SOAH DOCKET NO. 454-09-2678.M4
DWC NO. M4-08-6029-01

HILL COUNTRY BEHAVIORAL HEALTH, Petitioner	§	BEFORE THE STATE OFFICE
V.	§	OF
NATIONAL FIRE INSURANCE COMPANY OF HARTFORD, Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. INTRODUCTION AND SUMMARY

Hill Country Behavioral Health (Provider) requested a hearing to contest a medical fee dispute resolution order issued by the Texas Department of Insurance, Division of Workers' Compensation (Division) regarding medical services provided to . (Claimant). The Division determined that Provider was not entitled to reimbursement. A hearing was conducted in this case, and Provider appeared through its attorney, Allen T. Craddock, and the National Fire Insurance Company of Hartford (Carrier) appeared through its attorney, David L. Swanson. After considering the evidence and arguments presented, the Administrative Law Judge (ALJ) finds that Provider is not entitled to reimbursement.

II. FACTS

On , Claimant suffered a compensable injury to his right knee and low back when he fell from a platform, striking his low back on a marble table and hitting his knee on a pipe at his place of employment. Thereafter, he received extensive treatment for his injury, including a September 3, 2002 knee surgery (arthroscopy) and subsequent work hardening.[1]

[1] Provider Ex. 1 at 315-333.

At a February 12, 2003 requested medical exam (RME), Charles F. Xeller, M.D., evaluated Claimant, who complained that his low back hurt more than his knee, although he had some medial knee pain. Dr. Xeller determined that the knee surgery was successful and opined that Claimant could likely return to work, using back support for heavy lifting. On February 25, 2003, Alex. X. Rivera, D.C., evaluated Claimant, noting that he had fatigue and ache at the right knee and an increase of pain at the lumbosacral region. He recommended additional weeks of work hardening for claimant. Two days later, Carrier filed a TWCC-21 disputing Claimant's current medical condition. Carrier referenced the RME dated February 12, 2003, and stated its position that "any current medical condition alleged to be suffered by the injured worker is not related to the compensable low back and right knee injury."[2]

On March 25, 2003, Provider sought preauthorization from Carrier to provide 30 days of chronic pain management to Claimant.[3] In the request for preauthorization, Provider identified the treatment diagnosis with codes 717.89 (other internal derangement of the knee) and 722.93 (other and unspecified disc disorder of lumbar region).[4] The next day, Daniel C. Valdez, M.D., examined Claimant to determine if he had reached maximum medical improvement (MMI). Dr. Valdez found that Claimant had reached MMI with a 6% impairment rating. He further found that the right knee was stable and no further treatment was needed. As to Claimant's back, the doctor reported that any myofascial pain was due to subjective complaints and that there were no objective findings to support Claimant's "vague discomfort."[5]

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[2] Provider Ex. 1 at 31.

[3] Provider Ex. 1 at 58.

[4] Provider Ex. 1 at 27.

[5] Carrier Ex. 1 at 10.

On March 28, 2003, Carrier preauthorized the requested treatment. However, the preauthorization included the following statement:

> This recommendation is not a guarantee that benefits are payable by the claim administrator. At this time, there are still outstanding issues regarding the denial of compensability or liability or its extent or relatedness to the compensable injury.[6]

Spanning approximately two months, Claimant participated in the chronic pain management program for 30 days. Provider seeks reimbursement for dates of service from March 31 through April 14, 2003, and May 9 through May 20, 2003. Initially, Provider requested reimbursement totaling $30,000.[7] At the hearing, however, Provider stipulated that because the facility is non-CARF accredited and the sessions ended 15 minutes early, it seeks reimbursement for 224 hours of service at $100 per hour. In total, Provider now seeks $22,400 in reimbursement.

Phillip Glenn Bohart, MS, CRC, LPC, testified on behalf of Provider. At the time that the services were provided to Claimant, Mr. Bohart was the clinical director for Provider. He testified that the chronic pain management program is an interdisciplinary program designed to rehabilitate and return a person to work. He explained that the pain management program treats the whole person, which may have included degenerative conditions in Claimant's back and knee.

On , the Texas Workers' Compensation Commission Hearings Division issued a Decision and Order to address the extent of injury. The hearing officer found that:

> FoF No. 9—The Claimant's fall on , was not a producing cause of his various degenerative conditions in his lumbar spine, including an L3-4 protrusion, desiccation at L5-S1, and radiculitis at L4-5, nor did it aggravate these conditions,

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[6] Provider Ex. 1 at 54.

[7] Provider Ex. 1 at 3-5.

nor were these conditions the natural result of injuries sustained in the fall on , or medical treatment of these conditions.

FoF No. 10—The Claimant does not have a mood or adjustment disorder.[8]

Subsequently, Carrier denied reimbursement for the 30 days of pain management services provided on March 31 through April 14 and May 9 through May 20, 2003, citing "extent of injury." Carrier denied reimbursement for the pain management services dated April 16 through May 8, 2003 as "unnecessary treatment (with peer review)" as the basis for its denial.[9] However, Carrier also submitted revised explanations of review for the service dates April 16 though May 8, 2003, citing "denial after reconsideration, extent of injury, and unnecessary treatment (with peer review)."[10]

Provider appealed Carrier's denial. On , the Texas Department of Insurance, Division of Workers' Compensation (TDI Division) found that Provider was not entitled to reimbursement.[11]

III. ARGUMENT AND RULING

Provider argues that the services were provided to treat pain related the compensable injury. Provider notes that Carrier preauthorized the pain management program. For the services that Carrier initially denied as "unnecessary," Provider contends that Carrier failed to comply with the rules of the Texas Workers' Compensation Commission. Moreover, Provider argues that Carrier's notice of refusal to pay was insufficient.

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[8] Provider Ex. 1 at 10-15.

[9] Provider Ex. 1 at 34-43.

[10] Carrier Ex. 3.

[11] Provider Ex. 1 at 26-28.

Carrier contends that the treatment provided to Claimant was for pain that was not related to his compensable injury. As to Provider's argument that Carrier used the wrong denial code, Carrier notes that the correct code was used for the first 10 services in the program, effectively putting Provider on notice. Subsequently, Carrier revised its explanation of review and added "extent of injury" as a reason for denial. Carrier also notes that Provider did not raise this issue with the Division when requesting medical dispute resolution and that the issue was not addressed in the Division's decision.

Concerning Provider's argument that Carrier's refusal to pay was inadequate, Carrier denied the claim based on the RME dated February 12, 2003, which stated that "[I]t is the carrier's position that any current medical condition alleged to be suffered by the injured worker is not related to the compensable low back and right knee injury."[12] The ALJ finds that this denial is sufficiently detailed as to allow the requestor to understand the reason for denial.

Based on the record at the SOAH hearing, there is insufficient evidence linking the pain management program to the compensable injury. Rather, the great weight of evidence indicates that Claimant received therapy, successful knee surgery, and extensive treatment, including some work hardening sessions to treat his compensable injury. More importantly, when Provider requested preauthorization for the pain management program, there were no objective findings to support Claimant's pain-related complaints to either his knee or back. Mr. Bohart's testimony did not address how the pain management program targeted the compensable injury. Indeed, the nature of the program was to treat the whole body. Based on the examinations of Drs. Xeller and Valdez, Claimant's pain was not related to the Therefore, the pain management program was not necessary to treat the compensable injury.

[12] Provider Ex. 1 at 31.

In conclusion, then, the ALJ finds that Provider is not entitled to reimbursement for the chronic pain management services provided to Claimant. In support of this decision, the ALJ makes the following findings of fact and conclusions of law.

IV. FINDINGS OF FACT

1. (Claimant) suffered a compensable injury to his right knee and low back on when he fell from a platform onto a marble table and hit his knee on a pipe at his place of employment.

2. On the date of injury, National Fire Insurance Company of Hartford (Carrier) was the workers' compensation insurance carrier for Claimant's employer.

3. Claimant received extensive treatment for his compensable injury including a September 3, 2002 knee surgery (arthroscopy) and subsequent work hardening.

4. At a February 12, 2003 required medical exam (RME), Charles F. Xeller, M.D., evaluated Claimant and determined that the knee surgery was successful. He found that Claimant could likely return to work, using back support for heavy lifting.

5. On February 27, 2003, Carrier filed a TWCC-21 disputing Claimant's current medical condition. Carrier referenced the RME dated February 12, 2003, and stated its position that any current medical condition alleged to be suffered by the injured worker is not related to the compensable low back and right knee injury.

6. On March 25, 2003, Hill Country Behavioral Health (Provider) sought preauthorization from Carrier to provide 30 days of chronic pain management to Claimant.

7. In the request for preauthorization, Provider identified the treatment diagnosis with codes 717.89 (other internal derangement of the knee) and 722.93 (other and unspecified disc disorder of lumbar region).

8. On March 26, 2003, Daniel C. Valdez, M.D., examined Claimant and found that he had reached maximum medical improvement with a 6% impairment rating. He further found that the right knee was stable and no further treatment was needed. As to Claimant's back, the doctor found that any myofascial pain was due to subjective complaints and that there were no objective findings to support Claimant's discomfort.

9. On , Carrier preauthorized 30 days of chronic pain management to occur between March 28 and May 19, 2003. The preauthorization included the following statement:

> This recommendation is not a guarantee that benefits are payable by the claim administrator. At this time, there are still outstanding issues regarding the denial of compensability or liability or its extent or relatedness to the compensable injury.

10. The chronic pain management program services were provided between March 31 and May 20, 2003.

11. After the chronic pain management treatments were provided, Provider billed Carrier a total amount of $30,000 for the services.

12. On , the Texas Workers' Compensation Commission Hearings Division (TWCC Division) issued a Decision and Order to address the extent of injury. The TWCC Division hearing officer found that Claimant had some degenerative conditions in his lumbar spine, including an L3-4 protrusion, desiccation at L5-S1, and radiculitis at L4-5, which were not part of the compensable injury. The hearing officer also found that Claimant had no mood or adjustment disorder.

13. Carrier denied reimbursement for all services, citing "extent of injury" as the basis for its denial for services provided from March 31 through April 14, 2003, and May 9 through May 20, 2003. Carrier denied reimbursement, citing "unnecessary treatment (with peer review)" as basis for its denial for services provided from April 16 through May 8, 2003.

14. After Carrier denied reimbursement for the services, Provider requested medical fee dispute resolution through the Texas Department of Insurance, Division of Workers' Compensation (TDI Division).

15. On , the Division issued its findings and decision, holding that Provider was not entitled to reimbursement.

16. Provider timely requested a hearing by the State Office of Administrative Hearings (SOAH) to challenge the Division's order.

17. The Division referred the matter to SOAH on February 19, 2009.

18. All parties received adequate notice of not less than 10 days 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.

19. On April 27, 2009, SOAH Administrative Law Judge Lilo D. Pomerleau held a hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. At the hearing, Provider appeared through its attorney, Allen T. Craddock, and Carrier appeared through its attorney, David L. Swanson. No other persons appeared or participated in the hearing, and the record closed that day.

20. Provider, a non-CARF accredited facility, now seeks reimbursement for 224 hours of service at $100 per hour. In total, Provider currently seeks $22,400 in reimbursement.

21. The chronic pain management program at issue in this case was not provided for Claimant's compensable injury.

V. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE §§ 402.073(b), 413.031, 413.0311, and 413.055; and TEX. GOV'T. CODE ch. 2003.

2. Notice of the hearing was proper and timely. TEX. GOV'T. CODE §§ 2001.051-052.

3. Provider had the burden of proving by the preponderance of the evidence that it was entitled to reimbursement for the disputed services. 1 TEX. ADMIN. CODE § 155.427; 28 TEX. ADMIN. CODE § 148.14(a).

4. Based on the above findings of fact and conclusions of law, Provider is not entitled to reimbursement because the services in issue were not provided to treat Claimant's compensable injury.

ORDER

THEREFORE, IT IS ORDERED THAT Hill Country Behavioral Health is not entitled to reimbursement for the chronic pain management program services rendered in this case.

SIGNED June 5, 2009.

LILO D. POMERLEAU
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS