U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID MORGAN and U.S. POSTAL SERVICE,
FORT WAYNE MANAGEMENT CENTER, Fort Wayne, IN

Docket No. 00-321; Submitted on the Record;
Issued December 14, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly refused to pay for chiropractic treatment for appellant's accepted back condition.

On October 1, 1998 appellant filed a notice of occupational disease claim, alleging that his work duties of lifting, bending and stooping aggravated his back condition on or about August 24, 1998. The Office accepted appellant's claim for L3-4 herniated disc with L4 radiculopathy and paid appropriate compensation and medical benefits. Appellant stopped work on August 26, 1998, was placed on work restrictions on September 9, 1998 and returned to full duty on November 2, 1998.

Appellant was treated by Dr. Nalini Sehgal, an attending physician, who diagnosed acute L4 lumbar radiculopathy, secondary to L3-4 herniated disc as causally related to the August 24, 1998 employment injury. Appellant was also seen by Dr. David Dyer, a chiropractor, following the accepted employment injury.[1]

In a letter dated November 18, 1998, the Office advised appellant that it had accepted his occupational disease claim; however, it would not compensate him for any future or past use of chiropractic treatment. The Office noted that, according to the Federal Employees' Compensation Act, services rendered by chiropractors are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. The Office advised appellant that, since Dr. Dyer failed to diagnose a subluxation of the spine in medical reports of record, expenses for chiropractic services had been denied.

[1] The record reveals that appellant had a prior history of back problems, for which he had received chiropractic care.

Despite the Office findings, appellant sought reimbursement for his chiropractic services and expenses for a magnetic resonance imaging (MRI) scan ordered by Dr. Dyer. Appellant stated that he received chiropractic care on 15 occasions for treatment of his accepted condition.

In a letter dated March 9, 1999, the Office requested additional information from Dr. Dyer regarding his diagnosis of appellant's condition, based on x-ray findings. In a letter dated March 25, 1998, he reported that x-rays were performed which revealed mild dextrolumbar scoliosis, L3, 4 and 5 spondylosis, IVD L3, 4 and 5 degeneration and dorsal aorta artherosclerosis. Dr. Dyer diagnosed sacroiliac strain, lumbar IVD syndrome, sacroiliac radiculitis, lumbosacral spondylosis and injury to the sacral nerve root.

In a letter dated May 5, 1999, the Office informed appellant that it had not accepted the condition of subluxation of the spine as previously discussed in its November 18, 1998 letter, and as a result, reimbursement of chiropractic bills had been denied. Appellant was afforded 30 days to submit additional evidence relevant to his claim, including information related to the MRI performed, before final determination would be made. Appellant, however, submitted no further evidence.

By decision dated July 15, 1999, the Office denied appellant's claim for chiropractic treatment on the grounds that appellant failed to establish that he sustained a subluxation as demonstrated by x-ray.

The Board finds that the Office properly refused to pay for chiropractic treatment for appellant's accepted back condition.

Section 8103(a) of the 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 the monthly compensation."[2]

Section 8101(3) of the Act, which defines "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."[3]

[2] 5 U.S.C. § 8103(a).

[3] 5 U.S.C. § 8101(3). The Office's regulation on payment of chiropractic services, found at 20 C.F.R. § 10.311, states:

> "The services of chiropractors that may be reimbursed are limited by the [Act] to treatment to correct a spinal subluxation. The cost of physical and related laboratory tests performed by or required by a chiropractor to diagnose such a subluxation are also payable."

The treatments rendered by Dr. Dyer, a chiropractor, did not consist of manual manipulation of the spine and are therefore not payable under the Act. The Board has created exceptions to the general rule that chiropractic services 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. These exceptions are for physical therapy rendered by a chiropractor upon the direction of an authorized physician,[4] and for chiropractic treatment authorized without limitations by the Office or the employing establishment.[5]

In this case, appellant's treatments by Dr. Dyer were not rendered upon the direction of any authorized physician, and the services of Dr. Dyer were not authorized by the Office or the employing establishment.

The decision of the Office of Workers' Compensation Programs dated July 15, 1999 is affirmed.[6]

Dated, Washington, DC
December 14, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

[4] *Eleanor B. Loomis*, 37 ECAB 792 (1986); *Michael J. Trosan*, 33 ECAB 1964 (1982).

[5] *Beverly A. Scott*, 37 ECAB 838 (1986); *Virginia Mary Dunkle*, 34 ECAB 1305 (1983).

[6] On appeal, appellant states that an MRI scan was performed for which he has not been compensated. The Office has not yet issued a decision whether appellant is entitled to expenses for an MRI test related to his accepted condition, and this issue is therefore not presently before the Board on this appeal.