

____,	§	BEFORE THE
Petitioner	§	
	§	
v.	§	STATE OFFICE OF
	§	
FACILITY INSURANCE COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Injured worker ____¹ (Claimant) has appealed a decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (the Commission) denying reimbursement of \$323.00 she paid for immunotherapy and intradermal skin tests provided to her from June 15, 2001, through September 7, 2001, by her treating physician. The MRD's denial of payment was based on its review of a decision made by an independent review organization (IRO) physician who found the disputed treatment was not medically necessary to treat Claimant's compensable injury. As set out below, the Administrative Law Judge (ALJ) finds Claimant did not substantiate the medical necessity of the disputed treatment and is not entitled to reimbursement.

I. NOTICE, JURISDICTION AND VENUE

There were no contested issues regarding notice, jurisdiction or venue. Therefore, those matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

II. STATEMENT OF THE CASE

ALJ Sharon Cloninger convened the hearing in this matter on July 24, 2003, at the State Office of Administrative Hearings (SOAH) in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Claimant represented herself with assistance from Barton Levy, an ombudsman provided by the Commission at Claimant's request. Facility Insurance Company (Carrier) was represented by Steve Tipton, attorney. The hearing adjourned and the record closed that same day.

The issue before the ALJ is whether the immunotherapy and intradermal skin tests in question were medically necessary to treat Claimant's compensable injury.

¹ To protect Claimant's identity, her initials will be used in this Decision and Order.

III. EVIDENCE PRESENTED

Claimant testified on her own behalf and called William Rea, M.D.,² her treating physician, to testify by telephone. Edward Peters, M.D., testified on behalf of Carrier. Petitioner offered two exhibits, which were admitted. Carrier offered 18 exhibits, which were admitted.

A. Background

On ____, Claimant was a third-grade teacher in the ____ Independent School District when she sustained a compensable injury from handling methanol³ and inhaling methanol fumes contained in duplicating fluid. Within 24 hours of the exposure, Claimant developed circular headaches, nausea, a vomiting sensation, chest tightness and a sensation of wheezing in her throat. She returned to work briefly, but has not worked since February 28, 1992. Her symptoms recur when she is around paint fumes and other odors. (Carrier's Ex. 10).

In 1993, after being treated by a series of doctors, Claimant was referred to Dr. Rea at the Environmental Health Center in Dallas. He diagnosed her to have multiple chemical sensitivities. From June 15, 2001, through September 7, 2001, he provided her with eight immunotherapy treatments and two intradermal skin tests. She states the immunotherapy and testing are prescribed by Dr. Rea to control the headaches and seizure disorder caused by the brain injury she sustained from the methanol exposure. She states skin testing is required to determine the correct dosage for immunotherapy. (Pet. Ex. 1).⁴

B. Medical Necessity of Treatment

1. Claimant

Claimant said she has been treated for her compensable injury by approximately seven doctors, who all found her symptoms to be the result of her exposure to methanol. She said Stevan Cordas, D.O., a doctor designated by the Commission, found her to have a 25 percent impairment based on his independent neuropsychological testing and her reported seizure activity. She said she continues to suffer from debilitating headaches, which can be triggered by exposure to molds, chemicals and grasses, and which are relieved by immunotherapy. She said that when she does not have immunotherapy treatment, she is in bed for days with headaches.

² As a preliminary matter, the parties addressed Carrier's Motion to Strike Dr. Rea's testimony as to the nature and cause of Claimant's alleged injuries, on the grounds that Dr. Rea has no reasonable scientific basis for his opinion. The ALJ ruled that Dr. Rea could not testify as an expert, but could testify as to his diagnosis and treatment of Claimant.

³ Methanol is a light volatile pungent flammable poisonous liquid alcohol used especially as a solvent, antifreeze, or denaturant for ethyl alcohol and in the synthesis of other chemicals. Called also *methyl alcohol*, *wood alcohol*. *Merriam-Webster's Medical Dictionary* (1995), p. 415.

⁴ The pages in Petitioner's Exhibit 1 are not numbered.

2. Dr. Rea

Dr. Rea said diagnostic studies conducted on Claimant through the years indicate her to have neurotoxicity, which he continues to treat by having her avoid exposure to toxic substances such as car exhaust, copying machines, and pesticides; by using heat therapy to cause her to sweat out toxic substances in her system; and by using nutrition. He said he also uses neutralization injections, which he said are similar to allergy shots, to neutralize the effects of toxic substances on her system.

3. Dr. Peters

Dr. Peters is Board Certified in Internal Medicine, Pulmonary/Critical Care Medicine, and Allergy/Immunology. He testified that Claimant's current condition and symptoms are not related to the methanol exposure itself, because the effects of inhaling methanol fumes and handling methanol do not last for years. He said his opinion is based partly on the fact that a week before the hearing, he searched the National Institutes of Health website which cross-references thousands of articles, and could find nothing regarding the long-term effects of methanol exposure. He said there is nothing in the literature to support that methanol exposure causes an immuno response.

He allowed that Claimant's symptoms are real, but said they could not be the result of the methanol exposure. He said the use of neutralization injections is not supported by any peer review studies, and is outside the standard of care. He said the diagnosis of multiple chemical sensitivity is not a recognized diagnosis. He said Claimant needs to be seen and cared for by a doctor who will do something within the standard of care to treat her condition. He said that while allergists and immunologists use injections all the time, Dr. Rea's doses and the frequency of those doses administered to Claimant are not consistent with accepted medical care. Dr. Peters agrees with position statements included in Carrier's exhibits 1-18 that the treatments Dr. Rea is using for Claimant are not effective.

Dr. Peters agrees with Thomas Kurt, M.D.⁵, who examined Claimant on July 27, 1992, and found that because methanol is not capable of producing a continued toxic health effect, Claimant suffers from odor-triggered panic attack symptoms, initially associated with her methanol exposure. (Carrier's Ex. 10).

4. Documentary evidence

Dr. Cordas examined Claimant at the Commission's request and reported on June 17, 1994, that his findings agree with those of neuropsychologists that Claimant suffers from residual neurologic dysfunction that persists and apparently did not predate her compensable injury. He said the dysfunction is independent of the multiple chemical sensitivity, which is not compensable. (Petitioner's Ex. 1).

According to a December 1992 report that appeared in JAMA (Journal of the American Medical Association), there are no accurate, reproducible, well-controlled studies that support the contention that Multiple Chemical Sensitivity Syndrome is a significant disease or that the diagnostic tests and the treatments used have any therapeutic value. (Carrier's Ex. 3).

⁵ Dr. Kurt is a Diplomate of the American Board of Medical Toxicology.

The American Academy of Allergy and Immunology has concluded there is no clear evidence for a cause-and-effect relationship between symptoms and environmental exposure, and thus no evidence to support the use of “multiple chemical sensitivity” as a diagnostic entity. (Carrier’s Ex. 8).

Dr. Peters’ peer review report dated September 27, 2000, states that in patients who have chronic methanol intoxication, abnormalities on CT scan and MRI have been reported. He notes that Claimant’s MRI was normal on November 8, 1993, and her CT scan was normal on October 24, 1995, leading him to conclude there is no substantive evidence that links the occupational exposure to methanol to Claimant’s chronic medical complaints.

In a January 11, 2001 letter responding to a peer review, Dr. Rea explains that Claimant was “frequently complaining of severe headaches as a result of her chronic sinusitis. It is for this reason that we started her on skin testing to determine her specific sensitivities and to undergo antigen neutralization shots to build up immune tolerance and consequently reduce symptoms. The patient was extremely sensitive to a number of foods and inhalants which were the reasons we had to have her undergo extensive skin testing for full coverage. The patient was asymptomatic as long as she was on neutralization shots.” (Petitioner’s Ex. 1).

C. Closing arguments

1. Claimant’s argument

Claimant argued that her compensable injury is neurotoxicity, a diagnosis with which the Commission’s designated doctor concurred. Claimant is seeking reimbursement for the immunotherapy and intradermal tests because the disputed treatments give her relief from headaches.

2. Carrier’s argument

There is no scientific evidence supporting Dr. Rea’s position that the immunotherapy and intradermal skin tests are medically necessary to treat Claimant’s condition. There is nothing in the literature to support that immunotherapy cures headaches. Claimant’s EEG is normal and her MRI is normal. There is no explanation regarding how her toxic profiles are related to her methanol exposure.

IV. LEGAL STANDARDS

Section 408.021 of TEXAS LABOR CODE ANN. provides as follows:

- (a) 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. The employee is specifically entitled to health care that:
 - (1) cures or relieves the effects naturally resulting from the compensable injury;
 - (2) promotes recovery; or

- (3) enhances the ability of the employee to return to or retain employment.

V. DISCUSSION AND ORDER

Claimant did not prove the disputed treatments are medically necessary to treat her compensable injury, which according to the Commission's designated doctor is residual neurologic dysfunction. Dr. Rea states in his January 11, 2000 letter that he is using the immunotherapy and skin tests to treat Claimant's headaches resulting from her chronic sinusitis. There is no evidence that Claimant's exposure to methanol caused her to have chronic sinusitis resulting in headaches. Since the disputed treatment is for headaches unrelated to Claimant's compensable injury, there is no medical necessity for the treatment pursuant to TEX. LABOR CODE ANN. § 408.021. Even if the immunotherapy and intradermal skin tests relieve Claimant's headaches, as she testified, the treatment is not reimbursable because it is not medically necessary to treat her compensable injury.

VI. FINDINGS OF FACT

1. On ____, ____ (Claimant) sustained a work-related injury when she inhaled fumes from and handled duplicating fluid containing methanol.
2. On the date of the injury, Claimant's employer was the ____ Independent School District and its workers' compensation carrier was Facility Insurance Company (Carrier).
3. Within 24 hours of the contact with the duplicating fluid, Claimant suffered circular headaches, nausea, a vomiting sensation, chest tightness and a wheezing sensation in her throat.
4. Claimant suffers from residual neurologic dysfunction as a result of her compensable injury.
5. William Rea, M.D., provided immunotherapy and intradermal skin tests from June 15, 2001 to September 7, 2001, to treat Claimant's headaches associated with her chronic sinusitis.
6. Claimant paid Dr. Rea \$323.00 for the treatment listed in Finding of Fact No. 5.
7. Claimant sought reimbursement from Carrier for the provided medical services.
8. Carrier denied reimbursement on the grounds that the disputed treatment was not medically necessary.
9. An independent review organization (IRO) reviewed the medical dispute and found the treatment was not medically necessary.
10. On March 13, 2003, after reviewing the IRO decision, the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (the Commission) issued a decision denying reimbursement for the immunotherapy and intradermal skin tests provided June 15, 2001, through September 7, 2001, because the treatment was not found to be medically necessary.

11. Petitioner filed a timely request for hearing on March 25, 2003.
12. Notice of the hearing was sent to all parties on April 29, 2003.
13. 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.
14. Administrative Law Judge (ALJ) Sharon Cloninger convened a hearing in this matter on July 24, 2003, at the State Office of Administrative Hearings (SOAH) in the William P. Clements Building, 300 West 15th, Austin, Texas. Claimant represented herself, with assistance from Barton Levy, an ombudsman provided by the Commission at Claimant's request. Fidelity Insurance Company (Carrier) was represented by Steve Tipton. Following the presentation of evidence, the hearing adjourned and the record closed that same day.
15. Claimant's chronic sinusitis is not a result of her exposure to methanol.
16. Immunotherapy and intradermal skin tests are not medically necessary to treat Claimant's compensable injury.

VII. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction over this matter pursuant to the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. §413.031.
2. 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 the Act §413.031(d), TEX. GOV'T CODE ANN. Ch. 2003.
3. Adequate and timely notice of the hearing was provided to the parties in accordance with GOV'T CODE §§ 2001.051 and 2001.052.
4. Petitioner has the burden of proving by a preponderance of the evidence that it should prevail in this matter. 28 TEX. ADMIN. CODE (TAC) § 148.21(h).
5. Under the Commission's rules, the IRO's decision has presumptive weight in all appeals from reviews of retrospective medical necessity disputes. 28 TAC § 133.308(v).
6. 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. TEX. LAB. CODE ANN. § 408.021(a).
7. Petitioner has not met her burden of proving the immunotherapy and intradermal skin tests were medically necessary within the meaning of TEX. LAB. CODE ANN. § 408.021.

8. Based upon Findings of Fact Nos. 1-6 and 15-16, and Conclusion of Law No. 7, Petitioner is not entitled to \$323.00 in reimbursement from Carrier for the disputed treatments.

ORDER

Based on the above Findings of Fact and Conclusions of Law, it is ordered that___ is not entitled to reimbursement from Facility Insurance Company for the disputed treatment.

SIGNED this 22nd day of November, 2003.

SHARON CLONINGER
Administrative Law Judge
State Office of Administrative Hearings