

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**  
**300 West 15th Street, Suite 502**  
**Austin, Texas 78701**

**DOCKET NO. 453-03-1564.M5**  
**[MDR TRACKING NO. M5-02-2222-01]**

<b>LIBERTY MUTUAL INSURANCE</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>COMPANY OF TEXAS,</b>	§	
<i>Petitioner</i>	§	
<b>VS.</b>	§	
	§	<b>OF</b>
<b>NEUROMUSCULAR INSTITUTE</b>	§	
<b>OF TEXAS, PA</b>	§	
<i>Respondent</i>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Liberty Mutual Insurance Company of Texas (the "Carrier") appeals the decision of an Independent Review Organization (IRO) requiring reimbursement for a series of chiropractic manipulations and associated office visits provided to workers' compensation claimant \_\_\_\_ (the "Claimant"). The Administrative Law Judge (ALJ) concludes the Petitioner did not meet its burden of proving the disputed services were not medically necessary. Accordingly, this decision requires payment of \$569 for the disputed services.

**I. NOTICE AND HEARING**

The hearing convened May 20, 2003, at the hearing facilities of the State Office of Administrative Hearings (SOAH) before SOAH ALJ Kerry D. Sullivan. The Carrier was represented by Charlotte Salter; the Provider was represented by Hector Q. Martinez. The Commission did not participate in the hearing. After receipt of evidence, the record was closed the same day.

**II. EVIDENCE AND BASIS FOR DECISION**

The Claimant is a 53-year-old female who sustained compensable injuries on \_\_\_\_\_. The injuries included Repetitive Strain Injury of the spine; bilateral lateral epicondylitis; right side medial epicondylitis; a ganglion cyst of the right wrist; and adhesive capsulitis of the right shoulder. The documentary record consists of approximately 700 pages of documentation provided to the IRO. No witnesses testified at the hearing.

As indicated by the IRO decision, the documentation indicates that the Claimant's degenerative spinal condition has resisted a good resolution. The Claimant underwent a significant amount of reconditioning therapy with only marginal improvement documented. As a result, the Claimant continues to seek palliative relief. According to the IRO decision, the disk injuries in the Claimant's neck and lower back are clearly documented: the sclerosing in the lumbar spine and spondylosing in the cervical spine are viewed as indicators of chronic repetitive stress suffered by the spine. Additionally, the IRO decision notes that the Provider has been providing palliative manipulations at decreasing intervals, and that these manipulations have provided the Claimant with temporary pain relief.

In the ALJ's view, the IRO decision, which was admitted into the evidentiary record, provides the most thorough review and assessment of the medical records and the Claimant's condition available in the evidentiary record. In opposing this decision, the Carrier relies primarily on a January 17, 2001 peer review performed by Patrick Mulroy, M.D., in which Dr. Mulroy comes to different conclusions regarding the Claimant's status and appropriate treatment.<sup>1</sup> The ALJ, however, does not find Dr. Mulroy's review to be adequately explained. In light of the Provider's documentation of the Claimant's continuing pain and the analysis provided in the IRO decision, the ALJ finds that the Carrier has failed to prove that the disputed services were not medically necessary.

Based on the above, the ALJ finds that the requested reimbursement should be denied. Additional facts and analysis in support of this decision are set out in the Findings of Fact and Conclusions of Law, below.

### **III. FINDINGS OF FACTS**

1. \_\_\_\_\_ (the "Claimant") sustained a compensable injury on \_\_\_\_\_. The injury is well documented and included Repetitive Strain Injury of the spine; bilateral lateral epicondylitis; right side medial epicondylitis; a ganglion cyst of the right wrist; and adhesive capsulitis of the right shoulder.
2. Liberty Mutual Insurance Company of Texas (the "Carrier") was the worker's compensation provider for the Claimant's employer.
3. The Neuromuscular Institute of Texas (the "Provider") provided a series of chiropractic manipulations and office visits to the Claimant on February 20, 2001, February 27, 2001, March 13, 2001, March 20, 2001, April 11, 2001, May 21, 2001, and June 11, 2001.
4. The Carrier denied reimbursement for the chiropractic manipulations and office visits on the basis that they were medically unnecessary.

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<sup>1</sup> Dr. Mulroy concluded the Claimant had reached maximum medical improvement, assigned her a 0% impairment rating, and concluded that the Claimant is no longer a candidate for additional physical therapy or chiropractic manipulations.

5. The Provider filed a request for medical dispute resolution with the Texas Workers' Compensation Commission, which referred the matter to an Independent Review Organization (IRO).
6. The IRO found in favor of the Provider.
7. The Carrier filed a timely appeal of the IRO decision.
8. Notice of the hearing was sent January 8, 2003.
9. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
10. The hearing was held May 20, 2003, with representatives of Petitioner and the Carrier participating. The hearing was adjourned the same day.
11. The chiropractic manipulations described in Finding of Fact 3 provided temporary relief of the Claimant's pain.
12. The documentary evidence submitted by the Carrier was not adequately explained and conflicts with other documentation submitted by the Provider and with the analysis contained in the IRO decision.
13. The documentary evidence submitted by the Carrier fails to establish that the services in dispute were not medically necessary.

#### **IV. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. ch. 401 *et seq.*
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
4. The Carrier is the petitioner in this proceeding and has the burden of proof. 28 TEX. ADMIN. CODE §148.21(h).
5. The Carrier did not establish that the chiropractic manipulations and associated office visits were not medically necessary.
6. The Provider's request for reimbursement should be upheld.

**ORDER**

**IT IS, THEREFORE, ORDERED** that Liberty Mutual Insurance Company of Texas pay Neuromuscular Institute of Texas-PA \$569 for the chiropractic manipulations and associated office visits provided to workers' compensation claimant \_\_\_\_.

**Signed July 16, 2003.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**Kerry D. Sullivan**  
**Administrative Law Judge**