DOCKET NO. 453-05-4336.M5
MDR Tracking No. M5-05-0975-01

TARRANT COUNTY CHIROPRACTIC AND REHABILITATION, Petitioner	**§**	**BEFORE THE STATE OFFICE**
V.	**§**	**OF**
AMERICAN CASUALTY COMPANY OF READING, PA., Respondent	**§**	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Tarrant County Chiropractic & Rehabilitation (Provider) appealed the findings and decision of the Texas Workers' Compensation Commission's (Commission's)[1] designee, an independent review organization, which found that the office visits and physical medicine treatments provided to__, a workers' compensation claimant (Claimant), were not medically necessary health care. This decision finds that the treatments provided Claimant were not medically necessary.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

There were no contested issues of notice or jurisdiction. Those issues are set out in the Findings of Fact and Conclusions of Law.

The hearing in this matter convened on October 4, 2005, before Katherine L. Smith, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings. Attorney Deborah A. Womack represented American Casualty Company of Reading, PA., (Carrier). Monica Sharp, an employee, represented the Provider. The record closed the same day.

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

II. DISCUSSION

A. Background

Claimant sustained a compensable injury on___, while walking in the parking lot where she worked, when she stepped into a pot hole and fell forward, causing pain to her neck, left shoulder, and upper back. She was treated conservatively with medications by Richard Colyer, M.D., for sprain of the back, thoracic region, and neck from February 14 through May 19, 2003, at which time he certified that she had reached maximum medical improvement (MMI) with a 0% impairment rating. Claimant continued working during the treatment period. On June 19, 2003, Joel H. Carp, M.D., performed an MRI of the lumbar spine that revealed moderate to severe L3-L4 degenerative disc disease.

Claimant sought treatment from Anthony Esquibel, D.C., on September 12, 2003, at which time she complained of lower back pain radiating into her right hip and leg. Dr. Esquibel treated her with therapeutic exercises, manual therapy techniques, and neuromuscular re-education. Claimant was referred to Jose Pilatovsky, M.D., a Commission designated doctor, who determined on January 8, 2004, that Claimant reached MMI with a 1% impairment rating. Claimant continued under the care of Dr. Esquibel until at least February 11, 2004, at which time he recommended that she be allowed to return to work full-time with no restrictions. Ex. 1 at 40.[2] The treatments in dispute were provided from November 17 through December 12, 2003. The Carrier denied reimbursement. The IRO upheld the Carrier's denial because the treatment records failed to show subjective and objective findings indicating that the treatments were providing relief of symptoms or improved function.

[2] It is unclear from the record on what date Claimant stopped working. However, Dr. Esquibel says that as of December 15, 2003, he released her to return to work with restrictions. Ex. 1 at 11.

B. Provider's Position

Provider argues that it provided treatment to the lower back that had not been addressed by the prior treatment. Provider also contends that Claimant's release by Dr. Esquibel to light duty on December 15, 2003, and then to full duty on February 11, 2004, is proof that the treatments he provided were medically necessary because she was able to return to work. Although Dr. Colyer, Claimant's previous treating doctor, found that Claimant had reached MMI on May 19, 2003, with a 0% impairment rating, Carrier argues that Dr. Pilatovsky's assessment that she did not reach MMI until January 8, 2004, should carry more weight because he was the Commission's designated doctor.

C. Carrier's Position

Carrier contends that Claimant suffered only sprains to her upper back, neck and shoulder on the date of injury, and that those sprains were treated and resolved by Dr. Colyer, by May 19, 2003. Ex. 2 at 24-27. Carrier notes that Claimant did not complain of any lower back pain until seeking treatment with Dr. Esquibel. Carrier relies on a chiropractic peer review from Mike O'Kelley, D.C., and Dr. Pilatovsky's report for support. Dr. O'Kelley states in his review of December 2, 2003, that the soft tissue injuries received by Claimant would have resolved with or without treatment in the 8-10 weeks following the injury. He also notes that Claimant did not file for disability until she sought treatment with Provider much later, and that her complaints of pain could not be related to the injury of February 11, 2003. Ex. 2 at 2. Dr. Pilatovsky stated in his report of January 8, 2004, that although Claimant "had complaints of pain in the cervical and lumbar spine . . . there is no ratable diagnosis related impairment." Ex. 2 at 6.

D. Analysis

The ALJ has no documentation indicating which services were provided on which dates of service and under which codes. According to Ms. Sharp, Dr. Esquibel billed under CPT Codes 97110 (one-on-one physical therapy), 97112, 97140, and office visit code 99213. When a healthcare provider bills for one of the three highest level office visits, which includes CPT code 99213, and for physical medicine treatments, the Commission's rules require the healthcare provider to submit the

following: progress or SOAP[3] notes substantiating the care given, the need for further treatment and services, progress or improvement, the date of the next treatment and services, any complications, and an expected release date. 28 TEX. ADMIN. CODE § 133.1. In addition, billing under CPT code 99213 is not appropriate unless two of the following occurs: an expanded problem-focused history, an expanded focused examination, and medical decision making of low complexity. The medical notes document neither an expanded problem-focused history, nor an expanded focused examination. They are virtually the same for each visit. Moreover, the SOAP notes vary little from day to day and contain little or no discussion about what was needed for further treatment and provide no indication of progress, improvement, or any complications. Many just state under assessment "same." And as the IRO noted, Claimant's level of pain did not change; she exhibited the same pain level of five on December 12, 2003, as on November 24, 2003. Ex. 2 at 39, 55.

Furthermore, the ALJ is unpersuaded by Provider's argument that the January 8, 2004, date of MMI as found by Dr. Pilatovsky should carry more weight than Dr. Colyer's finding of MMI on May 19, 2003. Although Dr. Pilatovsky assigned Claimant a whole body impairment rating of 1%, that rating is not related to Claimant's complaints concerning her cervical and lumbar spine. Ex. 2 at 6.

The ALJ finds that Provider failed to meet its burden of proof. The disputed dates of service from November 17 through December 12, 2003, are inadequately documented to establish medical necessity. The ALJ finds, therefore, that the treatments provided Claimant were not medically necessary, and the ALJ denies reimbursement of the disputed claims.

[3] Subjective/objective assessment plan/procedure.

III. FINDINGS OF FACT

1. Claimant __sustained a compensable injury on___, when she stepped into a pothole and fell, injuring her cervical and thoracic spine and left shoulder.

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. Claimant was diagnosed with sprain of the back, thoracic region, and neck and was initially treated with medications from February 14 through May 19, 2003**.**

4. Claimant continued to work after the date of her injury.

5. Claimant was released from treatment on May 19, 2003, by her treating doctor and given a maximum medical improvement (MMI) impairment rating of 0%.

6. An MRI of the lumbar spine on June 19, 2003, revealed degenerative disc disease at the L3-L4 levels.

7. On September 12, 2003, Claimant sought treatment from Anthony Esquibel, D.C., with Tarrant County Chiropractic & Rehabilitation (Provider) for pain in her lower back radiating into her right hip and leg.

8. Provider treated Claimant with therapeutic exercises, manual therapy techniques, and neuromuscular re-education from September 12, 2003, to as late as February 11, 2004.

9. Carrier denied reimbursement for the treatments provided between November 17 and December 12, 2003.

10. Provider appealed to the Texas Workers' Compensation Commission (Commission), which referred the dispute to its designee, an independent review organization (IRO).

11. On January 21, 2005, the Commission's Medical Review Division (MRD) issued a decision based on the IRO's review, which found that the treatments were not medically necessary.

12. Provider timely appealed the MRD's decision on February 8, 2005.

13. On March 1, 2005, the Commission issued the notice of hearing, which stated the date, time, and location of the hearing, cited to the statutes and rules involved, and provided a short, plain statement of the factual matters involved.

14. Although Provider's representative stated that Provider billed Carrier under CPT Codes 99213, 97110, 97112, and 97140, no documentary evidence was presented showing the use of the codes.

15. Use of CPT code 99213 requires that two of the three occur during an office visit: an expanded problem-focused history, an expanded focused examination, and medical decision making of low complexity.

16. Provider introduced no medical records documenting that the office visits provided Claimant on the disputed dates of service included either an expanded problem-focused history or an expanded focused examination.

17. Provider's documentation and SOAP notes do not indicate what physical medicine treatments were provided, the expected release date, or any change of treatment plan when the existing plan was no longer effective.

18. Provider failed to prove that its office visits and treatments resulted in any significant or long-term improvement in Claimant's pain or function.

19. Provider failed to prove that its treatments helped Claimant return to work because Claimant had been working from the date of her injury.

20. The treatments provided to Claimant between November 17 and December 12, 2003, was not shown to be reasonably required by the nature of Claimant's injury.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over 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.

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

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

4. When a healthcare provider bills for an office visit using CPT code 99213 and for physical medicine treatment, the healthcare provider must submit progress or SOAP notes substantiating the care given and the need for further treatment and services, and indicating progress, improvement, the date of the next treatment and services, complications, and expected release date. 28 TEX. ADMIN. CODE §133.1.

5. Based upon the findings of fact, the Provider failed to prove that the treatments provided to Claimant that included office visits, therapeutic exercises, manual therapy techniques, and neuromuscular re-education from November 17 through December 12, 2003, were medically necessary health care under TEX. LAB. CODE ANN. §§ 401.011 and 408.021(a).

6. Based upon the findings of fact and conclusions of law, Provider's request for reimbursement should be denied.

ORDER

IT IS THEREFORE, ORDERED that Tarrant County Chiropractic & Rehabilitation's request for reimbursement from American Casualty Company of Reading, PA. for dates of service from November 17 through December 12, 2003, is denied.

SIGNED December 2, 2005.

KATHERINE L. SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS