessary.

8. The Commission's Medical Review Division reviewed and concurred with the IRO's decision in a decision dated December 21, 2004, in dispute resolution Docket No. M5-04-3831-01.

9. In the same decision referenced in the above Finding of Fact, the Medical Review Division found that EOBs for CPT code 97014 for dates of service December 17, 19, 20, 26, 27, 30, and 31, 2002, and January 3, 2003, as well as EOBs for all services on October 20, 2002, were not submitted, and, thus, no reimbursement was recommended.

10. Carrier requested in a timely manner a hearing with the State Office of Administrative Hearings (SOAH), seeking review and reversal of the MRD decision regarding reimbursement.

11. The Commission mailed notice of the hearing's setting to the parties at their addresses on February 3, 2005, and also mailed corrected notice on February 23, 2005.

12. On August 1, 2005, Lilo D. Pomerleau, an Administrative Law Judge with SOAH, convened a hearing in this matter at the William P. Clements Building, 300 W. 15th Street, Austin, Texas. Carrier was represented by Kevin J. Franta, attorney. Jimmy Todd Ruland, D.C., appeared, representing Provider, *pro se*.

13. Claimant received good care from Provider.

14. In general, it is reasonable to provide an injured worker approximately 18 sessions of chiropractic treatment for rehabilitation. Complications, exacerbations, and multiple injuries may extend the length of treatment.

15. The application of chiropractic manipulations after a patient receives epidural steroid injections is acceptable and established procedure.

16. Claimant received a number of epidural steroid injections and Provider treated Claimant with chiropractic manipulations after those injections. Claimant received his last injection on August 21, 2002.

17. An appropriate amount of treatment after epidural steroid injections is three times a week for four weeks.

18. Claimant exacerbated his injury at work shortly before his August 19, 2002 office visit with Provider.

19. Claimant had a flare-up in his symptoms and pain on October 1, 2002, which continued through October 3, 2002.

20. Claimant needed chiropractic manipulations and treatment through October 2, 2002.

21. There was no objective showing that the services from October 7, 2002, though January 13, 2003, were necessary.

22. Contested office visits, chiropractic treatment, and physical therapy provided on May 3 though October 3, 2002, were shown to be necessary and reasonable.

23. Contested office visits, chiropractic treatment, and physical therapy provided on October 7, 2002, though January 13, 2003, were not shown to be necessary and reasonable.

V. CONCLUSIONS OF LAW

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (the Act), TEX. LABOR CODE ANN. § 413.031.

2. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(k) 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 SOAH's rules, 1TEX. ADMIN. CODE (TAC) § 155.1 *et seq*.

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

5. Carrier bore the burden of proving the office visits, therapeutic exercises, and chiropractic treatment provided from May 3, 2002, though January 13, 2003, were not medically necessary pursuant to 28 TAC § 148.14 and 1 TAC § 155.41(b).

6. Based upon the foregoing Findings of Fact, Carrier failed to prove that the office visits, chiropractic treatment, and physical therapy provided on May 3 though October 3, 2002, were elements of health care medically unnecessary under § 408.021of the Act.

7. Based upon the foregoing Findings of Fact, Carrier proved that the office visits, chiropractic treatment, and physical therapy provided on October 7, 2002, through January 13, 2003, were elements of health care not medically necessary under § 408.021of the Act.

8. Based upon the foregoing Findings of Fact and Conclusions of Law, Provider is entitled to reimbursement for office visits, chiropractic treatment, and physical therapy provided May 3 through October 3, 2002, and is not entitled to reimbursement for office visits, chiropractic treatment, and physical therapy for dates of service October 7, 2002, through January 13, 2003.

ORDER

IT IS THEREFORE, ORDERED that Liberty Mutual Fire Insurance's denial of reimbursement for certain office visits, chiropractic treatment, and physical therapy for dates of service May 3, 2002, though January 13, 2003, is countermanded in part. Liberty Mutual Fire Insurance shall reimburse Jimmy Todd Rutland for all services at issue in this case, provided from May 3 through October 3, 2002.

SIGNED September 28, 2005.

LILO D. POMERLEAU
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS