SOAH DOCKET NO. 453-05-7235.M5
TWCC MR NO. M5-05-1492-01

CHRIS G. DALRYMPLE, D.C.	**§**	**BEFORE THE STATE OFFICE**
Petitioner	**§**	
	§	
V.	**§**	**OF**
	§	
INSURANCE COMPANY OF THE	**§**	
STATE OF PA,	**§**	**ADMINISTRATIVE HEARINGS**
Respondent		

DECISION AND ORDER

Petitioner, Chris G. Dalrymple, D.C. (Provider), challenged the Findings and Decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission, now the Texas Department of Insurance, Division of Workers' Compensation, denying reimbursement from Insurance Company of the State of PA (Carrier) for medical services provided to an injured worker (Claimant). Provider disputes the conclusion of the Independent Review Organization (IRO) that these services were not medically necessary. The Administrative Law Judge (ALJ) concludes that Provider has not met its burden of proof with respect to all services in dispute provided to Claimant between May 12 and September 26, 2004. Thus, Provider should not be reimbursed.

I. PROCEDURAL HISTORY

ALJ Penny Wilkov convened a hearing in this case on September 13, 2006, at the hearing facilities of the State Office of Administrative Hearings (SOAH), Austin, Texas. After the parties were afforded an opportunity to submit written objections to late-filed evidence, the record closed on September 15, 2006, with all exhibits admitted without condition. Attorney William Maxwell represented Provider. Attorney Steven M. Tipton represented Carrier. No party contested notice or jurisdiction.

II. DISCUSSION

1. Introduction

Claimant injured his lower back on__, while employed at a window company, after repetitively lifting 40-pound pieces of glass. Claimant was diagnosed with right far lateral disc herniation at L3-4 causing foraminal stenosis on L3, on the right side.[1] Claimant describes symptoms of persistent low back pain radiating to both legs.[2]

Claimant was initially treated by Kelly W. Lobb, M.D., who prescribed medications and physical therapy.[3] Then, beginning on February 23 and continuing until April, 2004, Claimant underwent an extensive course of chiropractic treatment, including active and passive therapies, with John R. Wyatt, D.C.[4] Claimant also consulted with Randall Light, M.D., a neurologist, on March 23, 2004, who prescribed pain medication and noted that Claimant "needs to have further medical evaluation for an underlying cause of this problem."[5] Claimant was likewise treated by orthopedic specialist, Kenneth G. Berliner, M.D., who, based on an MRI, recommended a series of nerve root blocks with concomitant physical therapy.[6] On April 14, 2004, Claimant switched treating chiropractors from Dr. Wyatt to Provider.

The current controversy arises out of a May 17, 2004, peer review conducted by Christine Huynh, M.D., completed at Carrier's request.[7] After a review of the medical records, Dr. Huynh concluded that the three months of chiropractic treatment Claimant received from Dr. Wyatt and

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[1] Petitioner's Exh. 1, page 396 (Kenneth Berliner, M.D., March 22, 2004).

[2] Petitioner's Exh. 1, page 180.

[3] Petitioner's Exh. 1, pages 149.

[4] Petitioner's Exh. 1, page 179-193.

[5] Petitioner's Exh. 1, page 38.

[6] Petitioner's Exh. 1, page 270-272.

[7] Petitioner's Exh. 1, pages 415-418.

Provider was adequate and necessary but henceforth, chiropractic care was not medically necessary.[8] Instead, she agreed with Dr. Berliner's recommendation that Claimant undergo epidural steroid injections and nerve root blocks, with associated physical therapy for strengthening, followed by a work hardening or work conditioning program.

Based on the peer review, Carrier denied further payment for chiropractic services rendered by Provider between May 12 and September 26, 2004, as medically unnecessary including office visits, ultrasound, therapeutic activities, and prolonged evaluation.

B. Applicable Law

Under the workers' compensation system, an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment. TEX. LAB. CODE ANN. §408.021. "Health care" includes "all reasonable and necessary medical . . . services." TEX. LAB. CODE ANN.§ 401.011(19).

C. Parties' Positions

1. Provider

Provider refutes the IRO reviewer's position that the services were not medically necessary. The IRO reviewer, a chiropractor, based the opinion on the Official Disability Guidelines, stating that "the chiropractic guidelines for a lumbar disc disorder with myelopathy would support a total of up to 18 visits over 6-8 weeks, avoid chronicity and gradually fade the Claimant to an active self directed care program."[9] Rather, Provider takes issue with the IRO's reliance on the guidelines, arguing that the guidelines do not take into account individual

[8] Petitioner's Exh. 1, page 415.

[9] Forte Independent Review, May 2, 2005, page 2.

predilections, such as an unease about surgery, and complications such as "flare-ups," described as an unattributable exacerbation of symptoms.

Specifically, Provider controverts Dr. Huyhn's and Dr. Berliner's opinion that "[Claimant] should undergo the recommendation of a series of epidural steroid injections/nerve root blocks."[10] According to Provider, Claimant did not want to undergo any invasive surgery, including injections, and alternatively, wanted to exhaust all conservative treatment options. Provider points out that, throughout the disputed period, Claimant continued to show slow and steady improvement without resorting to surgery.

Provider also documented many instances of flare-ups throughout the treatment period and managed these flare-ups with ultrasound treatments to "abate the amount of soft tissue edema, with Claimant reporting that he felt some reduction in pain."[11] Provider concluded that based on the slow and steady improvement "three visits per week [of] continued treatment [was] warranted . . . to manage exacerbations."[12] Thus, Provider argues that the medical necessity was sufficiently established by the treatment notes indicating progress and recovery without surgery.

2. Carrier

Carrier agrees with the conclusion of the IRO reviewing chiropractor, two treating specialists, and the peer review doctor that continuing extensive chiropractic care beyond May 2004, was excessive treatment and was not medically necessary. Carrier argues that Claimant made slow and steady progress because he was healing over time, not due to Provider's treatment.

Carrier points to the IRO reviewing chiropractor's opinion that the disputed services were ineffective and excessively supervised. Specifically, the IRO reviewer noted that "on 5/24/04,

[10] Petitioner's Exh. 1, page 82.

[11] Petitioner's Exh. 1, page 433,

[12] Petitioner's Exh. 1, page 450.

approximately 3 months after the injury occurred, the treating doctor was still performing mostly passive activities which are not supported by documentation. At this time it would be necessary for the Claimant to be undergoing an extensive active protocol as well as a home based exercise that could continue to modify and reduce the Claimant's symptoms by reducing any complications of doctor dependence."[13] Carrier also relates that the IRO reviewer observed that excessive daily office visits were not considered reasonable or necessary when monthly office visits would have been sufficient to assess progress.

Moreover, in March 2004, consulting orthopedic surgeon, Dr. Berliner, concluded that, based on Claimant's report of significant pain radiating down his legs after three weeks of physical therapy, selective nerve root blocks were recommended in conjunction with physical therapy. Substantiating Dr. Berliner's assessment, consulting neurologist, Dr. Light, related that "despite rest, anti-inflammatory agents, and therapy, [Claimant] continue[s] to have low back pain. . . . He needs to have further medical evaluation to look for the underlying cause of this problem."[14]

Lastly, according to the peer review doctor, Dr. Huyhn, Claimant could have been released to a home exercise program with lumbar stabilization exercises and stretching. In the meantime, however, she concurred with Dr. Berliner's recommendation for epidural steroid injections.

III. ANALYSIS

Provider bears the burden of proof that the factual basis or rationale for the MRD's decision in this case was invalid. Here, the records do not support the medical necessity of the disputed services rendered between May 12 and September 26, 2004.

The medical opinions of the peer reviewing physician and the two treating specialists all affirmed that Claimant continued to experience significant pain, not relieved by further chiropractic treatment beyond May, 2004, and should have pursued other avenues of treatment. Provider was on notice of this convergence of opinions in March, 2004, when Dr. Berliner

[13] Forte Independent Review, May 2, 2005, page 2.

[14] Petitioner's Exh. 1, page 38.

examined Claimant and, based on the MRI, recommended a series of nerve root blocks and physical therapy in conjunction with the injections. Provider was also made aware in May 2004, that Dr. Huyhn concurred with the Dr. Berliner's treatment protocol.

Nevertheless, Provider continued the extensive chiropractic therapies with passive and active modalities through September when it became apparent that Claimant was not progressing. This was documented by Provider who noted that on September 17, 2004, that "there is no change in the degree of pain in the lower back," and on September 23, 2004, when Claimant reported "there hasn't been any change in the lower back pain since the last treatment."[15] Certainly, this validates the myriad of medical opinions that a discontinuation of extensive chiropractic treatment was warranted. Nonetheless, in the event Claimant did not pursue the nerve root blocks, pursuant to the an active self directed care program and not continuation of ineffective treatment, as pointed out by the IRO.

In conclusion, Provider is not entitled to reimbursement for all medical services in dispute, from May 12, 2004, through September 26, 2004.

IV. FINDINGS OF FACT

1. Claimant injured his lower back on___, while employed at a window company, after repetitively lifting 40-pound pieces of glass.

