SOAH DOCKET NO. 453-05-3060.M5
MR NO. M5-04-2961-01

ERIC A. VANDERWERFF, D.C.,	**§**	**BEFORE THE STATE OFFICE**
	§	**Cross-Petitioner**
	§	
V.	**§**	**OF**
	§	
AMERICAN SAFETY CASUALTY,	**§**	
INSURANCE	**§**	**Cross-Petitioner**

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

American Safety Casualty Insurance (Carrier) and healthcare provider Eric A. VanderWerff, D.C., appealed the findings and decision of the Texas Workers' Compensation Commission's (Commission's)[1] designee, an independent review organization (IRO) and the Commission's Medical Review Division (MRD). This decision finds partially in favor of the Carrier and partially in favor of Dr. VanderWerff.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction or notice. Those issues are set out in the Findings of Fact and Conclusions of Law.

The hearing in this matter convened on November 17, 2005, before State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Katherine L. Smith. Julie B. Tebbets, an attorney, represented the Carrier. Dr. VanderWerff appeared *pro se*. The record closed on December 12, 2005, for the filing of additional documents. The ALJ admits into evidence as Exhibit 3 documents that Dr. VanderWerff filed on November 22, 2005, to which the Carrier raised no objection.

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.

II. DISCUSSION

A. Background

Claimant sustained a compensable injury on____, when she slipped and fell injuring her back. The results of an MRI administered on April 29, 2002, revealed disc herniations at the L4-5 and L5-S1 levels of the spine. The treatments in dispute were provided from May 28 to December 31, 2003,[2] and were billed with the following CPT[3] codes: office visits with manipulations (99213-MP); additional manipulation (97261); one-on-one therapeutic exercises (97110); myofascial release (97250); joint mobilization (97265); electrical stimulation (97014); neuromuscular re-education (97112), spine manipulation (98941), myofascial release/joint mobilization (97140-59), and unknown service billed as G0283. The Carrier denied reimbursement due to lack of medical necessity based on peer review. Dr. VanderWerff filed a request for dispute resolution with the Commission. The IRO found that all the treatments were medically necessary.

The MRD found that certain services were not addressed by the IRO and recommended reimbursement as follows:

- $ Code 97265 - recommend reimbursement of $43.00 x 21 days = $903.00
- $ Code 97250 - recommend reimbursement of $43.00 x 21 days = $903.00
- $ Code 97112 - recommend reimbursement of $35.00 x 21 days = $735.00
- $ Code 98941[4] - recommend reimbursement of $36.59 x 125% = $45.74 x 47 days = $2,149.78
- $ Code 97140-59[5] - recommend reimbursement of $27.24 x 2 units = $54.48 x 125% = $68.10 x 47 days = $3,200.70
- $ Code 97112 - recommend reimbursement of $29.55 x 125% = $36.94 x 47 days = $1,736.00

2 These dates do not match the dates of service in dispute listed in Ex. 1 at 6-20, which only list up to October 15, 2003. *See also* Attachment to this decision.

3 Current procedural terminology.

4 Dr. VanderWerff started using CPT code 98941 instead of 99213 and 97261on August 1, 2003. Ex. 1 at 361.

5 Dr. VanderWerff started using CPT code 97140-59 instead of 97250 and 97265 to bill for myofascial release and joint mobilization on August 1, 2003. *See* Ex. 1 at 361, Ex. 2 at 227.

With regard to the billing for 97110, the MRD found that Dr. VanderWerff had failed to adequately document the need for exclusive one-on-one therapy and declined to order payment for CPT code 97110.

Both parties filed timely appeals. Carrier is contesting all the dates of service in dispute due to lack of medical necessity. Stating that the MRD overstepped its bounds, Dr. VanderWerff wants the IRO decision upheld. In his filing of November 22, 2005, Dr. VanderWerff noted that the Carrier paid him for the treatments of May 28, 29, June 24, 25, 26, 27 and July 23, 29, and 31, 2003, which he alleges raises the presumption that the remaining services were medically necessary.

B. Analysis

The most confusing issue was initially raised by MRD. MRD stated several times that no explanation of benefits (EOBs) had been submitted for dates of service up to October 30, 2003. Dr. VanderWerff also testified that he did not receive EOBs from the Carrier. The Carrier insisted, however, that it sent EOBs with the bills listing the CPT codes and peer reviews attached. A close look at the record reveals the reason for the confusion. Carrier's EOBs consistently reference "V" (lack of medical necessity based on peer review) to deny reimbursement, but it is not clear from the majority of the EOBs that the Carrier was denying all of the billed services. The EOBS consist of the following sets of dates and CPT codes:

- May 28 to July 27 listing only 99213 and 97261;
- June 4 to October 30 listing only 99213 and 97014;[6]
- July 2 to October 10 listing only 99213 and 99455;[7]
- August 1 to October 30 listing only 97110 and 97014;
- November 12 to December 4 listing 97110 *through* 97014;
- December 8 to December 31 listing 97110 *through* G0283. (Emphasis added.)

6 Dr. VanderWerff ceased using 99213 on August 1, 2003, and did not start billing for 97014 until August 1, 2003.

7 Dr. VanderWerff ceased using 99213 on August 1, 2003, and never used 99455.

Not until the EOBs of November 12, 2003, is it clear that Carrier meant to deny all the CPT codes listed on the submitted bills. And although the peer review dated May 14, 2003, states that no chiropractic treatment was recommended beyond that date, it made no mention of the dates of service at issue or the treatments provided on those days. Carrier may have thought it was being explicit in its denials, but its EOBs failed to adequately and fairly apprise Dr. VanderWerff of the reasons for denying reimbursement pursuant to 28 TEX. ADMIN. CODE (TAC) § 133.304(c).

With regard to the CPT codes that the Carrier did reference, the ALJ has more specific findings based on the Commission's rules, the CPT codes used by Dr. VanderWerff, and the testimony at the hearing. Carrier's expert, Steven Richard Tomko, D.C., testified that the continuing chiropractic treatments were excessive, did not lead to a change in Claimant's condition, and were not reevaluated for efficacy. He testified that Claimant should have been progressed to more active therapy with monitoring once or twice a month or a work hardening program. Dr. VanderWerff testified that the more structured treatments were necessary to treat Claimant while awaiting preauthorization for work hardening, which he requested in June 2003. Ex. 3. Relying on Dr. Tomko's testimony, the ALJ finds that even though Carrier may have paid for three dates of service in May, June, and July 2003, that did not create a presumption of medical necessity because monitoring Claimant periodically was reasonable.

With regard to the office visits and additional manipulation that the Carrier consistently denied based on lack of medical necessity, the ALJ finds in favor of the Carrier. When a healthcare provider bills for one of the three highest level office visits, which includes CPT code 99213, and for physical medicine treatment, 28 TAC § 133.1 requires the healthcare provider to submit the following: progress or SOAP[8] notes substantiating the care given and the need for further treatment and services and indicating progress, improvement, the date of the next

8 Subjective/objective assessment plan/procedure.

treatment and services, complications, and expected release date. In general, Dr. VanderWerff's SOAP notes are sparse and do not delineate the treatment provided, except for myofascial release and joint mobilization, and do not discuss what was needed for further treatment. Ex. 2 at 182-245. Although Dr. VanderWerff testified that his overall treatment plan of August 10, 2002, should be read in conjunction with his daily treatment notes, the relevancy of that treatment plan is questionable having been written nine months before the dates of service in dispute. Ex. 2 at 66.

Moreover, use of CPT code 99213 is not appropriate unless two of the following occur: an expanded problem-focused history, an expanded focused examination, and medical decision-making of low complexity. The medical notes document neither an expanded problem-focused history, nor an expanded focused examination. They are virtually identical from week to week. They also do not document that manipulations were performed. Therefore, the ALJ finds that Dr Van derWerff shall not be reimbursed for the office visits billed as CPT code 97213-MP and additional manipulation billed as CPT code 97261 for May 30, June 4, 9-12, 16, 18-19, 30, July 1-3, 7-10, 14-17, 21-22, 24, 2003.

Pursuant to 28 TAC § 133.1, the ALJ agrees with the MRD's finding that the medical documentation fails to establish the medical necessity of one-on-therapy billed as CPT code 97110, because the treatment notes fail to even indicate that the treatment was provided to Claimant, let alone set forth the purpose of each activity, the equipment used, the number of repetitions, their duration, and what Claimant's response was to the treatments. Therefore, Dr. VanderWerff shall not be reimbursed for the billing of CPT code 97110 for July 21, August 1, 4-7, 11-14, 19-21, 25-28, September 2-5, 8-10, 15-18, 22-25, 29-30, October 1-2, 7-8, 13-16, 21, 23, and 27-30, November 12-14, 17-20, 25, December 1-4, 8-11, 16-18, 22-23, 30-31, 2003.

The ALJ notes that with regard to the services provided on July 21, 2003, the Carrier did specifically list 97112, as well as 99213-MP, 97261, 97110, 97265, and 97250, as not being medically necessary. Therefore, the ALJ finds that the neuromuscular re-education billed as CPT code 97112 was not medically necessary, because the medical notes make no mention of that service being provided. Therefore, reimbursement for that treatment is not due. Ex. 1 at 130, 200; Ex. 2 at 229.

With regard to the set of EOBs in which the Carrier denied reimbursement for CPT code 97014 (electrical stimulation), because the medical notes make no mention of that service being provided, reimbursement is not due for August 1, 4-7, 11-14, 19-21, 25-28, September 2-5, 8-10, 15-18, 22-25, 29-30, October 1-2, 7-8, 13-16, 21, 23, 27-30, November 12-14, 17-20, 25, December 1-4, 2003.

The ALJ also finds the following with regard to the set of EOBs at Ex. 1 at 281-82 on which the Carrier finally indicated that it was denying reimbursement for the range of services provided from November 12 to December 4, 2003, for CPT code *97110 through 97014* and for December 8 to December 31, 2003, for CPT code *97110 through G0283*. Dr. VanderWerff is entitled to reimbursement for the myofascial release and joint mobilization billed as CPT code 97140-59, which his medical notes documents were provided. But the remaining services billed as CPT code 98941 and G0283 shall not be reimbursed, as there was no testimony or other evidence about those CPT codes and no medical notes documenting that the services were provided.[9]

9 According to the AMA web site, CPT code 98941 represents chiropractic manipulations of the spine, but G0283 is not recognized as a CPT code.

C. Conclusion

The ALJ finds that the decision of the MRD stands except that Dr. VanderWerff shall not be reimbursed for the following:

- Office visits (99213-MP) and additional manipulation (97261) billed for May 30, June 4, 9-12, 16, 18-19, 30, July 1-3, 7-10, 14-17, 21-22, 24, 2003.
- One-on-one physical therapy (97110) billed for July 21, August 1, 4-7, 11-14, 19-21, 25-28, September 2-5, 8-10, 15-18, 22-25, 29-30, October 1-2, 7-8, 13-16, 21, 23, and 27-30, November 12-14, 17-20, 25, December 1-4, 8-11, 16-18, 22-23, 30-31, 2003.
- Neuromuscular re-education (97112) billed for July 21, 2003.
- Electrical stimulation (97014) billed for August 1, 4-7, 11-14, 19-21, 25-28, September 2-5, 8-10, 15-18, 22-25, 29-30, October 1-2, 7-8, 13-16, 21, 23, 27-30, November 12-14, 17-20, 25, December 1-4, 2003.
- Manipulations (98941) billed for November 12-14, 17-20, 25, December 1-4, 8-11, 16-18, 22-23, 30-31, 2003; G0283 billed for December 8-11, 16-18, 22-23, 30-31, 2003.

III. FINDINGS OF FACT

1. Claimant sustained a compensable injury on_____, when she slipped and fell, injuring her back.

2. At the time of the compensable injury, Claimant's employer had workers' compensation insurance coverage with American Safety Casualty Insurance (Carrier).

3. Eric A. VanderWerff, D.C., began treating Claimant on February 12, 2002.

4. The results of an MRI administered on April 29, 2002, revealed disc herniations at the L4-5 and L5-S1 levels of Claimant's spine.

5. The treatments in dispute were provided from May 28 to December 31, 2003.

6. Carrier denied reimbursement for the treatments due to lack of medical necessity based on peer review.

7. Dr. VanderWerff filed a request for dispute resolution with the Texas Workers' Compensation Commission (Commission), which referred the dispute to its designee, an independent review organization (IRO).

8. On November 5, 2004, the Commission's Medical Review Division (MRD) issued a decision based on the IRO's review, which found that the treatments were medically necessary.

9. The MRD also made the following decisions:

Code 97265 - recommend reimbursement of $43.00 x 21 days = $903.00

Code 97250 - recommend reimbursement of $43.00 x 21 days = $903.00

Code 97112 - recommend reimbursement of $35.00 x 21 days = $735.00

Code 98941 - recommend reimbursement of $36.59 x 125% = $45.74 x 47 days = $2,149.78

Code 97140-59 - recommend reimbursement of $27.24 x 2 units = $54.48 x 125% = $68.10 x 47 days = $3,200.70

Code 97112 - recommend reimbursement of $29.55 x 125% = $36.94 x 47 days = $1,736.00.

10. The MRD declined to order payment for treatment billed as CPT code 97110 because Dr. VanderWerff had failed to adequately document the need for exclusive one-on-one therapy.

11. Carrier timely appealed the MRD's decision on November 24, 2004.

12. Dr. VanderWerff timely appealed the MRD's decision on November 30, 2004.

13. On January 7, 2005, the Commission issued the notice of hearing, which stated the date, time, and location of the hearing and cited to the statutes and rules involved, along with a short, plain statement of the factual matters involved.

14. Carrier paid Dr. VanderWerff for the treatments he provided Claimant on May 28, 29, June 24, 25, 26, 27 and July 23, 29, and 31, 2003.

15. Use of CPT code 99213 requires that two of the three occur during an office visit: an expanded problem-focused history, an expanded focused examination, and medical decision-making of low complexity.

16. The medical records do not document that an office visit with expanded problem-focused history and expanded focused examination and manipulations billed as CPT codes 97213-MP and 97261 were provided Claimant on May 30, June 4, 9-12, 16, 18-19, 30, July 1-3, 7-10, 14-17, 21-22, 24, 2003.

17. The medical records do not document that one-on-one physical therapy billed as CPT code 97110 was provided Claimant on July 21, August 1, 4-7, 11-14, 19-21, 25-28, September 2-5, 8-10, 15-18, 22-25, 29-30, October 1-2, 7-8, 13-16, 21, 23, and 27-30, November 12-14, 17-20, 25, December 1-4, 8-11, 16-18, 22-23, 30-31, 2003.

18. The medical records do not document that neuromuscular re-education billed as CPT code 97112 was provided Claimant on July 21, 2003.

19. The medical records do not document that electrical stimulation billed as CPT code 97014 was provided Claimant on August 1, 4-7, 11-14, 19-21, 25-28, September 2-5, 8-10, 15-18, 22-25, 29-30, October 1-2, 7-8, 13-16, 21, 23, 27-30, November 12-14, 17-20, 25, December 1-4, 2003.

20. The medical records do not document that manipulations billed as CPT code 98941 were provided to Claimant on November 12-14, 17-20, 25, December 1-4, 8-11, 16-18, 22-23, 30-31, 2003.

21. The medical records do not document that the service billed as G0283 was provided to Claimant on December 8-11, 16-18, 22-23, 30-31, 2003.

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, pursuant to TEX. LABOR CODE ANN §§ 402.073(b) and 413.031(k), TEX. GOV'T CODE ANN. ch. 2003 and Acts 2005, 79th Leg., ch. 265, § 8.013, eff. Sept 1, 2005.

2. Dr. VanderWerff and the Carrier filed timely requests for hearing in response to the MRD's decision.

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

4. Carrier had the predominant burden of proof in this proceeding based on the MRD's decision, except for the finding concerning one-on-one physical therapy billed as CPT code 97110. Overturning that portion of the decision rested with Dr. VanderWerff. 28 TEX. ADMIN. CODE (TAC) §§ 148.21(h) and (i); 1 TAC § 155.41.

5. The Carrier failed to consistently apprise Dr. VanderWerff of the reasons for denying reimbursement pursuant to 28 TAC § 133.304(c). Therefore, Dr. VanderWerff is due reimbursement for those services for which he sent notice of the dates of service and which the Carrier failed to specifically address in an explanation of benefits.

6. When a healthcare provider bills for an office visit using CPT code 99213 and for physical medicine treatment, the healthcare provider must submit progress or SOAP notes substantiating the care given and the need for further treatment and services, and indicating progress, improvement, the date of the next treatment and services, complications, and expected release date. 28 TAC § 133.1.

7. The office visits (99213-MP) and additional manipulation (97261) billed for May 30, June 4, 9-12, 16, 18-19, 30, July 1-3, 7-10, 14-17, 21-22, 24, 2003, were not medically necessary health care under TEX. LAB. CODE ANN. §§ 401.011 and 408.021(a).

8. The one-on-one physical therapy (97110) billed for July 21, August 1, 4-7, 11-14, 19-21, 25-28, September 2-5, 8-10, 15-18, 22-25, 29-30, October 1-2, 7-8, 13-16, 21, 23, 27-30, November 12-14, 17-20, 25, December 1-4, 8-11, 16-18, 22-23, 30-31, 2003, was not medically necessary health care under TEX. LAB. CODE ANN. §§ 401.011 and 408.021(a).

9. The neuromuscular re-education (97112) billed for July 21, 2003, was not medically necessary health care under TEX. LAB. CODE ANN. §§ 401.011 and 408.021(a).

10. Electrical stimulation (97014) billed for August 1, 4-7, 11-14, 19-21, 25-28, September 2-5, 8-10, 15-18, 22-25, 29-30, October 1-2, 7-8, 13-16, 21, 23, 27-30, November 12-14,

17-20, 25, December 1-4, 2003, was not medically necessary health care under TEX. LAB. CODE ANN. §§ 401.011 and 408.021(a).

11. The manipulations (98941) billed for November 12-14, 17-20, 25, December 1-4, 8-11, 16-18, 22-23, 30-31, 2003, and services billed as G0283 for December 8-11, 16-18, 22-23, 30-31, 2003, were not medically necessary health care under TEX. LAB. CODE ANN. §§ 401.011 and 408.021(a).

12. Dr. VanderWerff's request for reimbursement should be granted, except for the following:

- Office visits (99213-MP) and additional manipulation (97261) billed for May 30, June 4, 9-12, 16, 18-19, 30, July 1-3, 7-10, 14-17, 21-22, 24, 2003.
- One-on-one physical therapy (97110) billed for July 21, August 1, 4-7, 11-14, 19-21, 25-28, September 2-5, 8-10, 15-18, 22-25, 29-30, October 1-2, 7-8, 13-16, 21, 23, and 27-30, November 12-14, 17-20, 25, December 1-4, 8-11, 16-18, 22-23, 30-31, 2003.
- Neuromuscular re-education (97112) billed for July 21, 2003.
- Electrical stimulation (97014) billed for August 1, 4-7, 11-14, 19-21, 25-28, September 2-5, 8-10, 15-18, 22-25, 29-30, October 1-2, 7-8, 13-16, 21, 23, 27-30, November 12-14, 17-20, 25, December 1-4, 2003.
- Manipulations (98941) billed for November 12-14, 17-20, 25, December 1-4, 8-11, 16-18, 22-23, 30-31, 2003; G0283 billed for December 8-11, 16-18, 22-23, 30-31, 2003.

ORDER

IT IS THEREFORE, ORDERED that American Safety Casualty Insurance shall reimburse Eric A. VanderWerff pursuant to the decision of the Medical Review Division, except that reimbursement is not due for the following:

- Office visits (99213-MP) and additional manipulation (97261) billed for May 30, June 4, 9-12, 16, 18-19, 30, July 1-3, 7-10, 14-17, 21-22, 24, 2003.
- One-on-one physical therapy (97110) billed for July 21, August 1, 4-7, 11-14, 19-21, 25-28, September 2-5, 8-10, 15-18, 22-25, 29-30, October 1-2, 7-8, 13-16, 21, 23, and 27-30, November 12-14, 17-20, 25, December 1-4, 8-11, 16-18, 22-23, 30-31, 2003.
- Neuromuscular re-education (97112) billed for July 21, 2003.
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$ Manipulations (98941) billed for November 12-14, 17-20, 25, December 1-4, 8-11, 16-18, 22-23, 30-31, 2003; G0283 billed for December 8-11, 16-18, 22-23, 30-31, 2003.

SIGNED February 9, 2006.

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KATHERINE L. SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS