DOCKET NO. 453-05-9160.M5
MDR Tracking No. M5-05-1420-01

CROWNE CHIROPRACTIC CLINIC,	**§**	**BEFORE THE STATE OFFICE**
Petitioner	**§**	
VS.	**§**	**OF**
	§	
AMERICAN HOME ASSURANCE COMPANY, Respondent	**§**	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Crowne Chiropractic Clinic, Petitioner, requested a hearing to contest an Independent Review Organization (IRO) decision that certain services it provided to an injured worker, Claimant, were not medically necessary. The Respondent, American Home Assurance Company, had denied the claim on that basis.[1] This decision concludes that Petitioner should not recover because it did not prove the services were medically necessary.

I. PROCEDURAL HISTORY

A hearing was held on February 15, 2006, before the undersigned Administrative Law Judge (ALJ) at the State Office of Administrative Hearings, Austin, Texas. Petitioner appeared and was represented by its owner, Johann Van Beest, D.C. Respondent appeared and was represented by its counsel, Steven M. Tipton. As there were no notice or other jurisdictional issues, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

II. DISCUSSION

[1] Respondent did not appeal the IRO's decision that one service, supplies for a TENS unit, was medically necessary. Respondent also did not appeal a determination by the Texas Workers' Compensation Commission Medical Review Division (MRD) that Respondent should pay for certain services the Petitioner proved it had provided. (Effective September 1, 2005, the Commission's duties were transferred to the Texas Department of Insurance, Division of Workers Compensation.) Petitioner did not appeal an MRD determination that Respondent should not be required to pay for certain services provided on February 6, 2004, based on MRD's conclusion that Petitioner did not submit documents relevant to that date of service.

1. Background

In___, Claimant submitted a claim for a repetitive-stress injury that was caused by working on a computer. She had right carpal tunnel syndrome surgery on November 27, 2001, and left carpal tunnel syndrome surgery on March 7, 2002. A designated doctor put her at maximum medical improvement on July 16, 2002, and returned her to full-duty work without restrictions on August 2, 2002.

Dr. Van Beest released her from treatment in February 2003. However, she presented with pain complaints in January 2004. The disputed dates of service are from January 2, 2004, through April 21, 2004. The disputed services are chiropractic manipulative disputed services, office visits, paraffin bath, electrical stimulation-manual, and ultrasound.

After Respondent denied Petitioner's claim for the services, Petitioner requested medical dispute resolution and, as indicated above, the IRO doctor determined the treatment was medically unnecessary.

Employees have a right to necessary health treatment under TEX. LABOR CODE ANN. §§408.021 and 401.011. Section 408.021(a) provides, "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. The employee is specifically entitled to health care 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." Section 401.011(19) of the Labor Code provides that health care includes "all reasonable and necessary medical . . . services."

As Appellant, Petitioner had the burden of proof.[2]

B. Parties' Evidence and Arguments

[2] 1 TEX. ADMIN. CODE (TAC)§155.41; 28 TAC §148.14.

In testimony, Dr. Van Beest said he recognized the difficulty in having services approved in a case where an old claim is resurrected after treatment has already ended and the patient sent back to work. He said for that reason, he was careful to request approval of the treatments from Respondent before proceeding. He acknowledged not being able to produce documentation showing the need for the services, and said that is the reason he asked for prior approval. He maintained he received letters from Respondent showing approval of the services he provided.[3]

Dr. Van Beest acknowledged not being able to cite authority during the hearing indicating the efficacy of ultrasound and interferential treatments, but asserted they are accepted treatment for the type of injury at issue. He agreed that ACOM guidelines are "mixed" on the efficacy of ultrasound, but maintained the guidelines did not go into effect until 2005, after the treatment occurred.

Dr. Van Beest argued Claimant's condition was an exacerbation of her original condition. He said that is the reason she presented to him in January 2004. He argued that Medicare/Medicaid and other guidelines permit short-to-medium term care such as that at issue when the formation of adhesive tissue has likely caused nerve impingement. He asserted that the most likely cause of adhesive tissue in this case is the carpal tunnel release surgery.

Dr. Van Beest agreed that chiropractic manipulation is not appropriate for carpel tunnel syndrome-he said he adjusted Claimant's thoracic spine for radiating pain.

Dr. Van Beest acknowledged that he talked to an adjuster for the Respondent who said that all "reasonable and necessary" services would be covered for Claimant. He said he understood the treatment would be subject to peer review.

Respondent requested that the ALJ take official notice of certain Medicare guidelines. It cited the following documents for the following principles:

[3] Dr. Van Beest cited Ex. 1, pages 58, 61, and 78. These pages show Respondent approved bilateral EMG/NVC studies and TENS unit supplies as medically necessary.

- The Carrier's Manual, Part 3, Chap. XV provides that if a physician bills an office visit on the same day he or she bills physical therapy, using CPT physical therapy codes, the physician must be prepared to document that the office visit was unrelated to the physical therapy performed.

- The Local Medical Review Policy (LMRP) guidelines indicate electrical stimulation, including interferential treatment, may be necessary during the initial treatment phase, but there must be an expectation for improvement. The treatment should be used with other procedures such as therapeutic exercise in an adjunctive role to effect continued improvement.

- The LMRP guidelines indicate that a paraffin bath is primarily for pain relief, which usually requires one or two sessions to educate the patient for home treatment. A third visit is allowable for a systemic illness such as rheumatoid arthritis. The treatment should be covered as adjunctive to enhance therapeutic procedures.