2. Claimant was diagnosed with right far lateral disc herniation at L3-4 causing foraminal stenosis on L3, on the right side.

3. Claimant describes symptoms of persistent low back pain radiating to both legs.

4. Claimant was initially treated by Kelly W. Lobb, M.D., who prescribed medications and physical therapy.

5. Beginning on February 23 and continuing until April, 2004, Claimant underwent an extensive course of chiropractic treatment, including active and passive therapies, with John R. Wyatt, D.C.

[15] Petitioner's Exh. 1, pages 465-466.

6. Claimant consulted with Randall Light, M.D., a neurologist, on March 23, 2004, who prescribed pain medication and noted that after several weeks of chiropractic treatment, Claimant needed further medical evaluation for the underlying cause of his pain.

7. Claimant was also treated by Orthopedic Surgeon, Kenneth G. Berliner, M.D., who, based on an MRI, recommended a series of nerve root blocks with physical therapy in conjunction with the nerve blocks.

8. On April 14, 2004, Claimant switched treating chiropractors from Dr. Wyatt to Chris G. Dalrymple, D.C. (Provider).

9. At the time of the injury, Claimant's employer had its workers' compensation insurance through Insurance Company of the State of PA (Carrier).

10. Provider submitted a claim to Carrier for treatment rendered to Claimant between May 12, and September 26, 2004, including office visits, ultrasound, therapeutic activities, and prolonged evaluation.

11. Carrier denied Provider's request for reimbursement for unnecessary treatment based on a peer review.

12. On October 6, 2003, Petitioner requested medical dispute resolution with the Texas Workers' Compensation Commission's (Commission) Medical Review Division (MRD).

13. An Independent Review Organization concluded that chiropractic treatments rendered between May 12 and September 26, 2004, were not medically necessary.

14. Provider filed a request for a hearing before the State Office of Administrative Hearings on May 25, 2005.

15. The Commission sent notice of the hearing to the parties on June 27, 2005. The hearing notice informed the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the statutes and rules involved; and the matters asserted.

16. The hearing convened on September 13, 2006, and after the parties were afforded an opportunity to submit written objections to late-filed evidence, the record closed on September 15, 2006, with all exhibits admitted without condition. Attorney William Maxwell represented Provider. Attorney Steven M. Tipton represented Carrier.

17. On May 17, 2004, a peer review was conducted by Christine Huynh, M.D. who concluded that the three months of chiropractic treatment that Claimant received from Dr. Wyatt and Provider was adequate and necessary but that further chiropractic care was not medically necessary.

18. Dr. Huyhn concurred with Dr. Berliner's opinion and recommended a treatment protocol of a series of nerve root blocks with associated physical therapy followed by a work hardening program.

19. A treatment protocol of nerve root blocks with associated physical therapy followed by a work hardening program was indicated in lieu of continued chiropractic care.

20. Dr. Light also agreed that Claimant needed further medical evaluation for the underlying cause of his pain.

21. Claimant continued to experience significant pain, not relieved by further chiropractic treatment beyond May, 2004, and should have pursued other options for treatment.

22. Pursuant to the an active self-directed care program in the event Claimant did not have the nerve root blocks.

23. As of September 2004, there was no change in the degree of pain in Claimant's lower back.

24. The continuation of extensive chiropractic therapies with passive and active modalities through September 2004 was not medically necessary.

V. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 413.073(b) and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003 and Acts 2005, 79th Leg., ch. 265, § 8.013, eff. Sept. 1, 2005.

2. Provider timely filed a request for hearing before SOAH, as specified in 28 TEX. ADMIN. CODE § 148.3.

3. The parties received proper and timely notice of the hearing pursuant to TEX. GOV'T CODE ANN. ch. 2001 and 1 TEX. ADMIN. CODE § 155.27.

4. Provider had the burden of proving the case by a preponderance of the evidence pursuant to 28 TEX. ADMIN. CODE § 148.14.

5. 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).

6. Health care includes all reasonable and necessary medical services. TEX. LAB. CODE ANN. §401.011(19)(A).

7. Provider failed to establish that the treatment rendered to Claimant between May 12 and September 26, 2004, including office visits, ultrasound, therapeutic activities, and prolonged evaluation are reimbursable under TEX. LAB. CODE ANN.§§ 401.011(19) and 408.021(a).

8. Provider's claim should be denied.

ORDER

IT IS **ORDERED** that Chris G. Dalrymple, D.C. is not entitled to reimbursement by Insurance Company of the State of PA for all disputed treatments rendered to Claimant between May 12 and September 26, 2004, including office visits, ultrasound, therapeutic activities, and prolonged evaluation.

SIGNED November 1, 2006.

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PENNY WILKOV
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS