DOCKET NO. 453-03-2315.M5
[MDR TRACKING NO. M5-02-3053-01]

MICHAEL COMBS, D.C.	§	**BEFORE THE STATE OFFICE**
	§	
V.	§	**OF**
	§	
TRANSCONTINENTAL INSURANCE COMPANY	§	**ADMINISTRATIVE HEARINGS**
	§	
	§	
	§	

DECISION AND ORDER

I. INTRODUCTION

Michael Combs, D.C. (Provider) has appealed a Texas Workers' Compensation Commission (TWCC) Medical Review Division (MRD) order, based on an independent review organization (IRO) review. They found that certain services that he provided to _____ (Claimant) from July 23, 2001, through May 29, 2002 (Disputed Services), were not medically necessary to treat the Claimant's compensable injury. Transcontinental Insurance Company (Carrier) had denied reimbursement for the Disputed Services, contending they were not medically necessary.

The total maximum allowable reimbursement (MAR) amount in controversy is $8,359. The only disputed issue is whether the Disputed Services were medically necessary. The Parties agree that the Provider, who did not prevail before the IRO, has the burden of proof.

As set out below, the Administrative Law Judge (ALJ) finds that two neuromuscular reeducation services, current procedural terminology (CPT) Code 97112, provided on July 23 and 27, 2001, were medically necessary. He also finds that filling out four TWCC-73 status-report forms, CPT Code 99080-73, was necessary to comply with the TWCC's administrative requirements. He cannot find that the remaining Disputed Services were medically necessitated by the compensable injury. The ALJ orders the Carrier to reimburse the Provider $130 for the necessary services and denies the Provider's request for reimbursement for the remaining Disputed Services.

II. DISCUSSION

The Claimant sustained the compensable injury on_____. It resulted in bilateral carpal tunnel syndrome and cubital tunnel syndrome. The Provider began treating the Claimant on January 23, 2001, with chiropractic manipulations and therapy. She frequently visited the Provider until at least May 29, 2002. Nearly every time she visited the Provider, the Claimant complained of hand and wrist weakness, stiffness, swelling, and pain and the Provider diagnosed her with fixations and provided manipulations and physical therapy. Eventually, other health-care providers determined that the Claimant needed surgery for her carpal and cubital tunnel syndromes. In fact, she had four surgeries on March 30, July 2, and November 6, 2001, and June 3, 2002.

Focusing on the ten-month period in dispute, even the Carrier's own expert witness, Brian M. Glenn, D.C., testified that the July 23 and 27, 2001, CPT Code 97112 neuromuscular-reeducation services were reasonably medically necessary. The Carrier did not dispute that at the hearing, hence the ALJ concludes they were as well. The Provider also seeks reimbursement for filling out four TWCC-73 forms, status reports concerning the Claimant. Since TWCC required the Provider to fill them out, the ALJ concludes they were necessary and that the Provider should be reimbursed the $15-per-service MAR for the four of them.

Additionally, the Claimant visited the Provider 71 times. During each office visit, CPT Code 99213-MP, the Provider furnished chiropractic manipulations using an activator, a spring-loaded device that gave a low-force thrust to the Claimant's elbow. During the period in dispute, the Carrier paid for an average of two office visits per month, 19 in all, through March of 2002. However, the Carrier denied reimbursement for the other 52 visits.

With a few exceptions, the Carrier also paid for all physical-therapy services–therapeutic exercises, myofascial release, ultrasound, neuromuscular reeducation, hot or cold packs, and electrodes–from July 23, 2001, through January 9, 2002. Thereafter, it denied reimbursement for all such services. In all, the Carrier denied reimbursement for 102 physical-therapy services.

Why would the Claimant need such a large number of services? The Provider contends that the Claimant needed them to decrease her pain, promote her healing, and return her to gainful employment. Provider witness Miguel Chiusano, D. C., also generally testified that chiropractic manipulations, heat, and other passive therapies promoted plasticity in the nervous system, helping to reduce pain. His opinion was that continued swelling also indicates that some type of treatment was necessary.

The Claimant testified that the therapy she received from the Provider decreased her pain for days or weeks and allowed her to function better. She specifically testified that the activator treatments decreased her pain. However, the Claimant also agreed that it would be best to rely on the Provider's notes to know how she was feeling on any given day. When examined together, those notes and the disputed billings do not show that the office visits, including the activator manipulations, significantly relieved the Claimant's pain or otherwise benefitted the her.

The notes show that the manipulations were provided to address fixations, restrictions on joint motions, in her wrists and elbows. The Provider diagnosed her with fixations and provided the activator treatment. The Patient kept returning a few days later with the same complaints, and received the same activator treatment.

Carrier witness Dr. Glenn agreed that it was reasonable to initially attempt conservative chiropractic treatment. While he was skeptical, he acknowledged that activator manipulation is accepted by some members of his profession for treating fixations. However, after a time, it was clear that neither the manipulations nor the physical therapy was significantly reducing either the Claimant's pain or fixations. She frequently reported pain, but the reported level of her pain did not significantly vary whether she was treated or not. The Provider stopped all treatment for three

weeks, between February 20, 2002, and March 13, 2002 (Cessation Period). The Claimant testified that during the Cessation Period her pain increased and she had a lot of shakes, but the contemporaneous documentation does not support her memory. There was some variation, but her recorded pain level was very similar, as it had been since the injury.

On February 1, 2002, Roland F. Chalifoux, D.O., P.A., who had performed the surgery on the Claimant, wrote that he could not understand why she still had pain. Taking a cue from that observation, Dr. Glenn concluded that the activator treatment was at least arguably necessary to a limited extent only until the beginning of February 2002, by which time it was clear that the activator treatment was ineffective, since the fixations and pain were not going away.

Even assuming that some manipulations and physical therapy were necessary until February 1, 2002, the evidence does not show why so many were needed until that date. Dr. Glen could not understand why they were. It is not clear that all of the Provider's notes concerning the Claimant's treatment during the period from January 23, 2001, when the Provider first began treatment, until July 23, 2001, the date of the earliest service disputed in this case, are not in evidence. However, enough of them are in evidence to conclude that by July 23, 2001, the Provider had been providing these same activator-manipulation services to the Claimant every few days for six months. After that period of time, the ALJ cannot conclude that continuing to provide those ineffective services every few days was medically necessary to treat the compensable injury. Nor is there any evidence showing why nearly as frequent and numerous physical therapy services, starting in November 28, 2001, sixteen months after the injury, were necessary.

The Provider contends that the Claimant's case was atypically complicated by her surgeries. Perhaps so, but that does not explain why his services, which did not cure, had no noticeable impact on pain, and continued every few days for months, were medically necessary.

III. FINDINGS OF FACT

1. ____ (Claimant) sustained a work-related injury on ___, while her employer was ___ and Transcontinental Insurance Company (Carrier) was its workers' compensation insurance carrier.

2. The compensable injury resulted in bilateral carpal tunnel syndrome and cubital tunnel syndrome.

3. Michael Combs, D.C. (Provider) began treating her on January 23, 2001, with chiropractic manipulations and physical therapy. She visited the Provider every two or three day thereafter, nearly continuously, until at least May 29, 2002.

4. Nearly every time she visited the Provider, the Claimant complained of hand and wrist weakness, stiffness, swelling, and pain.

5. Nearly every time the Claimant visited the Provider, he diagnosed her with fixations,

restrictions on joint motion in her wrists and elbows, and furnished chiropractic manipulations using an activator, a spring-loaded device that gave a low-force thrust to the Claimant's elbow.

6. By July 23, 2001, the Provider had been providing these same activator-manipulation services to the Claimant every few days for six months.

7. From July 23, 2001, through May 29, 2002, the Carrier paid the Provider for an average of two office visits, CPT Code 99213-MP, per month.

8. From July 23, 2001, through May 29, 2002, the Carrier paid for the following physical-therapy services:

CPT Code, Service	Date of Service
97112, neuromuscular reeducation	2001: 12/7, 12/10, 12/17, 12/21, 12/28, 12/31 2002: 1/7
97110, therapeutic exercises	2001: 11/28, 11/28, 11/30, 12/3, 12/3, 12/5, 12/5, 12/7, 12/7, 12/10, 12/10, 12/12, 12/12, 12/14, 12/14, 12/17, 12/17, 12/19, 12/19, 12/21, 12/21, 12/26, 12/26, 12/28, 12/28, 12/31, 12/31 2002: ½, ½, 1/7, 1/7, 1/9
97035, ultrasound	2001: 12/5,
97250, myofascial release	2001: 12/3, 12/5, 12/14, 12/19, 12/26, 2002: 1/9

9. From July 23, 2001, through May 29, 2002, the Provider also furnished the following services to the Claimant (Disputed Services):

CPT Code, Service	Date of Service
97112, neuromuscular reeducation	2001: 7/23, 7/27, 11/28, 11/30, 2002: 1/4, 1/14, 3/27, 4/1, 4/4, 4/8, 4/10, 4/15, 4/18, 4/22, 4/24, 4/29, 5/3, 5/8, 5/10, 5/13, 5/15, 5/23, 5/29
97110, therapeutic exercises	2001: 11/28, 11/30, 11/30, 12/7, 12/31 2002: ½, ½, 1/4, 1/4, 1/14, 1/14, 1/16, 1/16, 1/18, 1/18, 1/21, 1/21, 1/23, 1/23, 1/25, 1/25, 1/28, 1/28, 1/30, 1/30, 2/1, 2/1, 2/4, 2/4, 2/6, 2/6, 2/8, 2/8, 2/11, 2/11, 2/15, 2/15, 2/18, 2/18, 3/13, 3/13, 3/25, 3/27, 3/29, 4/1, 4/4, 4/8, 4/15,

CPT Code, Service	Date of Service
	4/15, 4/18, 4/18, 4/22, 4/22, 4/24, 4/24, 4/29, 4/29, 5/3, 5/8, 5/8, 5/10, 5/13, 5/15, 5/23, 5/23, 5/29
97214-MP, Evaluation & Management	2002: 2/20, 3/25, 5/20
97010, hot or cold pack	2001: 11/28, 11/30, 11/30, 12/7, 12/31 2002: ½, ½, 1/4, 1/4, 1/14, 1/14, 1/16, 1/16, 1/18, 1/18, 1/21, 1/21, 1/23, 1/23, 1/25, 1/25, 1/28, 1/28, 1/30, 1/30, 2/1, 2/1, 2/4, 2/4, 2/6, 2/6, 2/8, 2/8, 2/11, 2/11, 2/15, 2/15, 2/18, 2/18, 3/13, 3/13, 3/25, 3/27, 3/29, 4/1, 4/4, 4/8, 4/15, 4/15, 4/18, 4/18, 4/22, 4/22, 4/24, 4/24, 4/29, 4/29, 5/3, 5/8, 5/8, 5/10, 5/13, 5/15, 5/23, 5/23, 5/29
99213-MP, office visit	2001: 7/30, 8/1, 8/3, 8/8, 8/10, 8/15, 8/17, 8/27, 8/29, 8/31, 9/4, 9/6, 9/8, 9/12, 9/14, 9/17, 9/19, 9/21, 9/26, 9/28, 11/14, 11/16, 11/19, 11/21, 11/26, 11/28, 11/30, 12/5, 12/7, 12/10, 12/12, 12/14, 12/17, 12/19, 12/21, 12/28, 12/31 2002: ½, 1/4, 1/7, 1/14, 1/16, 1/18, 1/21, 1/23, 1/25, 1/28, 1/30, 2/1, 2/6, 2/8, 2/11, 2/15, 2/18, 3/27, 3/29, 4/1, 4/4, 4/8, 4/10, 4/15, 4/18, 4/22, 4/24, 4/29, 5/3, 5/8, 5/10, 5/13, 5/15, 5/29
97035, ultrasound	2001: 12/14
97250, myofascial release	2001: 11/30 2002: 1/16, 1/21, 1/25, 1/30, 2/6, 2/20, 3/13, 3/25, 3/27, 3/29, 4/1, 4/4, 4/8, 4/10, 4/15, 4/18, 4/22, 4/24, 5/8, 5/10, 5/13, 5/15, 5/20, 5/23, 5/29
A4556, electrodes	2001: 8/24, 9/12, 10/17, 10/17, 11/26, 12/28 2002: 4/8, 5/13
97265, joint mobilization	2002: 3/25, 3/27, 3/29, 4/1, 4/4, 4/8, 4/10
99080-73, filling out TWCC-73	2001: 11/19 2002: 2/18, 3/13, 5/23

10. The Provider timely sought reimbursement of the maximum allowable reimbursement (MAR) for the Disputed Services, which totaled $8,359.

11. The Carrier denied the requested reimbursement, maintaining that the Disputed Services were not medically necessary to treat the Compensable Injury.

12. The Provider filed a request for medical dispute resolution with the TWCC, which referred it to the IRO.

13. The IRO reviewed the medical dispute and could not find that the Disputed Services were medically necessary to treat the Claimant's compensably injury.

14. After the IRO decision was issued, the Claimant asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).

15. Notice of a July 10, 2003, hearing in this case was mailed to the Parties on April 29, 2003.

16. On July 10, 2003, William G. Newchurch, an Administrative Law Judge (ALJ) with SOAH held a hearing on this case at the William P. Clements, Jr. Building, 300 W. 15th Street, 4th Floor, Austin, Texas. The hearing concluded and the record closed on that same day.

17. The Carrier appeared at the hearing through its Attorney, David Swanson.

18. The Provider telephonically appeared at the hearing and represented himself.

19. The Claimant telephonically appeared at the hearing and testified as a witness for the Provider.

20. The above July 23 and 27, 2001, CPT Code 97112, neuromuscular-reeducation services and the above CPT Code 99080-73, TWCC-73-status-report services were reasonably necessary to treat the Claimant's compensable injury and to comply with the TWCC's administrative requirements.

21. The MAR for CPR Code 97112 is $35 and the MAR for CPT Code 99080-73 is $15.

22. Beyond the 97112 and 99080-73 services, there is inadequate evidence to conclude that the other Disputed Services corrected the Claimant's fixations, significantly relieved her pain, or were otherwise medically necessary to treat the Claimant's compensable injury.

IV. CONCLUSIONS OF LAW

23. The State Office of Administrative Hearings has jurisdiction over matters related to the

hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) (West 2002) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2003).

24. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.

25. SOAH's Chief ALJ has jurisdiction to adopt procedural rules for SOAH hearings, and a referring agency's procedural rules govern a hearing only to the extent that SOAH's rules adopt them by reference. Gov't Code § 2003.050 (a) and (b).

26. Under TWCC's rules, the party seeking relief has the burden of proof. 28 TEX. ADMIN. CODE (TAC) §148.21(h) (2002).

27. Under TWCC's rules, the IRO's decision has presumptive weight in all appeals from reviews of medical necessity disputes. 28 TAC § 133.308(v).

28. The Chief ALJ has not adopted TWCC's burden-of-proof or IRO-decision-presumptive-weight rules, and no statute requires the use of those rules.

29. In determining the burden of proof, the referring agency's documented policy is to be considered, but it must be modified to consider the parties' access to and control over pertinent information and so that no party is required to prove a negative. 1 TAC § 155.41(b).

30. Based on the above Findings of Fact, Conclusions of Law, and TWCC's documented policy set out in its rules, the Carrier should have the burden of proof in this matter.

31. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Labor Code § 408.021 (a).

32. Based on the above Findings of Fact and Conclusions of Law, the following services were reasonably medically necessary to either treat the Claimant's compensable injury or to comply with the TWCC's rules regarding such services:

CPT Code, Service	Date of Service
97112, neuromuscular reeducation	2001: 7/23, 7/27

CPT Code, Service	Date of Service
99080-73, filling out TWCC-73	2001: 11/19 2002: 2/18, 3/13, 5/23

33. Based on the above Findings of Fact and Conclusions of Law, the other Disputed Services were not reasonably medically necessary to treat the Claimant's compensable injury.

34. Based on the above Findings of Fact and Conclusions of Law, the Carrier should be ordered to reimburse the Provider $130 for the July 23 and 27, 2001, CPT-Code-97112 and the November 19, 2001, and February 18, March 13, and May 23, 2002, CPT-Code-99080-73 services and the Provider's request for reimbursement for the remaining Disputed Services should be denied.

ORDER

IT IS ORDERED THAT the Carrier shall reimburse the Provider $130 for the July 23 and 27, 2001, CPT Code 97112 and the November 19, 2001, and February 18, March 13, and May 23, 2002, CPT Code 99080-73 services and the Provider's request for reimbursement for the remaining Disputed Services is denied.

Signed September 8, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE