U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEAN D. TERRY and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Atlanta, GA

Docket No. 00-39; Submitted on the Record;
Issued June 21, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied reimbursement of payment for chiropractic services.

On November 8, 1995 appellant, then a 45-year-old secretary, filed a claim alleging that on October 27, 1995 she injured her lower back and left side while carrying a box of tax returns. Her claim was accepted for low back strain and compensation benefits were paid.

Accompanying appellant's claim was an attending physician's report dated May 9, 1996 prepared by Dr. Reginald L. Parker, a Board-certified family practitioner; a back to work note; and physical therapy notes from March 18 to April 10, 1996.[1] The attending physician's report indicated appellant sustained an acute muscle strain. He indicated by a checkmark "yes" that lifting a heavy object caused appellant's condition. The back to work note indicated that appellant could return to work on November 6, 1995. The physical therapy notes provide a history of appellant's injury and noted a gradual improvement of appellant's condition.

In April 1996, while on vacation in Florida, appellant indicated that she was experiencing severe lower back pain and sought the treatment from Dr. Harvey A. Frank, a chiropractor, who treated her from April to May 1996. In a report dated May 7, 1996, he indicated a diagnosis of lumbar disc; lumbar myofascitis and lumbar subluxation.

Appellant continued with chiropractic care after returning from vacation. She sought treatment from Dr. R. Jeffrey Shows, a chiropractor. In a report dated June 24, 1996, Dr. Shows indicated that he had been treating appellant since May 14, 1996. He noted that appellant

[1] Appellant sought treatment from Dr. Charmaine George, a Board-certified internist, after she was unable to obtain an appointment with Dr. Parker. Dr. George referred appellant to Columbia Rehabilitation for physical therapy. She underwent physical therapy from March 18 to April 10, 1996 and then was released from Dr. George's care.

suffered from an intervertebral disc protrusion, lower back and leg pain, lumbosacral subluxation complex and disc degeneration.

In a letter dated January 8, 1998, the Office notified appellant's attorney that the chiropractic treatments appellant underwent in Florida and South Carolina were not reimbursable under the Federal Employees' Compensation Act.[2] The Office indicated that appellant did not follow the appropriate procedure and changed physicians without authorization from either her attending physician, Dr. George or by the Office.

By letter dated August 6, 1998, appellant's attorney requested a hearing before an Office hearing representative and submitted additional medical records. Appellant submitted progress notes from Dr. Parker dated October 12 to November 4, 1995. Dr. Parker's notes indicated a diagnosis of lower back pain. Also submitted was a note from Dr. George dated April 11, 1996, who noted appellant's history of her back injury and requested that the employing establishment provide appellant parking closer to her office.

In a letter dated October 19, 1998, the Office notified appellant's attorney that a final decision had not been made regarding payment of appellant's chiropractic bills and therefore, an oral hearing could not be granted at this juncture.

In a decision dated November 3, 1998, the Office denied appellant's claim for payment of chiropractic treatment as the treatment was not authorized by the Office nor done at the referral of the attending physician.

By letter dated November 5, 1998, appellant's attorney requested a hearing before an Office hearing representative and submitted additional medical evidence. The hearing was held on April 27, 1999. Appellant indicated that, both Drs. Frank and Shows took x-rays, which indicated that spinal subluxation existed. She submitted two reports from Dr. Show dated November 6, 1996 and October 15, 1997. In his November 6, 1996 report, Dr. Show indicated appellant's diagnosis of lumbar subluxation. His November 6, 1996 report noted that the lumbosacral x-ray studies performed by Dr. Frank on April 22, 1996 revealed biomechanical changes consistent with subluxation of the lumbosacral spine.

By decision dated July 1, 1999, the Office hearing representative determined that the record fails to support appellant's change of physician and that the services provided by appellant's chiropractor were not reimbursable under the Act.[3] The Office hearing representative affirmed the Office's November 3, 1998 decision.

The Board finds that the Office has not exercised its discretion to determine whether Dr. Frank or Dr. Show's unauthorized chiropractic care was necessary and reasonable.

Section 8101(2) of the Act provides that chiropractors are considered physicians "only to the extent that their reimbursable services are limited to treatment consisting of manual

[2] 5 U.S.C. § 8103.

[3] 5 U.S.C. § 8101(2).

manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary."[4] Section 10.400(e) of the implementing federal regulations provides:

> "The term 'subluxation' means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae anatomically which must be demonstrable on any x-ray film to individuals trained in the reading of x-rays. A chiropractor may interpret his or her x-rays to the same extent as any other physician defined in this section."[5]

Thus, where x-rays do not demonstrate a subluxation (a diagnosis of a subluxation based on x-rays has not been made), a chiropractor is not considered a "physician," and his or her reports cannot be considered as competent medical evidence under the Act.[6]

In this case, appellant sought chiropractic treatment from Dr. Frank. The record indicated Dr. Frank examined and x-rayed appellant and determined appellant had lumbar subluxation. Appellant was also treated by Dr. Show, also a chiropractor, who submitted reports dated June 24 and November 6, 1996 and October 15, 1997. In Dr. Show's June 24, 1996 report, he diagnosed appellant with lumbosacral subluxation complex with disc degeneration. Dr. Show's November 6, 1996 report noted a diagnosis of lumbar subluxation; sacrum subluxation and disc degeneration. In his October 15, 1997 report, he indicated, appellant was examined, x-rayed and treated by Dr. Frank. Dr. Show noted that the "lumbosacral x-ray studies, performed at Dr. Frank's office on April 22, 1996, reveal biomechanical changes consistent with subluxation of the lumbosacral spine." The Board finds Dr. Frank and Dr. Show are physician's as described in Section 8101(2) of the Act. The Office subsequently found that appellant's attending physician of record was Dr. George and appellant did not obtain authorization for a change in physicians prior to seeking treatment from Dr. Frank and Dr. Show. The Office did properly note that appellant had not obtained authorization for a change of physicians and that Dr. Frank and Dr. Show were therefore not authorized physicians. The Office is, however, required by section 8103 of the Act[7] to provide all medical care necessary as a result of an employment injury.

Section 8103 of the Act provides, in part:

> "(a) 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...."

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[4] 5 U.S.C. § 8101(2).

[5] *See* 20 C.F.R. § 10.400(e).

[6] *See Susan M. Herman*, 35 ECAB 669 (1984).

[7] 5 U.S.C. § 8103.

The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office therefore has broad administrative discretion in choosing the means to achieve this goal.[8]

The Board finds that the Office is required by section 8103 of the Act[9] to provide all medical care necessary as a result of an employment injury. The Office has broad discretionary authority in the administration of the Act to approve appropriate medical treatment obtained after the initial choice of physician and without prior authorization from the Office.[10] In *Marjorie S. Geer*,[11] the Board stated:

> "While appellant is not entitled to reimbursement of unauthorized medical care as a matter of right, the Office nevertheless has the discretionary authority to approve unauthorized medical care which it finds necessary and reasonable and is required to exercise that discretion."

In the present case, the Office found that a change of treating physicians had not been authorized. The Office has not, however, exercised its discretion to determine whether any of Dr. Frank and Dr. Show's treatment of appellant was necessary and reasonable. The Office must review the treatment by Dr. Frank and Dr. Show, as well as the medical evidence of record, and determine if his treatment were necessary and reasonable for appellant's care.

[8] *James A. Sellers*, 43 ECAB 924 (1992).

[9] 5 U.S.C. § 8103.

[10] *Majorie S. Geer*, 39 ECAB 1099 (1988).

[11] *Id.*

The decision of the Office of Workers' Compensation Programs dated July 1, 1999 is set aside regarding the issue of chiropractic care and this case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, DC
June 21, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member