- The LMRP guidelines indicate that ultrasound is to be used as an adjunctive modality to therapeutic exercise.

Respondent contended the evidence did not show an exacerbation of Claimant's condition. It cited the results of March 4, 2004, ECM/NCV studies[4] to evaluate Claimant's left and right wrist pain. It said it approved the studies to determine any possible exacerbation of Claimant's condition. The doctor's impression for both studies was they were normal.

Respondent cited three peer reviews that opined on the necessity of treatment. An August 7, 2004 peer review by N. F. Tsourmas, M.D.,[5] stated there is little to imply from Dr. Van Beest's notes that Claimant has recurrent or persistent repetitive stress trauma and that current chiropractic treatment is therefore unnecessary. He said repetitive stress trauma should cease once repetitive stress is discontinued. He concluded, in light of Claimant's successful surgery, previous treatment, return to work, and March 4, 2004 electro diagnostic studies, that there is little in the way of residual effects of carpal tunnel syndrome.

A June 19, 2002 peer review by Jack A. Kern, M.D.,[6] and a July 11, 2002 peer review by Bill W. Timberlake, D.C.,[7] concluded that continued chiropractic care at that time was not reasonable or necessary.

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[4] Ex. 2 at 22.

[5] Ex. 2 at 20.

[6] Ex. 2 at 10-13.

C. Analysis

The ALJ concludes Petitioner did not carry its burden of proving the services were medically necessary. Dr. Van Beest said, to prove his case, he was depending on his pre-treatment agreement with Respondent that the services were necessary. He acknowledged not having the records to prove medically necessity. However, the records[8] and Dr. Van Beest's own testimony show that Respondent agreed to cover care that was "reasonable and necessary" whether the care was reasonable and necessary is the issue being addressed at this hearing. Dr. Van Beest's testimony and the records[9] show that Dr. Van Beest understood the care would be subject to peer review. Dr. Van Beest did not cite other records to show medical necessity.

Dr. Van Beest argued in closing that the care was necessary to treat adhesions that were likely caused by the carpal tunnel surgery performed more than three years before. However, the March 2004 EMG/NCV studies, as objective proof of no impingement, were more persuasive.

On the specific treatments at issue, the evidence, including medical guidelines, indicates either they are not necessary for treating carpal tunnel syndrome or they should be done as an adjunct to active modalities such as therapeutic exercise. Office visits associated with unnecessary medical care were not shown to be medically necessary.

IV. FINDINGS OF FACT

1. In___, the injured worker in this case, Claimant, submitted a claim for a repetitive-stress injury that was caused by working on a computer.

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[7] Ex. 2 at 15-17.

[8] Ex. 1 at 60.

[9] *Id.*

2. Claimant had right carpal tunnel syndrome surgery on November 27, 2001, and left carpal tunnel syndrome surgery on March 7, 2002.

3. A designated doctor put Claimant at maximum medical improvement on July 16, 2002, and returned her to full-duty work without restrictions on August 2, 2002.

4. Claimant received treatment from Crowne Chiropractic Clinic, Petitioner, and its owner, Johann Van Beest, D.C.

5. Dr. Van Beest released Claimant from treatment in February 2003.

6. Claimant presented to Petitioner in January 2004 with complaints of pain.

7. The disputed dates of service are from January 2, 2004, through April 21, 2004.

8. The disputed services are chiropractic manipulative treatment, office visits, paraffin bath, electrical stimulation-manual, and ultrasound.

9. Petitioner submitted a claim to American Home Assurance Company, Respondent, the insurance carrier for Claimant's employer.

10. Respondent denied the claim and Petitioner requested medical dispute resolution.

11. An independent review organization concluded that the disputed services were not medically necessary.

12. It is undisputed that Respondent requested a hearing not later than the 20th day after it received notice of the IRO decision.

13. All parties received not less than 10 days' notice of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

14. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.

15. Petitioner claimed that it obtained pre-approval for performing the treatment from Respondent.

16. Petitioner's case depends on the pre-approvals it obtained from Respondent.

17. Petitioner does not have records to support its case other than the approvals it obtained from Respondent.

18. In correspondence with Petitioner, Respondent acknowledged the existence of coverage on the Claimant, but said any treatment provided would need to be reasonable and necessary and subject to peer review.

19. March 2004 EMG/NCV studies indicated that there was no nerve impingement in Claimant's wrists.

20. Respondent did not prove that Claimant's condition had exacerbated when she returned for treatment in January 2004.

21. The specific treatments at issue were either not necessary for treating carpal tunnel syndrome or should have been done as adjunctive care to active modalities such as therapeutic exercise.

22. Office visits associated with unnecessary medical care were not shown to be medically necessary.

23. There was insufficient evidence to conclude that the services at issue were 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. TEX. LAB. CODE ANN. §413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.

2. All parties received adequate and timely notice of the hearing. TEX. GOV'T CODE ANN. §2001.052.

3. Petitioner has the burden of proof. 1 TEX. ADMIN. CODE (TAC) §155.41; 28 TAC §148.14(a).

4. Petitioner failed to prove the disputed services were medically necessary. TEX. LAB. CODE ANN. §§ 401.011 and 408.021.

5. Petitioner's claim should be denied.

ORDER

IT IS, THEREFORE, ORDERED that Crowne Chiropractic Clinic's claim against American Home Assurance Company for chiropractic manipulative treatment, office visits, paraffin

bath, electrical stimulation-manual, and ultrasound services provided to Claimant from January 2, 2004 through April 21, 2004, be, and the same is hereby, denied.

Signed February22, 2006.

JAMES W. NORMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS