SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION
DIVISION OF LABOR AND MANAGEMENT

VAN HEMERT CHIROPRACTIC, **HF No. 135, 2014/15**

Petitioner,

v. **DECISION**

EMBE,

Employer,

and

FIRST DAKOTA INDEMNITY COMPANY,

Insurer.

This is a workers' compensation case brought before the South Dakota Department of Labor and Regulation, Division of Labor and Management pursuant to SDCL 62-7-12 and ARSD 47:03:01. This matter was heard by Sarah E. Harris, Administrative Law Judge on April 20, 2016, in Sioux Falls, SD. Petitioner, Van Hemert Chiropractic, through Lyle Van Hemert appeared Pro Se. Employer, EMBE, and Insurer, First Dakota Indemnity Company, were represented by Susan Brunick Simons.

Issues:

This case presents the following legal issues:

1. Whether the lumbar-sacral orthosis belt prescribed to the patient was medically necessary?

2. Whether prior authorization of the lumbar-sacral orthosis belt was required before being prescribed in order for Van Hemert Chiropractic to be reimbursed for the medical expenses?

3. What is the reasonable amount of medical reimbursement?

Facts:

The Department finds the following facts by a preponderance of the evidence:

1. On and prior to January 24, 2014, Dr. Lyle Van Hemert from Van Hemert Chiropractic was treating a workers' compensation claimant for low back complaints.

2. On January 24, 2014, during an office visit Van Hemert Chiropractic, Petitioner, prescribed, provided and fitted claimant with a lumbar-sacral orthosis belt. Dr. Van Hemert spent 15 minutes of service showing claimant the correct way to use the belt. Petitioner did not bill for the service of showing claimant how to use the belt. Petitioner stated that the service charges were included in the price of the belt.

3. The wholesale value of the lumbar-sacral orthosis belt at the time of purchase by Petitioner was $159.99.

4. On January 28, 2014, a representative from RAS called Van Hemert Chiropractic to ask about claimant's care. Dr. Van Hemert informed the representative that claimant was in rehab. The representative informed Dr. Van Hemert that the rehab needed to be pre-approved. The representative also stated that claimant had 16 visits so far and they believed that she should be done with care.

5. Petitioner received reimbursement for the charges for the services provided during the January 24, 2014 office visit. The charge of $925.00 for the lumbar-sacral orthosis belt was denied by Insurer. The reason given for denial states "this procedure requires prior authorization and none was identified."

6. Petitioner appealed the denial with Insurer and received the re-evaluation letter processed on January 6, 2015, again denying the charge for the not getting prior authorization for durable medical equipment.

7. On February 18, 2015, Petitioner filed a Petition for Hearing seeking reimbursement of $925.00 for the lumbar-sacral orthosis belt that was prescribed to a patient.

8. On September 16, 2015, Petitioner filed an Amended Petition for Hearing on Medical Benefits seeking reimbursement of $925.00 for the lumbar-sacral orthosis belt that was prescribed to a patient.

Additional facts may be discussed in the analysis below.

Analysis:

A. Whether the lumbar-sacral orthosis belt prescribed to the patient was medically necessary?

South Dakota law requires an employer to provide necessary medical and surgical treatment to employees covered by workers' compensation insurance. SDCL 62-4-1. The South Dakota Supreme Court has clarified the burden of showing reasonable and necessary medical expenses. "It is in the doctor's province to determine what is necessary or suitable and proper. *When a disagreement arises as to the treatment rendered, or recommended by the physician, it is for the employer to show that the treatment was not necessary or suitable and proper.*" *Engel v. Prostrollo Motors*, 2003 SD 2, ¶ 32, 656 NW2d 299, 304 (SD 2003)(quoting *Krier v. John Morrell &*

Co., 473 NW2d 496, 498 (SD 1991) (emphasis in original). The Department cannot compel a claimant to utilize a specific treatment plan. The Department can only rule whether a specific treatment plan is medically reasonable and necessary and whether the Employer and Insurer are required to pay for that treatment.

Employer/Insurer argues that the lumbar-sacral orthosis belt prescribed by Dr. Van Hemert was not necessary. The reason Employer/Insurer believe the belt was unnecessary is that Dr. Van Hemert had restricted claimant's lifting to no lifting of any kind and the belt was prescribed to be used when claimant had to lift at work. Thus, Employer/Insurer reasoned that because claimant had not been released from her lifting restrictions at the time the belt was prescribed the belt would not be necessary.

In this case Dr. Van Hemert testified that although it is correct that he prescribed the belt to be worn when she has to lift at work and it was also correct that claimant was still on lifting restriction. Dr. Van Hemert testified that when you wear the belt it also helps to protect the muscles that have been injured. When wearing the belt, while not lifting, if claimant felt strain on her back the belt would help protect the muscles as they are healing and keep her from reinjuring herself. Dr. Van Hemert did not prescribe the belt until claimant had a flare-up five weeks into posttreatment. Dr. Van Hemert reasoned "at that point in time that having a belt even while she was walking around the office, et cetera, would help stabilize the soft tissue injury and help it heal, even though I stipulated not to lift." Employer/Insurer did not present any medical testimony to dispute Dr. Van Hemert's reasoning. Thus, Employer/Insurer have not shown that the treatment prescribed by Dr. Van Hemert was not necessary or suitable and proper.

B. Whether prior authorization of the lumbar-sacral orthosis belt was required before being prescribed in order for Van Hemert Chiropractic to be reimbursed for the medical expenses?

Employer/Insurer next argues that Petitioner cannot receive payment for the lumbar-sacral orthosis belt because Dr. Van Hemert failed to procure preauthorization for this piece of durable medical equipment. Petitioner argues that he did not need preapproval for a belt that was prescribed in office.

In this case, prior to prescribing the lumbar-sacral orthosis belt Dr. Van Hemert was not contacted by claimant's case management plan regarding preapproval of any procedure or medical equipment. Dr. Van Hemert stated that according to his understanding Risk Administrative Services (RAS) require preauthorization for all referrals for diagnostics such as an MRI, a CT scan, etc. and not for in office treatment or prescriptions filled in office. On January 24, 2014, Dr. Van Hemert prescribed and supplied the lumbar-sacral orthosis belt to claimant when she had a flare-up with her back approximately five weeks after and thirteen visits post injury. It was not until January 28, 2014, that RAS contacted Dr. Van Hemert about a utilization review of claimant's care. The first time that Dr. Van Hemert was informed that any preapproval would be needed was for claimant's rehab, to-which RAS indicated preapproval would be needed first.

Though insurers policies under SDCL 58-20-24 require insurers to provide medical services and health care to injured workers for compensable injuries and diseases under a case management plan, the law does not necessarily require that a case management plans be enforced. In this case if a case management plan had been used and the employee or Insurer had notified the medical provider that the employee was covered by a case management plan before treatment was rendered, Employer/Insurer would have been protected if the medical provider had failed to comply with the requirements of ARSD 47:03:04:06. However, that was not the case here. Petitioner was never notified prior to prescribing the lumbar-sacral orthosis belt that a case management plan was in place or that he needed approval from the case management plan before prescribing treatment. Neither party testified as to whether a case management plan had been implemented for the patient in this case. Though it is undisputed that Dr. Van Hemert was informed that preapproval would be needed for certain referrals and treatments this information was provided to Dr. Van Hemert a few days after he had already prescribed the belt in question. As such, Petitioner was not required to get pre-authorization for the lumbar-sacral orthosis belt in this case.

C. What is the reasonable amount of medical reimbursement?

Finally Employer/Insurer argues that the cost for the lumbar-sacral orthosis belt is unreasonable. The Petitioner is seeking to reimbursement based on ARSD 47:03:05:05's fee schedule. ARSD 47:03:05:05 governs the Department's authority regarding reimbursement criteria in workers' compensation cases. That regulation states:

> To be reimbursed, the charge must be for reasonable and necessary services for the cure or relief of the effects of a compensable injury or disability. A health care provider is not entitled to payment from an insurer or employee for fees in excess of the maximum reimbursement allowed under this chapter.
>
> Except as otherwise provided in this chapter, to determine the maximum reimbursement for services, the base unit value for a procedure code is multiplied by the following factors:

Procedure Code	Factor
10000-69999	$99.71
70000-79999	$18.88
80000-89999	$15.12
90000-95906	$ 6.50
95907-95913	$ 8.30
95914-99071	$ 6.50
99075	$14.29 1st hour, $1.78 each additional 15 min
99076-99199	$ 6.50
99201-99450	$ 7.92
99455-99456	$19.23 1st hour, $2.41 each additional 15 min
99460-99499	$ 7.92
99500-99607	$ 6.50

> If a code is properly submitted for one of these services, but is not listed in **Relative Values for Physicians**, or the base unit value is RNE or BR, the reimbursement is 80% of the provider's charge.

ARSD 47:03:05:05. Dr. Van Hemert testified that Petitioner would be reimbursed by the Insurer at 80% of the provider charge. Employer/Insurer argues that charging $925.00 for a belt that cost Petitioner $159.99 is unreasonable. Employer/Insurer also accuse Petitioner of charging different prices based on someone's ability to pay such as is provided in SDCL 62-7-8.1.

> Ability to pay for health care--Impermissible basis for higher fees--Misdemeanor. No health care provider may charge a higher price for goods, care or services rendered to an injured worker who is eligible for workers' compensation benefits based on the ability of the employer or the insurer to pay for such goods, care or services. A violation of this section is a Class 1 misdemeanor.

SDCL 62-7-8.1. However, Employer/Insurer have not provided any evidence to show that Petitioner charges different or higher prices based on employer or insurer's ability to pay for such goods, as such the allegations are unfounded and will not be considered. Employer/Insurer has not shown that the amount charged for the lumbar-sacral orthosis belt is unreasonable.

Order:

Petitioner shall submit Findings of Fact, Conclusions of Law and an Order consistent with this Decision, within 20 days of the receipt of this Decision. Counsel for Employer/Insurer shall have an additional 20 days from the receipt of Claimant's Findings of Fact and Conclusions of Law to submit Objections, Proposed Findings of Fact and Conclusions of Law. The parties may stipulate to a waiver of formal Findings of Fact and Conclusions of Law. If they do so, Counsel for Employer/Insurer shall submit such stipulation together with an Order.

Dated this 27th day of September, 2016.

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION

__/s/ Sarah E. Harris______________
Sarah E. Harris
Administrative Law Judge