DOCKET NO. 453-03-2718.M5
MDR Tracking No. M5-03-0528-01

TEXAS MUTUAL INSURANCE COMPANY,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
v.	§	**OF**
	§	
EL PASO PHYSICAL THERAPY SERVICES,	§	
Respondents	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

I. Summary

Texas Mutual Insurance Company (Carrier) sought review of a decision by the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) approving payment for 14 sessions of physical therapy or work conditioning services provided by El Paso Physical Therapy Services (Provider) on behalf of____ (Claimant) on several dates between February 25, 2002, and April 2, 2002. The substantive review of Petitioner's claim was conducted by an Independent Review Organization (IRO).[1] Carrier had denied payment on the ground that the services were not medically necessary. In a decision issued on February 12, 2003, the MRD concluded there was a medical need for physical therapy and work conditioning on all dates of service billed.

After the MRD issued its decision, Carrier dropped its dispute as to the medical necessity for therapy between February 25, 2002, and March 1, 2002, but continued to dispute services dates after March 1, 2002. It also asserted a dispute as to the amount of payment due for *all dates* from February 25, 2002, forward. The Provider argued there was a medical need for all services provided.

Based on the evidence, the Administrative Law Judge (ALJ) concluded that Carrier failed to meet its burden of proof to show that physical therapy/work conditioning was not medically necessary to treat Claimant's injury, although it met its burden of proof to show that no sessions of one-on-one physical therapy or conditioning were medically necessary. In addition, it failed to demonstrate that application of a hot/cold pack and a neuromuscular reeducation session administered to Claimant, and one patient evaluation, all performed between March 4, 2002, and April 2, 2002, were not medically necessary.

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[1] The IRO company in this case was Envoy Medical Systems, LLC. The reviewer was identified as medical doctor board-certified in physical medicine and rehabilitation. Carrier Exh. 1, p. 9.

The ALJ further concludes that the issue of medical necessity for the billed services is the only matter at issue in this contested case hearing since that was the sole basis for Carrier's denial of reimbursement, and the sole subject of the MRD Decision.

II. Discussion

A. Medical Necessity

It is undisputed that on ____, Claimant suffered a compensable injury to his left knee in the course of his employment as a construction worker. He was diagnosed as having a tear of the lateral meniscus and the anterior cruciate ligament (ACL). On January 7, 2002, he under went a left knee lateral debridement (partial meniscectomy) and ACL reconstruction. Carrier Exh. 1, pp. 16-19, and Exh. 4, p. 9. Claimant underwent post-operative physical therapy, some sessions of which are at issue here. During the period after March 1, 2002, Provider billed Carrier for two types of service, one-on-one therapy (CPT Code 97530) and group therapy (CPT Code 97110). On some dates both types of therapy were billed, while on others only group therapy was billed. Additional services supplementing the therapy were billed as follows: March 15, 2002–application of a hot or cold pack (CPT Code 97010); March 20, 2002–neuromuscular reeducation (CPT Code 97112); and April 2, 2002–evaluation of an established patient (CPT Code 99213). The IRO reviewer concluded that the combined physical therapy and work conditioning regimen was successful in returning Claimant to a heavy-demand job which required him to walk on uneven terrain, climb ladders, and stoop and kneel while carrying heavy objects in his arms. The IRO reviewer noted that such a job requires the maximum amount of strength, balance, range of motion, and flexibility in Claimant's legs. Carrier Exh. 1, p. 10. The reviewer, a specialist in rehabilitation medicine, also stated that 30 sessions of therapy after this operation would not be considered excessive for rehabilitation of this type of knee injury.[2] The physical therapist performing or overseeing the therapy, Mark Lick, stated that the surgeon in this, case Barry L. Cromer, M.D., provided him a treatment protocol which was followed in this case. Provider Exh. 1. Dr. Cromer's protocol specified a set of graduated exercises, with performance milestones, and also required periodic progress reports from the therapist. In response to such reports, Dr. Cromer gave direction to the therapist as to how to proceed. Reports that Mr. Lick filed on February 11 and on May 9, 2002, are in evidence, although Dr. Cromer's directive in response to the February 11, 2002 report is not. However, it is reasonable to infer that Provider was instructed to continue physical therapy and/or work conditioning since Provider's staff continued to administer it.

[2] The IRO reviewer apparently did not solicit documents from Carrier. Carrier Exh. 1, p. 15. While on the surface this seems to suggest that the IRO reviewer may not have had a complete record when making his or her decision, further review of the SOAH file in this case demonstrates otherwise. Responding to SOAH's standing order requesting from the parties all documents each supplied to the IRO, on April 22, 2002, the Provider filed the transmittal log listing documents sent to the IRO. That log shows that on December 16, 2002, Provider transmitted the following: HCFA Form 1500 for the dates of service at issue; the doctor's prescription; the January 23, 2002, progress evaluation by a licensed physical therapist (LPT); a re-evaluation by the LPT on February 25, 2002; the patient's plan of care; a copy of the surgical report; a summary of Claimant's functional status; 11 pages of progress notes; and the preauthorization

Dr. Cromer's ACL rehabilitation protocol contemplated return of a patient to 85 per cent or more of his or her contralateral strength by three to six months after an ACL reconstruction, with limitations on some knee-stressing activities such as cutting, pivoting, or jumping. The protocol contemplated that most patients will achieve full range of motion between six to nine months after such an operation. The protocol also recommended the application of heat before exercise and cold following exercise during the first three months after surgery. The therapy in this case was administered during the ninth through eleventh weeks after surgery, or, within three months of the surgery.

Mr. Lick acknowledged that his progress notes did not document all new exercises or other activities he performed with Claimant on a one-on-one basis. However, he stated that he had a general recollection of providing therapy in that manner. He also stated that recognized therapy treatment guidelines which he used in his practice suggested that a knee injury of the type suffered by Claimant could require up to 70 therapy sessions, depending on the individual's rate of progress and condition.

On May 9, 2002, approximately a month after the last date of service at issue, Mr. Lick reported Claimant was ready to return to work; Dr. Cromer instructed Provider at that time to administer a functional capacity evaluation (FCE). Claimant then returned to construction work.

Carrier's witnesses both argued that guided therapy sessions three times a week up through the twelfth week after the surgery were excessive and appeared to be no more than general strengthening and conditioning work that Claimant could have performed himself at a gymnasium or health club. Nicholas Tsourmas, M. D., a board-certified orthopedic surgeon, contended that the routine nature of the surgery and the rapid rate of Claimant's post-operative recovery demonstrated that the number and frequency of sessions was excessive. He stated that Claimant could have safely performed the exercises listed on the progress notes either at home or through a gym membership, with a therapy session once a month when Claimant's exercise program was due for augmentation. Mark Miller, a LPT, sounded a similar note, contending that the exercise program after February 25 showed neither a clear progression in therapy goals nor demonstrated how Claimant was being challenged to improve his performance. He also said that early progress notes indicated both that Claimant was progressing rapidly and that he was a patient capable of progressing on his own. Neither Dr. Tsourmas nor Mr. Lick commented on the supplemental services.

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correspondence. The medical documents submitted duplicate or approximate those documents the Carrier sponsored as evidence in this hearing. Based on the above, ALJ concludes that the IRO reviewer did have available the substantive medical records applicable to the physical therapy at issue. (The Standing Order and Provider's filing of April 22, 2002, appear in SOAH's file, of which the ALJ hereby takes official notice.)

Based on the evidence presented, the ALJ is persuaded that the treating surgeon and the physical therapist acting under his direction were in the best position to evaluate the need for supervised therapy and conditioning, and their medical judgement should be relied in this case. It is of some note that the IRO reviewer, also an orthopedic surgeon, was of the same opinion, particularly in light of the nature of Claimant's work. In sum, Carrier failed to meet its burden of proof to show that regular supervised sessions of physical therapy or work conditioning administered between March 1 and April 2, 2002, were not medically necessary to return Claimant to a heavy-duty work status. However, Carrier did meet its burden of proof to show that there was no medical necessity for routine one-on-one sessions during this latter stage of rehabilitation. Claimant was demonstrating rapid progress and there was no evidence he presented any special factors requiring one-on-one attention. Carrier failed to meet his burden of proof to show that the related services, i.e., one session of neuromuscular reeducation, one application of a hot/cold pack, and one patient evaluation over the course of two months of treatment, were not medically necessary or appropriate to support provision of the primary treatment–physical therapy.

B. Amount of Fees

The issue of the appropriate fee is not properly before SOAH because this issue was not raised by Carrier in its March 4, 2003, request for hearing. Further, the MRD decision from which the Carrier appealed to SOAH states expressly that "**medical necessity was the only issue to be resolved**." (Emphasis in original.) Carrier Exh. 1, p. 8. The MRD decision also states that the Carrier had raised no reasons other than medical necessity for denying reimbursement. In light of this, this decision will be confined to the issue of medical necessity.

III. Findings of Fact

1. On ___, ____(Claimant) suffered a compensable injury to his left knee. On the date of injury, Claimant was a construction worker.

2. Texas Mutual Insurance Company (Carrier) was the responsible workers' compensation insurance carrier for Claimant's employer on the date of injury.

3. Claimant was diagnosed as having suffered tears of the lateral meniscus and of the anterior cruciate ligament (ACL).

4. On January 7, 2002, Claimant underwent a partial meniscectomy, or debridement, of the left knee and a ACL reconstruction, performed by Barry Cromer, M.D.

5. Following the surgery, Claimant underwent a course of physical therapy, then a course of work hardening, both administered by staff at El Paso Physical Therapy Services (Provider).

6. To guide Provider's therapy services, Dr. Cromer issued to Provider a protocol on knee-surgery rehabilitation which he had prepared. Provider administered physical therapy and work conditioning services under the terms of this protocol.

7. Dr. Cromer's protocol specified the kind of exercises Provider was to oversee, based on progress measures and also set forth target dates for accomplishment by the patient of specified physical tasks. Under the protocol, Provider reported on Claimant's progress in order to permit Dr. Cromer to reevaluate the patient's status and course of rehabilitation.

8. The protocol included recommendations for heat before exercise and ice after exercise for exercises/therapy within three months after surgery.

9. Dr. Cromer's protocol contemplated return of the patient to 85 per cent or more of his contralateral strength by three to six months after an ACL reconstruction, with limitations on some knee-stressing activities such as cutting, pivoting, or jumping. The protocol contemplated that most patients achieve full range of motion between six to nine months after such an operation.

10. Provider followed Dr. Cromer's protocol and filed progress reports. Dr. Cromer did not order modification or discontinuation of the course of Claimant's work hardening or physical therapy for post-operative weeks nine through eleven, March 1, 2002, through April 2, 2002.

11. Claimant's reconditioning goal was to return him to a heavy physical demand level job, which would require him to walk on uneven terrain, climb ladders, and stoop and kneel while carrying heavy objects in his arms. Performance of this job would require Claimant to have the maximum amount of strength, balance, range of motion, and flexibility in his legs.

12. The Carrier denied payment for 14 sessions of physical therapy, including both one-on-one physical therapy and physical therapy or conditioning in a group setting, between March 1, 2002, and April 2, 2002, on the grounds this therapy was not medically necessary. The Carrier also denied payment for services supplementing the therapy as follows: application of a hot/cold pack, March 15, 2002; neuromuscular reeducation session, March 20, 2002, and an evaluation of an established patient, April 2, 2002.

13. The frequency and number of physical therapy/work conditioning sessions between March 1, 2002 and April 2, 2002, was reasonable for Claimant's rehabilitation after the type of injury suffered, and the corrective surgery undertaken, and in light of his return-to-work goals.

14. Claimant displayed no medical indications for one-on-one physical therapy or work conditioning sessions between March 1, 2002, and April 2, 2002.

15. The auxiliary services of a single administration of a hot/cold pack, a single session of neuromuscular reeducation and a patient evaluation over the course of approximately six weeks of treatment were medically necessary to support the primary course of therapy.

16. Petitioner appealed the Carrier's denial of benefits to the Medical Review Division (MRD) of the Texas Workers Compensation Commission (Commission), which referred the dispute to an Independent Review Organization (IRO).

17. On February 12, 2003, based on the recommendation of the IRO, the MRD determined that the physical therapy administered to Claimant was medically necessary. Medical necessity was the only issue determined in the MRD decision.

18. On March 25, 2003, Carrier filed a timely request for a hearing at the State Office of Administrative Hearings (SOAH) on the MRD decision.

19. On April 29, 2003, the Commission issued a notice of hearing which included the date, time, and location of the hearing, the applicable statutes under which the hearing would be conducted, and a short, plain statement on the nature of the matters asserted.

20. SOAH Administrative Law Judge (ALJ) Cassandra Church convened a hearing on these issues on June 5, 2003; the record closed that day.

IV. Conclusions of Law

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction to decide the issues presented pursuant to TEX. LABOR CODE ANN § 413.031.

2. The State Office of Administrative Hearings (SOAH) 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 § 413.031 and TEX. GOV'T CODE ch. 2003.

3. The notice of hearing issued by the Commission was sufficient under the terms of TEX. GOV'T CODE § 2001.052.

4. Carrier, the petitioner, has the burden of proving by a preponderance of the evidence that it should prevail in this matter, pursuant to TEX. LABOR CODE ANN § 413.031.

5. Carrier proved by a preponderance of the evidence that sessions of one-on-one physical therapy and/or work conditioning were not medically necessary between March 1, 2002, and April 2, 2002, to treat Claimant's compensable injury, within the meaning of TEX. LABOR CODE ANN. §§ 408.021 and 401.011 (9).

6. Petitioner failed to prove by a preponderance of the evidence that sessions for group physical therapy and/or work conditioning between March 1, 2002, and April 2, 2002, were not medically necessary to treat Claimant's compensable injury, within the meaning of TEX. LABOR CODE ANN. §§ 408.021 and 401.011 (9).

7. Petitioner failed to prove by a preponderance of the evidence that the supplemental services–application of a hot/cold pack, patient evaluation, and neuromuscular reeducation–provided in support of Claimant's course of physical therapy and/or work conditioning between March 1, 2002, and April 2, 2002, were not medically necessary to treat Claimant's compensable injury, within the meaning of TEX. LABOR CODE ANN. §§ 408.021 and 401.011 (9).

ORDER

IT IS HEREBY ORDERED that Texas Medical Insurance Company reimburse Provider for all units of group therapy (CPT Code 97110) which Provider administered to Claimant between March 1, 2002, and April 2, 2002, for an application of a hot/cold pack on March 15, 2002, for a session of neuromuscular reeducation on March 20, 2002, and for an evaluation of an established patient on April 2, 2002.

ISSUED September 17, 2003.

CASSANDRA J. CHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS