SOAH DOCKET NO. 453-05-4541.M5
TWCC MR NO. M5-05-0985-01

SOUTH COAST SPINE AND REHABILITATION, P.A., Petitioner	§	**BEFORE THE STATE OFFICE**
V.	§	**OF**
BROWNSVILLE ISD, Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

South Coast Spine and Rehabilitation, P.A. (Petitioner), appealed the decision of the Texas Workers' Compensation Commission's (Commission) Medical Review Division (MRD) based in part on the decision of its designee, an independent review organization (IRO). Petitioner appealed the portions of the decision that upheld Brownsville ISD's (Carrier) denial or otherwise denied reimbursement for services provided a workers' compensation claimant (Claimant). All disputed services were denied on the basis that such services were either not medically necessary healthcare or were not sufficiently documented.

This decision agrees with the MRD's decision to deny reimbursement for services it deemed not medically necessary, but finds the services denied on documentation grounds were sufficiently documented and should, therefore, be reimbursed by Carrier with the exception of $23.00 billed on April 19, 2004, under CPT Code 99080, which should not be reimbursed.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

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.

The hearing in this matter convened February 1, 2006, and continued on March 14, 2006, at the State Office of Administrative Hearings, 300 W. 15th Street, Austin, Texas, with Administrative Law Judge (ALJ) Ami L. Larson presiding. Petitioner was represented by Attorney Keith Gilbert. Attorney Dean Pappas represented Carrier. Commission Staff did not participate in the hearing.

The record was held open until April 12, 2006, to allow the parties to submit written closing arguments.

II. DISCUSSION

A. Background Facts

On___, Claimant sustained an injury to his right shoulder that was compensable under the Texas Workers' Compensation Act. At the time of the compensable injury, Claimant's employer had workers' compensation insurance coverage with Carrier.

On ___, three days after his workplace injury occurred, Claimant was evaluated by Robert Howell, D.C.,[1] who noted Claimant's status as a 57-year old obese male who suffered from hypertension and diabetes. Dr. Howell diagnosed Claimant with a suspected torn rotator cuff and placed him off work due to severe right shoulder pain. Dr. Howell recommended that Claimant undergo physical therapy and also referred him to Donald Kramer, M.D., a pain management specialist, and to Jorge Tjimes, M.D., an orthopedic surgeon.

On ___, an MRI of Claimant's right shoulder confirmed a torn rotator cuff tendon and also revealed the presence of fluid in the subacrominal-subdeltoid bursa with spur formation of the AC joint impinging on the supraspinatus muscle tendon junction near the rotator cuff.[2]

On April 6, 2004, Claimant was evaluated by Dr. Tjimes, who recommended surgery.[3] On May 7, 2004, Dr. Tjimes performed surgery on Claimant's right shoulder.[4]

From the time of his injury until August 4, 2004, Claimant consulted with Dr. Howell regularly for various active and passive physical therapies including electrical stimulation,[5]ultrasound,[6] massage,[7] aquatic therapy,[8] and other therapeutic exercises.[9]

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[1] Dr. Howell is an owner of the clinic referred to herein as Petitioner.

[2] Petitioner's Exhibit 1, page 520.

[3] It is unclear why Claimant did not see Dr. Tjimes until two months after he was referred by Dr. Howell.

[4] Petitioner's Exhibit 1, pages 572 and 573.

[5] CPT Code 97032.

[6] CPT Code 97035.

Carrier denied payment for a variety of services and office visits provided by Petitioner to Claimant and the matter was referred to MRD for resolution. Petitioner timely appealed the IRO findings and MRD decision. Carrier did not cross appeal the MRD's award of reimbursement.

The dates of disputed services at issue in this case are March 22 through August 4, 2004.

B. Legal Standards

Petitioner has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE (TAC) §§148.21(h) and (i); 1 TAC § 155.41. Pursuant to the Act, 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). Health care includes all reasonable and necessary medical services including a medical appliance or supply. TEX. LAB. CODE ANN. § 401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. § 401.011(31).

Treatment is shown to be effective if documentation establishes a link between the patient's improvement and the treatment. See, 28 TAC §§ 133.1(a)(E)(i) and 133.105(b)(6). The Act requires services be appropriately billed and provide the effective medical cost control required by TEX. LAB. CODE ANN. § 413.011(d).

C. Evidence Presented

In addition to voluminous documents, Petitioner presented Dr. Howell's testimony. Respondent offered an exhibit and presented the testimony of Timothy John Fahey, D.C.

III. ANALYSIS

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[7] CPT Code 97124.

[8] CPT Code 97113.

[9] CPT Code 97110.

A. Medical Necessity of Pre-Surgery One-On-One Therapeutic Exercises - CPT Code 97110

Dr. Howell testified that the purpose of providing pre-surgery therapy to Claimant was to try to prevent the need for surgery and medication if possible. On April 6, 2004, however, Claimant was evaluated by Dr. Tjimes, who recommended that he undergo surgery. By that time, Claimant already had approximately 25 sessions of one-on-one physical therapy and was not showing substantial progress. Apparently, the therapy was not productive enough to avoid the need for surgery.

Dr. Howell further testified that, even after Claimant had been deemed a surgical candidate by Dr. Tjimes, it was his duty to continue therapy in order to ensure that Claimant would be as strong as possible and prepared for surgery. He further testified that Claimant required one-on-one supervision during therapy because of his obesity, hypertension, and diabetes.

Dr. Howell noted in his April 6, 2006 evaluation that Claimant had seen Dr. Tjimes that day. Dr. Howell's notes further indicate that Claimant reported Dr. Tjimes had recommended that he undergo surgery and also continue in therapy to increase his right shoulder range of motion before surgery.[10]

There is no prescription or other written indication in the record from Dr. Tjimes to demonstrate whether he was aware of the therapy Claimant had already undergone or to substantiate Dr. Tjimes's recommendation for continued therapy before surgery. Additionally, there is no indication that Dr. Howell ever spoke to Dr. Tjimes to confirm Claimant's report that more therapy had been recommended.

Because Dr. Tjimes was in the best position to judge what Claimant's medical needs were as of April 6, 2004, his opinion is entitled to substantial weight. However, without any evidence from

Dr. Tjimes himself about his recommendation, there is insufficient evidence to support Claimant's need for the additional clinically-based one-on-one exercises Petitioner provided.

[10] Petitioner's Exhibit 1, page 223.

Claimant had already undergone extensive similar, if not identical therapy prior to April 6, 2004. Notwithstanding some documented progress in his strength, Claimant did not show substantial progress in other areas such as range of motion or pain. Petitioner failed to carry its burden of proof to establish that the one-on-one services provided on April 12, 14, 15, and 19, 2004, were medically necessary to treat Claimant's compensable injury. Carrier should not, therefore, reimburse Petitioner for those services.

B. Medical Necessity of Post-Surgery Disputed Services

1. Aquatic Therapy - CPT Code 97113

Following Claimant's surgery, Petitioner provided one-on-one aquatic therapy beginning on June 11, 2004.[11] This dispute involves two of the four units of aquatic therapy billed during each of the nine sessions provided between June 11 and July 8, 2004.

According to Petitioner's notes, each aquatic therapy session consisted of a warm-up phase that included five minutes of underwater bicycling followed by ten minutes of underwater running, five minutes of which utilized ankle weights. After the warm-up phase, Claimant engaged in the cardiovascular phase consisting of three seven-minute intervals of running forward, sideways, and backward in chest-deep water. Only approximately 24 minutes out of every hour of aquatic therapy billed were devoted to exercises specifically tailored to work Claimant's right shoulder.

Dr. Howell testified that the warm-up and cardiovascular phases of any exercise program are crucial, required, and, therefore, medically necessary. He further stated that all of the aquatic warm-up and cardiovascular exercises provided to Claimant engaged his right shoulder and helped facilitate the healing process.

Dr. Fahey testified that aquatic therapy is useful for ankle, knee, and lower back injuries to reduce strain on weight-bearing joints, but since the shoulder is not a weight-bearing joint, less

[11] Petitioner's ledger of billed services during the dates in dispute does not reflect that aquatic therapy was billed on June 11, 2004, but Dr. Howell's notes indicated that aquatic therapy was provided on that date. Petitioner's Exhibit 1, pages 1-3, 324-328. The only issue before the ALJ is the medical necessity of the aquatic therapy provided.

intensive land-based therapies would have been equally effective and more cost-efficient treatment for Claimant.

Although Dr. Howell explained the benefits of aqua therapy for Claimant, Petitioner failed to satisfy its burden to show that two of the four units of each aqua therapy session could not have been equally effectively and less expensively accomplished on land. Therefore Respondent should not reimburse Petitioner for two units of each aqua therapy session provided from June 11 through July 8, 2004.

2. Office Visits - CPT Code 99213

Petitioner billed Carrier for office visits that occurred on days during which Claimant was also seen by Petitioner for one-on-one therapy. The MRD awarded reimbursement for one office visit per week. Nine additional office visits remain in dispute.

Dr. Howell testified that the purpose of these office visits was to review subjective findings, identify problems, and determine appropriate responses. Dr. Howell further stated that a doctor must make this assessment since there are different types of pain. He stated that all of the office visits billed were medically necessary to treat Claimant's injury.

Dr. Fahey testified that since no remarkable changes in his condition in the form of deterioration or exacerbation were evident during the course of Claimant's therapy, one office visit per month should have been sufficient.

The ALJ finds the disputed office visits were not medically necessary. The evidence shows that on the same date as each disputed office visit, Claimant engaged in one-on-one therapy, each session of which was directly supervised by Dr. Howell, another doctor, or one of his trained

assistants. There is no indication that Dr. Howell could not have adequately evaluated or been made sufficiently aware of Claimant's progress and condition during the supervised therapy sessions without the need for an additional separately-billed office visit.

Petitioner failed to establish that any of the disputed office visits were medically necessary. Therefore, Carrier should not reimburse Petitioner for the office visits that took place on June 11, 14, 17, 21, 24, 28, 30, and July 6, and 8, 2004.

3. Sufficiency of Documentation

1. One-On-One Therapeutic Exercises - **CPT Code 97110**

No Explanation of Benefits (EOB) forms were submitted to the MRD by either party with respect to one-on-one therapeutic exercises for 15 dates of service that occurred both pre- and post-surgery.[12] The MRD found that Petitioner requested, but did not receive EOBs from Carrier. The MRD did not recommend reimbursement for these services, however, based on its assertion that Petitioner's documentation was insufficient to show that the individual services were provided as billed.

Petitioner's evidence includes detailed records regarding the disputed services performed on each date at issue.[13] These documents describe specifically all exercises performed by Claimant on each date, as well as who was present, and for how long Claimant performed each exercise. The documentation submitted adequately supports Petitioner's claim that the services were provided as billed. The medically necessity of the services is not at issue in this case.[14]

2. Special Reports - 99080

[12] March 22, 24, 25, 29, 31; April 1, 8, 9; July 21, 22, 26, 28, 29; and August 2, and 4, 2004.

[13] Petitioner's Exhibit 1, pages 244-475.

[14] The MRD Decision noted "deficiencies in the adequacy of the documentation . . . both with respect to the medical necessity of one-on-one therapy and documentation reflecting that these individual services were provided as billed." Because no EOBs were provided, however, there is no evidence that Carrier ever denied payment for these services based on a lack of medical necessity. Since Carrier did not properly raise the issue of medical necessity, it was not addressed by the IRO and cannot be addressed by the MRD or ALJ.

Carrier denied payment, based on insufficient documentation, for what appears to be copying fees from April 19, 2004, billed under CPT Code 99080. The MRD found Petitioner's documentation in support of these services to be insufficient and, therefore, declined to recommend reimbursement.

Neither party addressed this issue during the hearing or in closing argument. The ALJ is unable to find any documentation in the record to support the billed service and, therefore, finds Petitioner failed to meet its burden of proof and should not be reimbursed.

3. Supplies and Materials - 99070

Neither party submitted an EOB for this claim, which relates to a home-exercise kit prescribed to Claimant on April 23, 2004. The MRD stated, as its basis for refusing to recommend reimbursement, that "the requestor did not submit a copy of the services billed."[15]

There is a discrepancy in the record as to whether Dr. Howell merely ordered the exercise kit on April 23, 2004, or actually gave it to Claimant on that date.[16] Dr. Howell testified, however, that he gave Claimant a home exercise kit. Additionally, Petitioner's requests for reconsideration substantiate that this item was billed for April 23, 2004. Therefore, the ALJ finds that Petitioner met its burden of proof and should be reimbursed $75.00 for the home exercise kit.

IV. FINDINGS OF FACT

1. On___, Claimant sustained an injury to his right shoulder that was compensable under the Texas Workers' Compensation Act (Act).

2. At the time of the compensable injury, Claimant's employer, Brownsville ISD (Carrier), provided workers' compensation insurance coverage through a self-insurance program.

[15] Petitioner's Exhibit 1, page 589.

[16] Petitioner's Exhibit 1, pages 229 - 231.

3. On ___, Claimant was evaluated by Robert Howell, D.C.

4. Dr. Howell is an owner of South Coast Spine and Rehabilitation, P.A. (Petitioner).

5. Dr. Howell suspected that Claimant had a torn rotator cuff and placed him off work due to severe pain in his right shoulder.

6. Dr. Howell recommended Claimant undergo physical therapy and also referred Claimant to Donald Kramer, M.D., a pain management specialist, and to Jorge Tjimes, M.D., an orthopedic surgeon.

7. On___, an MRI of Claimant's right shoulder confirmed a torn rotator cuff tendon and also revealed the presence of fluid in the subacrominal-subdeltoid bursa with spur formation of the AC joint impinging on the supraspinatus muscle tendon junction near the rotator cuff.

8. On April 6, 2004, Claimant was evaluated by Dr. Tjimes, who recommended surgery.

9. After his visit with Dr. Tjimes, Claimant also consulted with Dr. Howell on April 6, 2004.

10. Claimant reported to Dr. Howell that Dr. Tjimes recommended Claimant continue in therapy to improve the range of motion in his shoulder prior to surgery.

11. Dr. Howell did not confirm Claimant's report with Dr. Tjimes nor is there any evidence from Dr. Tjimes regarding his recommendation for continued therapy after April 6, 2004, and before surgery.

12. On May 7, 2004, Dr. Tjimes performed surgery on Claimant's right shoulder.

13. Claimant saw Dr. Howell regularly for various active and passive physical therapies including electrical stimulation, ultrasound, massage, aquatic therapy, and other therapeutic exercises from the time of his injury until August 4, 2004.

14. Following Claimant's surgery, Dr. Howell provided nine sessions of one-on-one aquatic therapy from June 11 through July 8, 2004.

15. Each aquatic therapy session consisted of a warm-up phase that included five minutes of underwater bicycling and ten minutes of underwater running, five minutes of which utilized ankle weights.

16. After the warm-up phase, each aquatic therapy session included a cardiovascular phase that consisted of three seven-minute intervals of running forward, sideways, and backward in chest-deep water.

17. Only approximately 24 minutes out of every hour of aquatic therapy billed were devoted to exercises specifically tailored to work Claimant's right shoulder.

18. Two units of each aqua therapy session provided from June 11 through July 8, 2004, could have been equally effectively and less expensively accomplished on land.

19. Petitioner billed Carrier for nine office visits that occurred on days during which Claimant was also seen by Petitioner for one-on-one therapy.

20. Dr. Howell could have sufficiently evaluated Claimant's progress and condition during the one-on-one therapy sessions without requiring the additional disputed office visits.

21. Petitioner's detailed records adequately document all exercises performed by Claimant on each disputed date of service as well as who was present and for how long Claimant performed each exercise on each date.

22. Petitioner failed to sufficiently document copying fees billed under CPT Code 99080 for April 19, 2004.

23. Dr. Howell provided and billed for Claimant's home exercise kit on April 23, 2004.

24. Carrier declined reimbursement for numerous services provided to Claimant between March 22 and August 4, 2004.

25. Petitioner filed a request for dispute resolution with the Commission that was addressed by the Commission's Medical Review Division (MRD).

26. The MRD referred a portion of the dispute to an Independent Review Organization (IRO), which determined the issues of medical necessity. The MRD issued a decision based in part on the IRO's findings.

27. The MRD also addressed issues regarding the sufficiency of Petitioner's documentation to support the services provided during the disputed dates.

28. Petitioner timely appealed the IRO and the MRD decisions.

29. Pursuant to notice of hearing sent by Commission Staff, all parties appeared or were represented at the hearing held April 19, 2006.

V. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (Act), TEX. LAB. CODE ANN. § 413.031.

2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(d) 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. ADMIN. CODE (TAC) §§133.305 and 133.308.

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

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

6. The IRO had authority to review the parties' positions and issue a decision pursuant to the Commission's rules at 28 TAC §§ 133.305 and 133.308.

7. Pursuant to the Act, 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).

8. Health care includes all reasonable and necessary medical services, including a medical appliance or supply. TEX. LAB. CODE ANN. §401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. § 401.011(31).

9. Petitioner failed to establish that the disputed services were appropriately billed and provided in a way that constituted the effective medical cost control required by TEX. LAB. CODE ANN. § 413.011(d).

10. Petitioner is not entitled to reimbursement for the disputed office visits billed in conjunction with one-on-one therapeutic sessions that were supervised by Dr. Howell because those office visits were not shown to be medically necessary healthcare.

11. Petitioner's therapeutic services to Claimant from April 12 through 19, 2004, were not shown to be medically necessary healthcare.

12. Petitioner is not entitled to reimbursement from Carrier for the disputed services rendered to Claimant from April 12 through 19, 2004.

13. Petitioner is not entitled to reimbursement for two units of each aquatic therapy session provided to Claimant from June 11 through July 8, 2004, because they were not shown to

be medically necessary healthcare.

14. Petitioner is not entitled to reimbursement for April 19, 2004 copying fees billed under CPT Code 99080 because it did not provide documentation adequate to support the claim.

15. Petitioner is entitled to reimbursement for the home exercise kit given to Claimant on April 23, 2004, because it provided sufficient documentation to support its claim.

ORDER

Accordingly, **it is ORDERED** that:

- South Coast Spine and Rehabilitation, P.A.(Petitioner), is not entitled to reimbursement from Brownsville ISD (Carrier) for the one-on-one therapeutic exercises billed under CPT Code 97110 and provided to Claimant from April 12 through 19, 2004;
- Petitioner is not entitled to reimbursement from Carrier for two of the four units of aquatic therapy billed under CPT Code 97113 and provided from June 11 through July 8, 2004;
- Petitioner is not entitled to reimbursement from Carrier for office visits billed under CPT Code 99213 and provided on June 11, 14, 17, 21, 24, 28, 30 and July 6 and 8, 2004; and
- Petitioner is not entitled to reimbursement from Carrier for the services billed under CPT Code 99080 for April 19, 2004.

It is FURTHER ORDERED that Carrier should reimburse Petitioner for one-on-one therapeutic exercises billed under CPT Code 97110 and provided from March 22 through April 9, and from July 21 through August 4, 2004 and for the home exercise kit billed under 99070 and provided on April 23, 2004.

SIGNED June 12, 2006.

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AMI L. LARSON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS