DOCKET NO. 453-05-6431.M5
TWCC MRD NO. M5-05-1561-01

PATRICK R. E. DAVIS, D.C., Petitioner	**§**	**BEFORE THE STATE OFFICE**
	§	
V.	**§**	
	§	**OF**
CAMDEN FIRE INSURANCE	**§**	
ASSOCIATION, Respondent	**§**	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Patrick R. E. Davis, D.C., (Provider) appealed the decision of the Texas Workers' Compensation Commission (Commission)[1] designee, an Independent Review Organization (IRO), which denied reimbursement for chiropractic manipulations, therapeutic exercises, manual therapy techniques, therapeutic activities, supplies/materials, neuromuscular re-education, ultrasound, neuromuscular stimulator, and durable medical equipment (collectively, chiropractic care) provided to Claimant ___(Claimant) from January 27, 2004, through February 15, 2004. The Administrative Law Judge (ALJ) finds that the chiropractic care was not medically necessary. Accordingly, Camden Fire Insurance Association (Carrier) is not required to reimburse Provider for the chiropractic care provided from January 27, 2004, through February 15, 2004.

In addition, the Commission Medical Review Division (MRD) determined that the medical necessity fees were not the only fees involved in the medical dispute. Regarding CPT Codes 98940, 97710, 97112, 97530, 99070, 97035, 99215, 97140, and HCPCs Codes E0745 and E1399 from February 17, 2004, through February 20, 2004, neither Carrier nor Provider provided an explanation of benefits (EOBs). According to the MRD, Provider did not provide convincing evidence of Carrier's receipt of EOBs pursuant to 28 TEX. ADMIN. CODE 133.307(e)(2)(B). Furthermore, Provider did not challenge the MRD's fee dispute findings at the hearing. Because Provider did not provide EOBs pursuant to 28 TEX. ADMIN. CODE 133.307(e)(2)(A), no reimbursement is recommended for the chiropractic care from February 17, 2004, through February 20, 2004.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On February 7, 2006, ALJ Michael J. O'Malley convened the hearing on the merits at the William P. Clements Building, 300 West 15th Street, Austin, Texas, and closed the record that day. Provider appeared and represented himself. Carrier appeared and was represented by attorney

[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.

Tommy L. Smith. There were no contested issues regarding notice or jurisdiction; therefore, those issues are presented in the findings of fact and conclusions of law.

II. BACKGROUND, EVIDENCE, AND DISCUSSION

1. Background

On____, Claimant sustained a work-related compensable lumbar injury with S1 radiculopathy on the right. Claimant participated in physical therapy and returned to work. While participating in prescribed work duties, Claimant allegedly exacerbated his lumbosacral symptoms. To treat his symptoms, Claimant received lumbar epidural steroid injections (ESIs) performed by Charles E. Willis, M.D. Dr. Willis prescribed 15 sessions of post-injection therapy, which Provider performed.

B. Legal Standards

Provider has the burden of proof in this proceeding. 28 TEX. ADMIN CODE §148.14(a). 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. LABOR CODE ANN. § 408.021(a).

C. Parties' Positions and Evidence

1. Provider's Position and Evidence

Provider generally stated that the post-injection therapy was medically necessary because it increased the effectiveness of the ESIs. Provider also testified that because the ESIs were preauthorized and found to be medically necessary, the treatment following the injections should also be considered medically necessary. Provider emphasized that he only treated Claimant periodically and did not treat him consistently for three and half years. He believed the treatment he

provided was medically necessary given the resurgence of Claimant's symptoms and the need to treat his condition. Provider opined that it is standard practice to provide therapy following a preauthorized ESI. Additionally, Provider maintained that he performed the therapy in accordance with the prescription of Dr. Willis. Finally, Provider testified that Claimant completed his 15 sessions of post-injection therapy, and Claimant presented with subjective and objective improvements, including increased range of motion and strengthened muscles in the lumbar region.

2. Carrier's Position and Evidence

Ronald A. Buczek, D.C., D.O., testified on behalf of Carrier. Dr. Buczek testified that it was not medically necessary to perform chiropractic care on Claimant following the ESIS. He stated Claimant had received an enormous amount of chiropractic care over a three-year period, and he still remained symptomatic. Thus, he concluded that Claimant had not responded to the extended chiropractic care. Dr. Buczek also emphasized that the evidence-based medical guidelines do not allow for the extended treatment received by Claimant for his injury.[2] He further testified that within hours after the steroid injection the body absorbs (breaks down) the steroid through the liver or kidneys; therefore, the post-injection therapy would not enhance the effect of the steroid.

D. ALJ's Analysis

Claimant has a chronic low back pain, lumbar disc displacement, and radiculopathy. Since Claimant's injury, he has received extensive chiropractic care. The evidence indicates that Claimant participated in approximately 100 sessions of physical therapy. The ALJ finds that the post-injection therapy was not medically necessary for the following reasons.

Claimant's injury occurred on____. By late January 2004, Claimant's condition had become chronic. Because Claimant's condition had become chronic, further chiropractic care, such

[2] Dr. Buczek estimated that Claimant had participated in approximately 100 sessions of chiropractic care since Claimant's injury in August 2000.

as chiropractic manipulations, therapeutic exercises, manual therapy techniques, therapeutic activities, neuromuscular re-education, ultrasound, and neuromuscular stimulator, would not have been medically necessary even as part of post-injection therapy. Although the ESIS had been preauthorized for Claimant, the post-injection therapy seemed excessive given the amount of prior chiropractic care and the age of the injury.[3] In addition, long-term treatment with passive modalities would not be beneficial. Because Claimant's condition had become chronic, other treatment options should have been considered for Claimant.

Although Dr. Davis indicated that Claimant had exacerbated his injury after he had returned to work, he failed to provide the date this occurred or any details on how Claimant exacerbated his injury. Dr. Davis did not show that the resurgence of Claimant's injury justified the additional chiropractic care.

On the evidentiary record presented in this case, the ALJ concludes that Provider failed to carry his burden of proving that the post-injection chiropractic care he provided to Claimant from January 27, 2004, through February 15, 2004, was medically necessary.

III. FINDINGS OF FACT

1. On___, ___(Claimant) sustained a compensable lumbar injury.
2. Patrick R. E. Davis, D.C., (Provider) became Claimant's treating doctor, providing chiropractic care to Claimant for his compensable injury.
3. Provider treated Claimant periodically for three and half years for his injury.
4. Provider diagnosed Claimant with a lumbar injury with S1 radiculopathy to the right.
5. Prior to January 19, 2004, Claimant received approximately 100 treatments of conservative care, including physical therapy/chiropractic care and a work-hardening program.
6. To further treat Claimant's lumbar injury, he received epidural steroid injections (ESIs) .

[3] The evidence-based guidelines, discussed by Dr. Buczek and the IRO, do not support this amount of chiropractic care. After the initial treatment in late 2000, Claimant still remained symptomatic, and his symptoms persisted for three more years although he continued to receive chiropractic treatment.

7. Following the ESIS, from January 27, 2004, through February 15, 2004, Provider treated Claimant with chiropractic manipulations, therapeutic exercises, manual therapy techniques, therapeutic activities, neuromuscular re-education, ultrasound, and neuromuscular stimulator (collectively, chiropractic care).

8. From February 17, 2004, through February 20, 2004, Provider also treated Claimant under the following codes: CPT Codes 98940, 97710, 97112, 97530, 99070, 97035, 99215, 97140, and HCPCs Codes E0745 and E1399.

9. Provider failed to adequately document the exacerbation of Claimant's injury.

10. By January 2004 (three and half years post injury), Claimant's condition had become chronic, and any further treatment of Claimant with conservative treatment and passive modalities was not medically necessary.

11. Camden Fire Insurance Association denied payment for the chiropractic care provided to Claimant from January 27, 2004, through February 20, 2004.

12. On April 1, 2005, an Independent Review Organization (IRO) denied reimbursement to Provider for the chiropractic care provided to Claimant from January 27, 2004, through February 15, 2004, based on lack of medical necessity.

13. On April 7, 2005, the Texas Workers' Compensation Commission (Commission) Medical Review Division (MRD) denied reimbursement for the chiropractic care provided from February 17, 2004, through February 20, 2004, based on Provider's failure to submit explanation of benefits.

14. On April 22, 2005, Provider appealed the decision of the IRO and MRD.

15. On May 12, 2005, the Commission sent notice of the hearing to the parties. The hearing notice informed the parties of the matters to be determined, the right to appear and be represented, the time and place of the hearing, and the statutes and rules involved.

16. On February 7, 2006, Administrative Law Judge Michael J. O'Malley convened the hearing on the merits at the William P. Clements Building, 300 West 15th Street, Austin, Texas. Provider appeared and represented himself. Carrier appeared and was represented by attorney Tommy L. Smith. The record closed on February 7, 2006.

IV. CONCLUSIONS OF LAW

1. 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 TEX. LAB. CODE ANN. §§ 402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.

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

3. Provider timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE 148.3.

4. 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).

5. Pursuant to 28 TEX. ADMIN. CODE § 148.14(a), Provider has the burden of proving by a preponderance of the evidence that the chiropractic care provided to Claimant was medically necessary.

6. Provider did not prove by a preponderance of the evidence that the chiropractic manipulations, therapeutic exercises, manual therapy techniques, therapeutic activities, supplies/materials, neuromuscular re-education, ultrasound, neuromuscular stimulator, and durable medical equipment provided to Claimant from January 27, 2004, through February 15, 2004, following the ESIs, were medically necessary to treat Claimant.

7. Provider should not be reimbursed for the chiropractic manipulations, therapeutic exercises, manual therapy techniques, therapeutic activities, supplies/materials, neuromuscular re-education, ultrasound, neuromuscular stimulator, and durable medical equipment provided from January 27, 2004, through February 15, 2004.

8. Because Provider did not provide explanation of benefits pursuant to 28 TEX. ADMIN. CODE 133.307(e)(2)(A), no reimbursement is recommended for the chiropractic care from February 17, 2004, through February 20, 2004, for the following: CPT Codes 98940, 97710, 97112, 97530, 99070, 97035, 99215, 97140, and HCPCs Codes E0745 and E1399.

ORDER

IT IS HEREBY ORDERED that Camden Fire Insurance Association is not required to reimburse Patrick R. E. Davis, D.C., for chiropractic manipulations, therapeutic exercises, manual therapy techniques, therapeutic activities, supplies/materials, neuromuscular re-education, ultrasound, neuromuscular stimulator, and durable medical equipment provided to Claimant. from January 27, 2003, through February 15, 2004, or CPT Codes 98940, 97710, 97112, 97530, 99070, 97035, 99215, 97140, and HCPCs Codes E0745 and E1399 from February 17, 2004, through February 20, 2004.

SIGNED March 28, 2006.

MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARING