DOCKET NO. 453-03-2851.M5
MDR Tracking No. M5-03-0348-01

CHURCHILL REHABILITATION CENTER,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
V.	§	**OF**
	§	
TEXAS MUTUAL INSURANCE COMPANY,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Churchill Rehabilitation Center (Provider) challenged the decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission upholding Texas Mutual Insurance Company's (Carrier) denial of reimbursement for a course of physical therapy administered March 5, 2002 from April 12, 2002.[1] Both Carrier and the MRD concluded that the physical therapy and associated passive modalities were not medically necessary to treat___. (Claimant) on those dates.

Based on the evidence, the ALJ concluded that Provider demonstrated that one 15-minute session of therapy on each date of service was medically necessary to treat Claimant's injury, as was an office visit on March 26, 2002. However, Claimant failed to prove that additional timed units of one-on-one therapy, or any passive modalities on any day of service, were warranted.

The hearing in this matter convened on September 2, 2003, in Austin, Texas, with Administrative Law Judge (ALJ) Cassandra Church presiding. The record closed that day. Provider was represented by Pamela Goh, Provider's collection manager. Carrier was represented by Patricia Eads, attorney. The Commission did not participate in the hearing.

[1] Provider's hearing request had also asked for reconsideration of the denial of payment for one day of work hardening which was administered on June 4, 2002. Carrier had paid for work hardening provided during the month of May and earlier in June. Carrier subsequently agreed to reimburse Provider for services provided on June 4, 2002, so no work hardening dates of service remain in issue and will not be discussed further in this Decision.

I. DISCUSSION

Claimant injured his back in on _____In the intervening 20 months before the disputed period, Claimant's back injury was treated by, among other things, two spine surgeries, both involving fusion and instrumentation of Claimant's lumbar spine. The surgeon performing the second procedure referred Claimant to Provider to treat post-surgery back symptoms and to prepare him for work conditioning. Carrier paid for physical therapy between December 3, 2001, the date of the second surgery, and February 27, 2002, but declined to pay for physical therapy and passive physical medicine modalities between March 5, 2002, and April 12, 2002. Carrier also reimbursed Provider for work conditioning it performed later that year.

As to service on the dates in question, Carrier argued the Claimant had passed the point in his recovery when an extensive regimen of passive modalities were needed, and also argued that Provider failed to demonstrate that Claimant's condition warranted administration of several hour-long sessions per week of one-on-one physical therapy. However, Provider's expert witness, Mark Miller, P.T., acknowledged that some degree of ongoing supervised exercise would help a post-surgical patient like Claimant maintain his conditioning and thus be prepared for the more rigorous work conditioning expected to follow initial therapy. Carrier Exh. A, pp. 16-19. Mr. Miller also testified that any physical therapy session usually involves some one-on-one attention in order to teach the patient new exercises and to determine if a patient is performing the exercises safely and correctly.

In addition to the points above, Carrier argued that an unlisted procedure which Provider termed "muscle energy" was not a standard or recognized physical medicine procedure. (CPT Code 97139) Nicholas Tsourmas, M.D., a board-certified orthopaedic surgeon of many years experience, stated he had never heard of such a treatment. He also stated that Claimant was in April and March of 2002 at a point where much of his conditioning could have been sustained through a home program, and that he did not need repeated in-office administration of passive modalities. Dr. Tsourmas also said that mobilization of the spine might be harmful to a post-fusion patient as the primary purpose of that procedure is to reduce motion within the spine.

Provider relied primarily on a letter of support from Carlos Acosta, M.D., the surgeon overseeing Claimant's post-surgery treatment. The referring prescription is not in the record. However, in his March 2003 letter, Dr. Acosta affirmed that physical therapy during the disputed period was at his behest. Provider Exh. 1, p. 300-301. However, Dr. Acosta did not assert that he requested exclusively one-on-one physical therapy or that Claimant presented any factors that would require that type of therapy. Provider failed to prove that Claimant had any mental or physical condition that would warrant continuous administration of one-on-one physical therapy. Provider gave no explanation of the medical purpose of a "muscle energy" procedure, or of the specific factors about Claimant's condition that warranted application of multiple passive modalities on virtually every date of treatment.

In sum, based on the evidence in this case, the ALJ concluded that Provider showed the medical need for supervised exercise in the interim between convalescence and entry into a work conditioning program. This therapy, including some amount of one-on-one time, was needed to assist Claimant maintain his conditioning. Specifically, the ALJ concludes that Provider met his burden of proof to show that one unit of one-on-one therapy (CPT Code 97110) was warranted for each date of service on which therapy was administered, between March 5, 2002 and April 12, 2002. Provider also met his burden of proof to show that one office visit in the midst of this ongoing course of therapy, on March 25, 2002, was reasonable and medically necessary to monitor Claimant's condition.

However, Provider failed to meet his burden of proof to show that more than one unit of one-on-one therapy on any date of service was medically necessary. Provider further failed to meet its burden of proof to show that administration of several passive modalities on each date of service was medically necessary. Specific services for which reimbursement is being denied include joint mobilization (CPT Code 97265), myofascial release (CPT Code 97250), unattended electrical stimulation (CPT Code 97014), and application of the "muscle energy" procedure (CPT Code 97139 [unlisted procedure]).

II. FINDINGS OF FACT

1. On ____ (Claimant) injured his back lifting a fifty-pound toolbox while on a ladder. Texas Mutual Insurance Company (Carrier) was the responsible insurer.

2. Claimant was diagnosed as having suffered a herniated disc at the L2-L3 level and subcutaneous herniation with a component of an extruded fragment.

3. At an unknown time before the disputed service period, Claimant under went a series of lumbar epidural injections.

4. On April 2, 2001, Claimant underwent a laminectomy with decompression and stabilization and fusion at the L3-L5 levels.

5. On December 3, 2001, Claimant underwent a second spine surgery, a laminectomy at the L2-L3 level with additional fusion by means of Ray cages inserted at the L2-L3 level. This surgery was performed by Carlos Acosta, M.D., a neurosurgeon.

6. Dr. Acosta referred Claimant to Provider for administration of post-surgery physical therapy to treat Claimant's ongoing back symptoms and to prepare Claimant to handle the more-rigorous work hardening or work conditioning program.

7. Dr. Acosta's referral did not specify that Provider should administer exclusively one-on-one physical therapy. Claimant had no medical indications for exclusive one-on-one physical therapy.

8. Carrier reimbursed Provider for physical therapy for some period of time before the disputed dates of service, and reimbursed Provider for the administration of a course of work conditioning in May and June of 2002.

9. Provider administered physical therapy on March 7, 11, 13, 14, 19, 20, 22, 25, 27, and 29, and on April 3, 5, 8, 10, and 12, 2002. At most sessions, Provider billed for up to four units of one-on-one physical therapy as well as for multiple passive modalities, including one or more of the following, joint mobilization (CPT Code 97265), myofascial release (CPT Code 97250), unattended electrical stimulation (CPT Code 97014), and application of the "muscle energy" procedure (CPT Code 97139 [unlisted procedure]).

10. Provider billed for one office visit (CPT Code 99213) on March 25, 2002. This was the only office visit billed during the service period at issue.

11. Supervised exercise and/or physical therapy was medically necessary to assist Claimant maintain his conditioning prior to a work conditioning program to prepare him to return to work. One unit of one-on-one physical therapy per visit was sufficient to permit the therapist to assist Claimant maintain his conditioning.

12. Claimant had no medical indications for repeated application of multiple passive modalities between March 5, 2002, and April 12, 2002.

13. Provider denied reimbursement for all physical therapy, and all passive modalities, between March 5, 2002, and April 12, 2002, as well as the office visit on March 26, 2002, on the basis that none were medically necessary.

14. Provider appealed the Carrier's denial of reimbursement to the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission).

15. On March 10, 2003, based on the review by an Independent Review Organization (IRO), Maximus, the MRD denied reimbursement to Provider for physical therapy and passive modalities provided from March 5, 2002, through April 12, 2002, and for the office visit on March 26, 2002.

16. On March 12, 2003, Provider requested a hearing on the MRD decision on the denial of reimbursement for physical therapy and passive modalities administered from March 5, 2002, through April 12, 2002, and for the office visit on March 26, 2002.

17. On April 23 2003, the Commission issued a notice of hearing that included the date, time, and location of the hearing, the applicable statutes under which the hearing would be conducted, and a short, plain statement of matters asserted.

18. Administrative Law Judge Cassandra Church conducted a hearing on the merits of this case on September 2, 2003, and the record closed that day.

III. CONCLUSIONS OF LAW

1. 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. LAB. CODE ANN. §413.031 and TEX. GOV'T CODE ANN. ch. 2003.

2. Provider timely requested a hearing, as specified in 28 TEX. ADMIN CODE § 148.3.

3. Proper and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN.§§ 2001.051 and 2001.052.

4. Provider, as the petitioning party, has the burden of proof in this proceeding pursuant to TEX. LAB. CODE ANN. § 413.031 and 28 TEX. ADMIN CODE § 148.21 (h).

5. Provider met its burden of proof to show that one unit (a 15-minute session) of physical therapy on each date of service listed in Finding of Fact No. 9, on which therapy was provided was medically necessary to treat or reasonably required to relieve the effects of or promote recovery from a compensable injury suffered by Claimant, within the meaning of TEX. LAB. CODE ANN. §§ 408.021 and 401.011(19).

6. Provider met its burden of proof to show that an office visit (CPT Code 99213) on March 25, 2002, was medically necessary to treat or reasonably required to relieve the effects of or promote recovery from a compensable injury suffered by Claimant, within the meaning of TEX. LAB. CODE ANN. §§ 408.021 and 401.011(19).

7. Provider failed to meet its burden of proof to show that additional units of physical therapy, beyond those specific in Conclusion of Law No. 5, or administration of passive modalities on all dates of service between March 5, 2002 and April 12, 2002, were medically necessary to treat or reasonably required to relieve the effects of or promote recovery from a compensable injury suffered by Claimant, within the meaning of TEX. LAB. CODE ANN. §§ 408.021 and 401.011(19).

ORDER

IT IS ORDERED that Texas Mutual Insurance Company is required to reimburse Churchill Rehabilitation Center for one unit (a 15-minute session) of physical therapy (CPT Code 97110) for each of the following dates of service: March 7, 11, 13, 14, 19, 20, 22, 25, 27, and 29, and April 3, 5, 8, 10, and 12, 2002, and is also required to reimburse Churchill Rehabilitation Center for an office visit (CPT Code 99213) on March 25, 2002.

SIGNED December 11, 2003.

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