DOCKET NO. 453-05-4231.M5
TWCC MR NO. M5-04-4112-01

MERRITT CHIROPRACTIC, P.A.	§	**BEFORE THE STATE OFFICE**
	§	
V.	§	
	§	**OF**
TEXAS MUTUAL INSURANCE COMPANY	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Merritt Chiropractic, P.A. (Provider) seeks reimbursement of $4,554.54 from Texas Mutual Insurance Company (Carrier) for office visits, therapeutic activities, neuromuscular reeducation, manual therapy (myofascial release and joint mobilization), and gait training (collectively called medical services) provided to injured worker ___(Claimant) from August 25, 2003, through December 17, 2003 (disputed period). An independent review organization (IRO) on behalf of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) found that one hour of physical therapy (CPT code 97110) per session from October 7, 2003 through November 21, 2003, was medically necessary. However, the IRO found all other medical services provided during the disputed period were not medically necessary.

Carrier paid Provider for the services the IRO found were medically necessary. Only the remaining medical services provided by Provider to Claimant were considered in this contested hearing. As set forth below in the Discussion and in the Findings of Fact and Conclusions of Law, the Administrative Law Judge (ALJ) concludes that Provider failed to prove by a preponderance of the evidence that the disputed medical services were medically necessary.

I. DISCUSSION

The sole issue in this case is whether the disputed medical services provided by Provider to Claimant from August 25, 2003, through December 17, 2003, were medically necessary. In ___, Claimant, a 60-year-old male, injured his right knee while at work when a truck door closed on his legs (the compensable injury). On October 28, 2002, Claimant had knee surgery to repair a torn meniscus. Claimant began seeing Provider for treatment on November 21, 2002. Initially, Provider treated Claimant with passive care and then active rehabilitation. Claimant ultimately underwent a total knee replacement on September 22, 2003.

Prior to the surgery, Claimant underwent pre-surgical therapy to increase his range of motion (ROM) and his strength. From August 25, 2003, through September 17, 2003, Claimant went to Provider for physical therapy three times a week for a total of eight visits. This included therapeutic exercises and activities (box lifts, chain steps, squats, lunges, and treadmill exercises) and manual therapies (myofascial release and joint mobilization). Claimant's ROM increased from 120 degrees to 130 degrees and his strength increased from a 4/5 to a 5/5.

On October 7, 2003, following the surgery, Claimant returned to Provider for rehabilitative therapy which included neuromuscular reeducation, kinetic activities, therapeutic exercises, and manual therapy. This therapy was similar to that provided to Claimant following his first knee surgery and preoperative therapy. Provider treated Claimant with nine weeks of postsurgical therapy for a total of 26 visits, and then released Claimant to engage in a self-care program and periodic follow-up visits on December 17, 2003. The exercises essentially remained the same, but the stress levels changed.

Cotton D. Merritt, D.C., argued that this is a unique case in that Claimant had a gross amount of arthritic changes in his knee prior to the total knee replacement and had endured a failed knee surgery. Consequently, Provider had to keep Claimant in therapy longer to increase his endurance by having him engage in longer periods of low impact exercises. In between the exercise, Provider would have Claimant engage in stretching exercises and ice his knee. Dr. Merritt agreed that these exercises were not structurally complicated or difficult to learn.

Carrier called two experts to testify: John Pearce, M.D., an orthopaedic surgeon, and David Alvarado, D. C. Dr. Pearce opined that nothing in the medical records justified the pre-surgical therapy given to Claimant because Claimant already knew how to do these exercises from his rehabilitation following his first knee surgery. According to Dr. Pearce, Claimant's ROM was fairly normal so he did not need this therapy. Dr. Pearce explained that although Provider's therapy might have been beneficial to Claimant, that does not mean it was medically necessary if Claimant could have done the physical therapy on his own or in a group setting.

As for the therapy provided to Claimant after the knee replacement, Dr. Pearce testified that it was not medically necessary to provide the treatments to Claimant for two hours, or past the first eight weeks following Claimant's knee replacement. Dr. Pearce agreed with the IRO that one hour of one-on-one physical therapy for eight weeks was medically necessary, not the second hour. Dr. Pearce disagreed with Provider that Claimant's failed surgery and arthritic condition justified the second hour, asserting that once Claimant was instructed on how to do these exercises, he should have been released to do them at home or in a group setting.

Dr. Alvarado agreed with Dr. Pearce and the IRO that the amount of physical therapy and manual therapy provided Claimant both before and after surgery was excessive and not medically necessary. The exercises used to recover from both knee surgeries are similar and are not difficult to learn. Hence, Claimant should have been able to do the exercises on his own before surgery and either on his own or in a group setting after the first eight weeks following the knee replacement. According to Dr. Alvarado, one hour of one-on-one therapy was more than sufficient to treat Claimant. The second hour of therapy was not medically necessary.

Dr. Merritt had the burden to show that the disputed medical services provided Claimant from August 25, 2003, to December 17, 2003, were medically necessary to treat Claimant's compensable injury. Based on the evidence and argument of counsel, the ALJ finds that Dr. Merritt failed to show that it was medically necessary to provide: (1) the preoperative therapy; (2) more than one hour of one-on-one therapy for the first eight weeks following the total knee replacement; and (3) any other services. Claimant had already been taught how to do the exercises required to increase

his ROM and strength following his first knee surgery and could have engaged in a home or group program. Following his second surgery, it was medically reasonable to provide Claimant with one hour of one-on-one physical therapy three times a week for eight weeks. However, his medical condition did not warrant an additional hour of one-on-one therapy or more than eight weeks of physical therapy. Therefore, Provider is not entitled to any further reimbursement from Carrier for the disputed medical services provided to Claimant from August 25, 2003, through December 17, 2003.

II. FINDINGS OF FACT

1. On ___, ___(Claimant), a 60-year-old male, suffered a compensable, work-related injury to his right knee when a truck door closed on his legs.

2. Texas Mutual Insurance Company (Carrier) is Claimant's employer's workers' compensation insurance carrier covering Claimant's compensable injury.

3. As a result of the compensable injury, Claimant suffered from knee pain that required surgery.

4. On October 28, 2002, Claimant underwent knee surgery to repair a torn meniscus.

5. Claimant went to Cotton D. Merritt (Provider) for postsurgical treatment of his compensable injury.

6. Provider treated Claimant with physical therapy and activities which included squats, lunges, and treadmill exercises, and with manual therapy which included myofascial release and joint mobilization.

7. Claimant's first knee surgery was not successful in relieving his symptoms and he required a total knee replacement.

8. Prior to his second surgery, Claimant's surgeon prescribed pre-surgical physical therapy to increase Claimant's range of motion (ROM) and strength.

9. Claimant could have performed the physical therapy in a group setting or home setting.

10. From August 25, 2003, through September 17, 2003, Provider treated Claimant with physical therapy three times a week, for a total of eight visits, which included box squats, lunges, and treadmill exercises and manual therapies (myofascial release and joint mobilization).

11. It was not medically necessary that Provider perform one-on-one physical therapy or manual therapy on Claimant to increase Claimant's ROM and strength.

12. On September 22, 2003, Claimant underwent total knee replacement surgery.

13. On October 7, 2003, Claimant returned to Provider for postsurgical therapy.

14. Provider treated Claimant with treatment similar to that provided after Claimant's first knee surgery and included physical therapy and activities (squats, lunges, and the treadmill) and manual therapies (myofascial release and joint mobilization).

15. Provider's rehabilitation sessions lasted for two hours.

16. No more than one hour of physical therapy three times a week for eight weeks is medically necessary following a total knee replacement without the existence of special circumstances.

17. Claimant did not have any special circumstances that required an additional hour of physical therapy or more than eight weeks of physical therapy.

18. Following his second knee surgery, it was medically necessary for Claimant to receive one hour of one-on-one therapy three times a week for eight weeks, through November 21, 2003.

19. After the first eight weeks of one-on-one therapy, Claimant had no extenuating circumstance to justify the need for continued one-on-one physical therapy or the manual therapies being provided by Provider.

20. It was not medically necessary to conduct an office visit each time Claimant had physical therapy.

21. Carrier denied reimbursement to Provider for services provided from August 25, 2003, to December 17, 2003, for lack of medical necessity

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

23. On October 30, 2004, an independent review organization (IRO) reviewed the medical dispute and found that the first hour of one-on-one physical therapy services (CPT code 97110) per session from October 7, 2003 and November 21, 2003, were medically necessary. The IRO found all other disputed medical services provided to Claimant by Provider from August 25, 2003, through December 17, 2003, were not medically necessary.

24. On February 15, 2005, Provider timely requested a hearing, and the case was referred to the State Office of Administrative Hearings (SOAH).

25. Required notice of the hearing was mailed to the parties on February 24, 2005.

26. The notice contained a statement of the time, place, and nature of the hearing, and the legal

authority and jurisdiction under which the hearing was to be held; a reference to the sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

27. On May 17, 2005, Administrative Law Judge Carol Wood[1] convened a hearing in this case. Cotton D. Merritt, D. C. appeared on behalf of Provider. Attorney Ryan Willett represented Carrier. The hearing concluded and the record closed that same day.

III. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act (the Act), specifically TEX. LABOR CODE ANN. §§ 402.073(b) and 413.031(k), and TEX. GOV'T CODE ANN. ch. 2003.

2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.

3. The request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE § 148.3.

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

5. Provider has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).

6. 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 that cures or relieves the effect naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LABOR CODE ANN. § 408.021(a).

7. Based on the above Findings of Fact and Conclusions of Law, the disputed services provided by Provider to Claimant between August 25, 2003, through December 17, 2003, were not medically necessary to treat Claimant's compensable injury.

[1]ALJ Wood conducted the hearing. However, due to scheduling conflicts, the case was reassigned to ALJ Catherine Egan. ALJ Egan listened to the tape recording of the hearing and reviewed the documents admitted into evidence, prior to issuing this Decision and Order.

ORDER

IT IS ORDERED THAT Merritt Chiropractic, P.A., is not entitled to reimbursement from Texas Mutual Insurance Company for the disputed medical services provided Claimant from August 25, 2003, to December 17, 2003.

SIGNED July 18, 2005.

CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS