

**SOAH DOCKET NO. 453-05-4486.M5
MDR NO. M5-05-1274-01**

SAN ANTONIO ACCIDENT/INJURY CARE	.	BEFORE THE STATE OFFICE
	.	
	.	
V.	.	OF
	.	
AMERICAN HOME ASSURANCE COMPANY	.	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

San Antonio Accident/Injury Care (Provider) has challenged a decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission)¹ in a dispute regarding the medical necessity of chiropractic services provided to an injured claimant between April 19 and July 2, 2004. The MRD's decision was based on the findings of an independent review organization (IRO), which concluded that American Home Assurance Company (Carrier) properly denied reimbursement for all of the services in dispute. Provider challenged the decision on the basis that the treatment at issue was, in fact, medically necessary within the meaning of " 408.021 and 401.011(19) of the Texas Workers Compensation Act, TEX. LABOR CODE ANN. ch. 401 *et seq.* The amount in controversy is \$6,636.48.

The Administrative Law Judge (ALJ) concludes that Carrier should pay for the services in dispute.

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.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

The hearing in this matter was convened October 6, 2005, at the State Office of Administrative Hearings with ALJ Carol S. Birch presiding. Provider was represented by William Maxwell, attorney. Carrier was represented by its attorney, Jeffrey Federspiel. After presentation of evidence and argument by the parties, the hearing was adjourned and the record closed the same day. The evidence on the issue of medical necessity consisted of medical records submitted by both parties, and the testimony of the claimant's treating doctor, Richard Alexander, D.C., and Carrier's expert witness, Michael Hamby, D.C.

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

II. DISCUSSION

1. Background Facts

Claimant, who worked as a night stocker, suffered a compensable injury to his left ankle on___, when a cart loaded with packaged drinks and weighing approximately 600 pounds rolled over his foot and onto his ankle. The claimant's injury was initially diagnosed as a sprain/strain by the company doctor. The claimant began chiropractic care with Provider in March 2004, who diagnosed a left ankle internal derangement, or crush injury, and initially treated the claimant with passive modalities for a short period of time. Provider referred the claimant to an orthopedic specialist who recommended that he continue with physical therapy.

Between April and July, 2004, Provider provided 25 sessions of chiropractic treatment to the claimant. The services included, generally, aquatic therapy, gait training, neuromuscular re-education, and therapeutic exercises and activities. During the same period of time, the claimant was also doing exercises at home prescribed by Provider. By the time Provider discontinued treatment in early July, the claimant had progressed from needing crutches to walking with a cane, and his pain levels had decreased from an eight to a two, on a scale from one to ten.

When Provider billed Carrier for the dates of service disputed in this proceeding, Carrier denied payment for all treatments and office visits on the basis that they were not medically necessary.

B. IRO Decision

Based on a review of certain medical records, the IRO chiropractor, found that “the amount, type and extent of treatment rendered was not justified for a simple sprain/strain,” concluding that none of the services provided on the disputed dates of service were medically necessary.

C. Applicable Law

Under Texas law, 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. TEX. LABOR CODE ' 408.021. The statute provides that the purposes for which health care is to be rendered to a claimant include any that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment.

The types of health care to which an employee is entitled are similarly broad, including Aall reasonable and necessary medical aid, medical examinations, medical treatments, medical diagnoses, medical evaluations, and medical services. TEX. LABOR CODE ' 401.11(19).

Although the law describes few limitations on a claimant's entitlement to care, the law places upon the treating physician an obligation to maintain efficient utilization of health care. TEX. LABOR CODE ' 408.025(c).

D. Burden of Proof

Under the Commission's rules, an IRO decision is deemed a Commission decision and order.² The burden of proof in this case is on Provider to prove by a preponderance of the evidence that the disputed services were reasonable and necessary medical treatments.³

E. Argument and Analysis

In support of its position, Provider argues that the disputed services were reasonable and medically necessary as follows:

The chiropractic care provided was intended to, and did, decrease the claimant's pain over time, while increasing range of motion.

As a result of the chiropractic care, the claimant was able walk using only a cane instead of crutches.

The care provided was done on the advice of one or more specialists, and Provider was entitled to rely on those recommendations.

Because the care incorporated weight-bearing and non-weight-bearing exercises as could be tolerated by the claimant, direct supervision was necessary.

The care progressed from aquatic therapy to land-based therapy as the claimant improved, and the care was not excessive.

² 28 TEX. ADMIN. CODE § 133.308(p)(5).

³ 28 TEX. ADMIN. CODE §§ 133.308(p)(5), 148.14(a).

Carrier argues that the treatment at issue was not medically necessary because:

The care exceeded the medical guidelines for treating a sprain/strain.

The claimant's condition did not improve under this care.

If it was a crush injury, treatment other than chiropractic care, *e.g.*, surgery, would have been warranted.

The real problem in this case seems to be that the parties are addressing different injuries. The IRO reviewer and Dr. Hamby both addressed the issue as if Provider had been treating a sprain/strain, even though there is ample evidence in the record that the claimant's injury was much more serious, as diagnosed by Dr. Alexander. The diagnostic tests support Provider's diagnosis, and the orthopedic specialist who actually examined the claimant also agreed.

The IRO decision initially appears to be based on a thorough review of the record, but upon closer inspection, it is clearly based on unsupportable assumptions and incorrect facts. For example, the reviewer spent a great deal of time discussing how a prior injury sustained by the claimant was a contributing factor in this case, when in fact, that injury was to the claimant's other leg and totally irrelevant. For this reason, the ALJ has accorded the IRO decision little weight.

In addition, Dr. Hamby's testimony consisted largely of opinions without much explanation. He testified at length regarding the appropriate treatment protocols for a sprain/strain injury, which in the ALJ's opinion, have no bearing in this case. He also opined that the disputed treatment was not reasonable or necessary because the claimant did not improve, a conclusion clearly not supported by the record. Dr. Hamby also testified that if the claimant actually sustained a crush injury, surgery would have been warranted, and chiropractic care useless. Given the fact that Carrier has refused to authorize surgery for over a year, the ALJ finds that argument troublesome.

Provider bears the burden of proving that the factual basis or analytical rationale for the IRO's decision in this case was invalid. In the ALJ's view, it has met that burden. Because

Dr. Alexander's testimony, which was supported by the record, was more persuasive than that of Dr. Hamby, Provider has demonstrated by a preponderance of the evidence that the prior decisions of the IRO and MRD in this case should be overturned.

Based on the evidence in this case as discussed above, and as set forth in the findings of fact, the ALJ concludes Provider met its burden of proof to show that chiropractic care was reasonable and necessary for the disputed dates of service to treat the claimant's injuries. Although all of the evidence presented was not discussed in this decision, it was considered. The findings of fact and conclusions of law are based on all of the evidence in the record.

III. FINDINGS OF FACT

1. An injured worker, the claimant, suffered compensable injuries to his left ankle on____, when a heavily-loaded cart rolled over the ankle.
2. At the time of the claimant's injury, his employer had workers' compensation insurance with American Home Assurance Company (Carrier).
3. The claimant began treatment with Richard Alexander, D.C., and San Antonio Accident/Injury Care (Provider) in March 2004.
4. The claimant was diagnosed with a crush injury to his talus, or ankle bone.
5. Beginning in April 2004, and in accordance with recommendations from an orthopedic specialist, Provider provided 25 sessions of chiropractic treatment to the claimant, which generally consisted of some combination of active and passive modalities including aquatic therapy, neuromuscular re-education, gait training, and therapeutic exercises and activities.
6. Carrier denied the requested reimbursement for all of those 25 dates of service.
7. Provider made a timely request to the Texas Workers' Compensation Commission (the Commission) for medical dispute resolution with respect to the services in dispute.
8. The Commission referred the dispute to an independent review organization (IRO), which concluded that the services in dispute were not medically necessary.
9. The Commission's Medical Review Division (MRD) reviewed and concurred with the IRO's decision.

10. Provider timely requested 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 setting to the parties on March 10, 2005.
12. A hearing in this matter was convened on October 6, 2005, at the William P. Clements Building, 300 W. 15th St., Austin, Texas, before Carol S. Birch, an Administrative Law Judge with SOAH. Provider and Carrier were represented and participated in the hearing.
13. The amount in dispute is \$6,636.48.
14. The services at issue were not excessive.
15. The services at issue cured or relieved the effects naturally resulting from the claimant's injury, and promoted his recovery.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (the Act), TEX. LABOR CODE ANN. §413.031.
2. 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 the Commission's rules, 28 TEX. ADMINISTRATIVE CODE (TAC) § 133.305(g) and §§ 148.001-148.028.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
5. Provider, as the party seeking relief, bore the burden of proof in this case, pursuant to 28 TAC § 148.14(a).
6. Provider met its burden of proving the treatment was medically necessary and that it should be reimbursed for the services in dispute.
7. Pursuant to TEX. LABOR CODE ANN §413.031, Carrier should reimburse Provider \$6,636.48.

ORDER

IT IS THEREFORE, ORDERED that American Home Assurance Company shall reimburse San Antonio Accident/Injury Care \$6,636.48, plus interest, for the services in dispute in this proceeding.

SIGNED on December 5, 2005

**CAROL S. BIRCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**