U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS W. STEVENS and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Gainesville, Fla.

Docket No. 97-1452; Submitted on the Record;
Issued March 15, 1999

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied payment for services provided by a chiropractor.

The Office accepted that appellant sustained lumbosacral strain as a result of a traumatic injury on July 26, 1996. Appellant did not stop work.

In an authorization for examination and/or treatment (Form CA-16) dated August 19, 1996, the employing establishment authorized treatment for appellant with the employing establishment's medical center. Dr. R. Wampler, an employing establishment physician, completed the form report and diagnosed lumbosacral strain and noted that an x-ray obtained on August 16, 1996 was within normal limits.[1] On the form report and in an accompanying clinic note dated August 19, 1996, Dr. Wampler indicated that appellant requested a referral to a chiropractor. He stated that he explained to appellant that chiropractic treatment was only reimbursable under workers' compensation if he had a spinal subluxation. Dr. Wampler noted that he was referring appellant to a chiropractor if approved by workers' compensation.

The record contains an August 19, 1996 note signed by a nurse with the employing establishment clinic referring appellant to Dr. Terry W. Stansberry, a chiropractor. The nurse requested that Dr. Stansberry treat appellant for back pain, informed him that x-rays were within normal limits, and stated that appellant was aware that without a lumbar subluxation his chiropractic treatment might not be covered under workers' compensation.

Appellant submitted chiropractic reports dated throughout the month of August from Dr. Stansberry. The chiropractor did not diagnose a lumbar subluxation.

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[1] Dr. Jehuda Steinback, a Board-certified radiologist, interpreted x-rays of appellant's spine taken August 16, 1996 as demonstrating no significant abnormalities.

In a clinic note from the employing establishment dated August 27, 1996, Dr. Wampler indicated that appellant had an employment-related injury to his back on August 16, 1996 after he repeatedly reached behind him to use an adding machine.

In a treatment note dated September 9, 1996, Dr. Stansberry noted that appellant complained of increased back pain which he attributed to "playing golf over the weekend."

In a clinic note dated September 9, 1996, Dr. James T. Menges, an employing establishment physician, noted that appellant had increased back pain and should work limited duty.

Dr. Stansberry obtained an x-ray of appellant's spine on September 10, 1996 which he interpreted as showing a subluxation at L5.

On September 10, 1996 appellant filed a notice of recurrence of disability (Form CA-2a) due to his July 26, 1996 employment injury. Appellant did not stop work.

The record contains further chiropractic reports for the month of September 1996. In a chiropractic report dated September 27, 1996, Dr. Stansberry noted that appellant "stated that he had a bulged disc at L5 and intended to have surgery."

By decision dated March 4, 1997, the Office denied appellant's claim for chiropractic expenses on the grounds that the evidence did not establish that he had a subluxation of the spine. By decision dated April 4, 1997, the Office denied modification of its prior decision.[2]

The Board finds that the Office properly denied payment for services rendered by a chiropractor.

Section 8103 of the Federal Employees' Compensation Act states in pertinent part, "the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation."[3] Section 8101(3) of the Act, defining services and supplies," states: "Reimbursable chiropractic services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist, and subject to regulation by the Secretary."[4]

[2] Following the date of appellant's appeal to the Board on March 17, 1997, the Office issued its April 4, 1997 decision. The Board finds that this decision is null and void, as both the Board and the Office cannot have jurisdiction over the same issue in the same case at the same time. 20 C.F.R. § 501.2(c); *Arlonia B. Taylor*, 44 ECAB 591 (1993). The Board further notes that it is unable to review the additional medical evidence submitted by appellant as part of his request for reconsideration before the Office. Under 20 C.F.R. § 501.2(c), the Board is precluded from reviewing evidence that was not before the Office at the time it issued its decision.

[3] 5 U.S.C. § 8103(a).

[4] 5 U.S.C. § 8101(3).

In the present case, prior to his September 10, 1996 report, Dr. Stansberry did not diagnose a subluxation as demonstrated by x-ray to exist, and therefore his reports are not those of a physician. On September 10, 1996 Dr. Stansberry diagnosed a lumbar subluxation based on his review of x-rays taken in his office on that date.

The diagnosis of a subluxation must, however, also be established as employment related in order for chiropractic treatment to be reimbursable. Dr. Stansberry did not relate appellant's subluxation to his July 1996 employment injury and thus his treatment of appellant after September 10, 1996 is not reimbursable merely on his diagnosis of a subluxation. Moreover, the record indicates that on September 9, 1996 appellant injured his back playing golf. The x-rays obtained prior to September 9, 1996 by the employing establishment health clinic revealed findings within normal limits. As the record contains no evidence relating the September 10, 1996 diagnosis of a subluxation to appellant's July 26, 1996 employment injury, Dr. Stansberry's chiropractic services are not reimbursable based on his diagnosis of a subluxation.[5]

The Board notes that it has created exceptions to the general rule that services rendered by a chiropractor are not payable when they do not consist of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[6] These exceptions are for physical therapy rendered by a chiropractor under the direction of an authorized physician,[7] and for chiropractic treatment authorized without limitations by the Office or the employing establishment.[8]

The Board finds, however, that the evidence in this case fails to establish that the treatment provided by Dr. Stansberry was under the direction of Dr. Wampler or any other authorized physician. In his August 19, 1996 report, Dr. Wampler indicated that appellant requested a referral to a chiropractor which he agreed to provide "if approved by workers' compensation." Dr. Wampler further explained to appellant that any treatment by a chiropractor was only reimbursable if he had a spinal subluxation. While a referral by an authorized physician is sufficient to obligate the Office to pay for reasonable and necessary treatment for an employment-related condition by another physician,[9] in the instant case, where a physician refers a claimant to a nonphysician for treatment, more control and direction by the referring physician must be shown.[10] Neither Dr. Wampler's report nor the August 21, 1996 referral signed by a

[5] *Theresa M. Fitzgerald*, 47 ECAB 689 (1996).

[6] *Edward Schoening*, 41 ECAB 977 (1990).

[7] *Eleanor B. Loomis*, 37 ECAB 792 (1986).

[8] *Beverly A. Scott*, 37 ECAB 838 (1986).

[9] *David L. Sala*, 38 ECAB 419 (1987).

[10] *See Rebecca Oritz*, 42 ECAB 134, 138 (1990) (the Board remanded the case to the Office for the authorized physician "to clarify or indicate the nature and extent of contemplated physical therapy recommended or prescribed for appellant," and to "then review the chiropractic bills to determine whether the services rendered … related to the physical therapy, if any, recommended or allowed by … the treating physician"); *David Deloatch*, 41 ECAB 212, 215 (1989) (Reimbursement denied on the basis it was "not rendered upon the direction of any authorized

nurse discussed the nature and extent of the chiropractic treatment contemplated and the record contains no communication from Drs. Wampler to Stansberry prescribing or recommending physical therapy.[11] The Board, therefore, finds that the evidence of record fails to establish that a qualified physician prescribed, recommended or directed physical therapy or any other services by Dr. Stansberry as required under section 8103 of the Act.

The decision of the Office of Workers' Compensation Programs dated March 4, 1997 is hereby affirmed.

Dated, Washington, D.C.
March 15, 1999

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

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physician"); *Beverly A. Scott*, *supra* note 8 at 841 (the Board, noting that the authorized physician's referral or prescription for treatment by a chiropractor was not in the case record, remanded the case to the Office for the authorized physician "to indicate the nature and extent of treatments which were contemplated"); *Eleanor B. Loomis*, *supra* note 8 at 794 (payment of bills for physical therapy required where "provided in accordance with [a prescription]" from an authorized physician).

[11] Further, the record indicates that appellant underwent physical therapy after his referral by Dr. Menges, an employing establishment physician, to a physical therapist.