SOAH DOCKET NO. 453-05-3753.M5
TWCC MR. NO. M5-04-2913-01

GEORGE C. WILSON, D.C. **Petitioner**	§	**BEFORE THE STATE OFFICE**
V.	§	**OF**
CITY OF FORT WORTH, **Respondent**	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Petitioner, George C. Wilson, D.C. (Provider) appealed the Findings and Decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC)[1] denying reimbursement from the City of Fort Worth (City) for medical services rendered to an injured worker (Claimant). The City provided workers' compensation coverage for its workers through a self-insurance program. Provider disputes the conclusion of the Independent Review Organization (IRO) that these services were not medically necessary. This decision agrees with the IRO and finds that the services in dispute provided to Claimant between May 9, 2003, and September 15, 2003, were not medically reasonable and necessary. Thus, Provider should not be reimbursed.

I. PROCEDURAL HISTORY

Administrative Law Judge Penny Wilkov convened a hearing in this case on August 23, 2005, at the State Office of Administrative Hearings (SOAH), Austin, Texas. Patrick R. E. Davis, D.C., the owner of Fort Worth Injury Rehabilitation Clinic, appeared on behalf of Provider.[2] The City appeared and was represented by Attorney William E. Weldon. No party challenged jurisdiction or notice. The record remained open until August 30, 2005, to allow Provider to re-submit the medical records that had not been received on the date of the hearing.

[1] As of September 1, 2005, the agency is known as the Texas Department of Insurance, Workers' Compensation Division.

[2] George C. Wilson, D.C., was employed by Fort Worth Injury Rehabilitation Clinic at the time of the disputed services but has since left the practice.

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II. DISCUSSION

1. Background

Claimant sustained a work-related back and left ankle injury on___, while employed as a senior customer service representative, when she tripped and fell over a power cord. Claimant has been diagnosed with discogenic pain at L4-5, with radiation to the left leg and foot.[4] The medical records reflect that Claimant has seen several doctors and therapists since the date of the injury, but at the time period in issue, Claimant has been under the care of Fort Worth Injury Rehabilitation Clinic. Claimant's history of treatments has included injections, medications, chiropractic treatments, physical therapy, and two surgeries, in conjunction with various diagnostic tests including a discogram, MRIs, x-rays, and nerve conduction tests.[5]

Claimant underwent an IDET procedure, an outpatient surgical procedure which uses heat to destroy nerves and alleviate nerve compression, on March 7, 2003, performed by Ved Aggarwal, M.D. The initial date of the disputed services with Provider began on May 9, 2003, approximately nine weeks after the IDET procedure. This treatment is the basis of the IRO's August 3, 2004, decision that:

[3] George C. Wilson, D.C., was employed by Fort Worth Injury Rehabilitation Clinic at the time of the disputed services but has since left the practice.

[4] Petitioner's Exhibit 1, pages 17-22.

[5] Respondent's Exhibit 1, pages 37-38.

> National treatment guidelines allow for this type of treatment for this type of injury. However, they do not allow for the frequency, intensity, and extensive duration of treatment this patient has received.[6]
>
> National treatment guidelines allow for this type of treatment for this type of injury. However, they do not allow for the frequency, intensity, and extensive duration of treatment this patient has received.[7]
>
> National treatment guidelines allow for this type of treatment for this type of injury. However, they do not allow for the frequency, intensity, and extensive duration of treatment this patient has received.[8]

Additionally, Claimant underwent left ankle arthroscopy, an ankle surgical reconstruction procedure, on August 13, 2003, performed by Linden Dillin, M.D. Provider's post-operative treatment and supplied durable medical equipment following the arthroscopy is also in dispute. This post-operative treatment and equipment is the basis of the IRO's decision that the services were not medically necessary since:

> The records indicate the carrier paid for 15 sessions of postoperative rehab. through 09/05/04. A neuromuscular stimulator was provided to the claimant by another healthcare provider, and the carrier has declined payment for another unit and supplies for the existing unit.

The City denied payment for certain chiropractic services, including joint mobilization, myofascial release, supplies and materials, therapeutic exercise and activities, gait training, neuromuscular reeducation, manual traction, chiropractic manipulation, neuromuscular stimulation, and durable medical equipment administered by Provider between May 9, 2003, and September 15, 2003, as medically unnecessary.

2. Evidence and Argument

1. Provider

[6] *Ibid*, at 38.

[7] *Ibid*, at 38.

[8] *Ibid*, at 38.

Provider argues that the City should be required to reimburse Provider for all medical services provided between May 9, 2003, and September 15, 2003, since the therapy and treatments were medically necessary post-operative treatment following the IDET surgical procedure on March 7, 2003, and left ankle arthroscopy on August 13, 2003.

Provider argues that the IDET post-operative treatment was done under the auspices of the surgeon, Ved Aggarwal, M.D., a board-certified anesthesiologist, who referred Claimant for physical therapy and rehabilitation. Provider states that Claimant "required 12 weeks of postoperative rehabilitation for the lumbar spine to achieve maximum benefit and improve her work capacity."[9] According to Provider, the therapy was designed to progress Claimant from a post-operative "standard" level of difficulty to the more difficult "intermediate/standard" level of activity, so that Claimant could regain functionality and return to work.[10] The treatment strategy included combining passive therapy designed to improve coordination, posture, and movement with aggressive active therapy devised to rapidly improve strength, endurance, and flexibility. According to Provider, the combined passive and active therapies decreased the pain, spasms, and effusion involved with the physically-demanding active therapy. Provider also used "arctic ice application," to enable Claimant to tolerate the pain, fatigue, and weakness of the intense exercises.

As to the post-arthroscopy ankle rehabilitation services, Provider disputes the IRO reviewer's position that only fifteen sessions were medically necessary. According to Provider, Claimant required a minimum of five weeks of care, until September 15, 2003, to prevent post operative scar tissue formation, to increase range of motion, and to return Claimant to work.[11]

The intensive one-on-one supervision was required, according to Provider, to insure that Claimant did not physically or functional regress. Provider notes that by closely observing and

[9] Petitioner's Exhibit 1, page 8 (Treatment Summary).

[10] Petitioner's Exhibit 1, Treatment Summation, pages 6-12, provides a discussion of the post-operative rehabilitation strategy used by Provider.

[11] Petitioner's Exhibit 1, page 8.

monitoring Claimant's progress, the treating chiropractor was able to modify or adjust treatment and to provide positive reinforcement to Claimant. Provider also points out that Claimant was able to avoid post-operative complications such as further surgery or RSD, a disabling pain syndrome, or to obviate a pain management or work hardening program.

On cross-examination, although Dr. Aggarwal's treatment notes indicate that he prescribed six to eight weeks of postoperative physical therapy,[12] Provider testified that Dr. Aggarwal, after examining Claimant, extended the prescription to twelve weeks. However, Provider concedes that this prescription was not included in the medical records included for the hearing but was in Claimant's file.

2. City

The City maintains that all medical services administered by Provider between May 9, 2003, and September 15, 2003, were not medically reasonable or necessary and supports the IRO's conclusion.

First, the City refers to Dr. Aggarwal's notes following the March 2003 IDET surgery that reiterates the post-operative rehabilitation plan. In the notes, Dr. Aggarwal prescribes "PT/rehab three times weekly for four weeks and then twice weekly for an additional two to four weeks. This will be set up to begin in a few days."[13] The City points out that Provider's disputed treatments began nine weeks after the procedure, in May 2003, and continued until September 2003, exceeding Dr. Aggarwal's plan of twenty sessions of physical therapy to be completed by six to eight weeks after the surgery in March 2003. By the first date of disputed service, the City points out that Claimant had already completed twenty-eight sessions of physical therapy, surpassing the prescribed recovery plan.

[12] Petitioner's Exhibit 1, page 171, Dr. Aggarwal on March 7, 2003, recommends twenty sessions of physical therapy.

[13] Petitioner's Exhibit 1, page 171.

Second, the City asserts that Provider's notes indicate that on June 6, 2003, the treating chiropractor stated that "[Claimant] has received and participated in a fair and reasonable course of physical medicine rehabilitation. At this point physical therapy is formally discontinued until further notice."[14] This was consistent, according to the City, with Provider's certification that Claimant had attained Maximum Medical Improvement (MMI) on June 19, 2003, with a thirteen percent impairment rating, and had returned to work on modified duty.[15]

Finally, the City presented the testimony of Jeff Cunningham, D.C., who, based on his review of the treatment records as well as thirteen years of Chiropractic experience, opined that the treatment rendered by Provider appeared excessive and medically unnecessary. Dr. Cunningham testified that because the IDET procedure is an invasive, complex and painful procedure, many of the treatments would not be appropriate. For instance, treatment such as manipulation, manual traction, and joint mobilization could result in more pain. Dr. Cunningham also commented on the volume of the records, noting that prior to the IDET procedure, Claimant had already had sixty office visits with Provider, with an additional forty eight office visits during the disputed time period. Lastly, Dr. Cunningham testified that the ankle surgery, a relatively non-invasive procedure, required very little rehabilitation, and the fifteen rehabilitative sessions reimbursed by City was appropriate, but anything beyond that was excessive treatment.

3. Applicable Law

Under the workers' compensation system, an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment. TEX. LAB. CODE ANN. § 408.021. "Health care" includes "all reasonable and necessary medical . . . services." TEX. LAB. CODE ANN.§401.011(19).

[14] Respondent's Exhibit 1, page 79.

[15] Respondent's Supplemental Exhibit G, page 3.

4. Analysis

Provider has not met its burden of proof with respect to the services in dispute provided to Claimant between May 9, 2003, and September 15, 2003. The IDET procedure was performed on March 7, 2003, and shortly thereafter post-surgical treatment, as directed by Dr. Aggarwal, was prescribed to commence for three sessions weekly to continue for four weeks, followed by twice weekly sessions for an additional two to four weeks, encompassing twenty sessions altogether. Dr. Aggarwal did not testify and the documents in the record do not reflect the revised directive for additional rehabilitative treatments to continue until September, 2003. Instead, it appears that Provider devised an intensive and extensive course of treatment beyond the recommended plan.

Moreover, the extensive treatments which included joint mobilization, myofascial release, supplies and materials, therapeutic exercise and activities, gait training, neuromuscular reeducation, manual traction, chiropractic manipulation, neuromuscular stimulation, and durable medical equipment rendered were not shown to be medically necessary in light of the medical evidence in this case: First, the treating chiropractor, Dr. Wilson, stated in June 2003, that Claimant had participated in an adequate course of physical medicine and certified that Claimant had attained maximum medical improvement on June 19, 2003. Yet, physical therapy continued inexplicably for months thereafter. Second, based on the medical evidence, the IRO reviewer, a chiropractor, stated that the frequency, duration, and intensity of the treatments far exceeded any medical treatment guidelines. Third, another reviewing chiropractor, Dr. Cunningham, concurred with the IRO reviewer's assessment of the nature and duration of treatment as unnecessary and unreasonable and relayed that some of the treatment could have caused harm. Therefore, based on the consensus of opinions, and without further evidence of the unique circumstances that would warrant overriding the recommended rehabilitation plan, the Provider's extensive treatments services cannot be viewed as medically necessary.

In conclusion, the City should not be required to reimburse Provider for services provided to Claimant between May 9, 2003, and September 15, 2003.

III. FINDINGS OF FACT

1. Claimant sustained a work-related back and left ankle injury on___, while employed as a senior customer service representative, when she tripped and fell over a power cord.

2. At the time of the injury, Claimant's employer, the ___(City), provided workers' compensation coverage for its workers through a self-insurance program.

3. Claimant has been diagnosed with discogenic pain at L4-5, with radiation to the left leg and foot.

4. At the time period in issue, Claimant had been had been receiving physical therapy and treatment at Fort Worth Injury Rehabilitation Clinic administered by George C. Wilson, D.C. (Provider).

5. Claimant's history of treatments has included injections, medications, chiropractic treatments, physical therapy and two surgeries, in conjunction with various diagnostic tests including a discogram, MRIs, x-rays, and nerve conduction tests.

6. Provider submitted a claim to City for treatment rendered to Claimant from May 9, 2003, to September 15, 2003, including joint mobilization, myofascial release, supplies and materials, therapeutic exercise and activities, gait training, neuromuscular reeducation, manual traction, chiropractic manipulation, neuromuscular stimulation, and durable medical equipment.

7. The City denied Provider's request for reimbursement.

8. Provider requested medical dispute resolution with the Texas Workers' Compensation Commission's (Commission) Medical Review Division (MRD).

9. An Independent Review Organization concluded that treatments rendered from May 9, 2003, to September 15, 2003, were not medically necessary.

10. Provider filed a request for a hearing before the State Office of Administrative Hearings on December 30, 2004.

11. The Commission sent notice of the hearing to the parties on February 7, 2005. The hearing notice informed the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the statutes and rules involved; and the matters asserted.

12. The hearing convened on August 23, 2005, before Administrative Law Judge Penny A. Wilkov at the State Office of Administrative Hearings, Austin, Texas. Patrick R. E. Davis, D.C., the owner of Fort Worth Injury Rehabilitation Clinic, appeared on behalf of Provider. Attorney William E. Weldon appeared on behalf of the City. No party challenged jurisdiction or notice. The record remained open until August 30, 2005, to allow Provider to re-submit the medical records that had not been received on the date of the hearing.

13. Claimant underwent an IDET procedure, an outpatient surgical procedure which uses heat to destroy nerves and alleviate nerve compression, on March 7, 2003, performed by Ved Aggarwal, M.D.

14. Dr. Aggarwal prescribed post-surgical rehabilitation to commence for three sessions weekly for four weeks, followed by twice weekly sessions for an additional two to four weeks, encompassing twenty sessions altogether, beginning a few days after the IDET procedure.

15. Provider's disputed treatments began nine weeks after the procedure, in May 2003, and continued until September 2003, exceeding Dr. Aggarwal's plan of twenty sessions of physical therapy to be completed by six to eight weeks after the surgery.

16. By the first date of disputed service, Claimant had already completed twenty-eight sessions of physical therapy, surpassing the prescribed recovery plan.

17. Dr. Aggarwal had not revised the treatment plan for additional rehabilitative treatments to continue until September, 2003.

18. Because the IDET procedure is an invasive, complex and painful procedure, many of the treatments would not be appropriate since they could have resulted in more pain and complications.

19. The frequency, intensity, and extensive duration of treatment administered by Provider was excessive and medically unnecessary.

20. Claimant underwent left ankle arthroscopy, an ankle surgical reconstruction procedure, on August 13, 2003, performed by Linden Dillin, M.D.

21. Provider began post-operative treatment and supplied durable medical equipment until September 15, 2003.

22. Ankle arthroscopy required minimal rehabilitation and only the fifteen rehabilitative sessions reimbursed by the City was medically necessary.

23. No objective or subjective findings supported a finding that Claimant had any complications during the duration of the disputed services.

24. Provider has not shown that the disputed services rendered between May 9, 2003, and September 15, 2003, were medical necessary.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing, 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.

2. Provider timely filed a request for hearing before SOAH, as specified in 28 TEX. ADMIN. CODE § 148.3.

3. The parties received proper and timely notice of the hearing pursuant to TEX. GOV'T CODE ANN. ch. 2001 and 1 TEX. ADMIN. CODE § 155.27.

4. Provider had the burden of proving the case by a preponderance of the evidence pursuant to 28 TEX. ADMIN. CODE § 148.21.

5. 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).

6. Health care includes all reasonable and necessary medical services. TEX. LAB. CODE ANN. § 401.011(19)(A).

7. Provider failed to establish that the joint mobilization, myofascial release, supplies and materials, therapeutic exercise and activities, gait training, neuromuscular reeducation, manual traction, chiropractic manipulation, neuromuscular stimulation, and durable medical equipment rendered were reasonably required by the Claimant's injury under TEX. LAB. CODE ANN. §§ 401.011(19) and 408.021(a).

8. Provider is not entitled to reimbursement for services provided to Claimant for her compensable injury.

ORDER

IT IS **ORDERED** that George C. Wilson, D.C. is not entitled to reimbursement by the City of Fort Worth for joint mobilization, myofascial release, supplies and materials, therapeutic exercise and activities, gait training, neuromuscular reeducation, manual traction, chiropractic manipulation, neuromuscular stimulation, and durable medical equipment provided to Claimant between May 9, 2003, and September 15, 2003.

SIGNED October 25, 2005.

PENNY WILKOV
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS