

DOCKET NO. 453-03-2988.M5
MDR TRACKING NO. M5-03-0057-01

NEUROMUSCULAR INSTITUTE	§	BEFORE THE STATE OFFICE
OF TEXAS, P.A.,	§	
Petitioner	§	
	§	
V.	§	OF
	§	
INSURANCE COMPANY OF THE	§	
STATE OF PA.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

The Neuromuscular Institute of Texas, P.A. (Institute) is appealing the decision of the Texas Workers' Compensation Commission's (Commission's) designee, an independent review organization (IRO), which upheld the denial of reimbursement by the Insurance Company of the State of Pennsylvania (Carrier) based on lack of medical necessity for treatment provided to Claimant ____ This decision concludes that the Institute is entitled to reimbursement.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

Administrative Law Judge (ALJ) Katherine L. Smith convened the hearing on February 23, 2004, at the William P. Clements Building, 300 West 15th Street, Austin, Texas. The Institute was represented by Allan Craddock, an attorney. The Carrier was represented by Kevin Franta, an attorney. The record closed the day of the hearing. The parties did not contest notice or jurisdiction.

II. BACKGROUND

Claimant sustained a work-related injury on ____, while employed by ____ as a typist. Claimant was diagnosed with bilateral carpal tunnel syndrome. She began treatment at the Institute on August 3, 1998. Her treating doctor is Brad Burdin, D.C. Dr. Terry Westfield, who is also with the Institute, performed carpal tunnel release on Claimant's left hand in February 2001 and on her right hand on October 16, 2001. Claimant received twelve sessions of occupational therapy after the surgery on her right hand. On December 26, 2001, Dr. Burdin recommended that Claimant receive another six sessions of therapy which began on January 23, 2002, and ended on February 1, 2002. Carrier paid for the first twelve sessions and four of the six additional sessions, but did not reimburse the Institute for two of the last six sessions.

III. DISCUSSION

This case involves three disputed dates of service: an office visit to Dr. Burdin on August 24, 2001, and two occupational therapy visits on January 25 and January 28, 2002. The Institute criticizes the IRO's decision because it did not address the need for treatment after the surgery on Claimant's right hand. The Institute maintains, for example, that Claimant's visit to Dr. Burdin on August 24, 2001, was reasonable because as her treating doctor, Dr. Burdin had to make the referral for Claimant to have carpal tunnel release on her right hand. As for the disputed dates of occupational therapy, Dr. Burdin testified that he believed Claimant had improved after the first twelve sessions, but that another six sessions would further help her in strengthening her grip. The

Institute argues that it was also inconsistent for Carrier to pay for visit numbers 1, 4, 5, and 6, but refuse to reimburse the Institute for visits 2 and 3. The Institute argues further that even Dr. William R. Culver, who performed a peer review of Claimant's treatment on March 27, 2002, said that 12 to 15 sessions of occupational therapy after surgery of this type is not unusual. Carrier's Ex. 1 at 350. The Institute points out that the two additional sessions of therapy at issue would have been sessions 14 and 15.

Carrier asserts that the IRO's decision was correct. Carrier notes that Claimant received the same therapies and treatments continuously with no apparent improvement or symptom relief. Carrier's Ex. 1 at 263, 338. As for the Institute's argument that it was illogical for Carrier to grant reimbursements for visits 1, 4, 5, and 6, but deny reimbursement for visits 2 and 3, Carrier asserts that it is not unusual for carriers to pay for sessions before they realize that the billings should have been denied on the basis of a reviewer's assessment. Furthermore, although Dr. Culver notes that 12 to 15 sessions of occupational therapy are standard after this type of surgery, he also states that this individual had a significant amount of occupational therapy both pre- and post-operatively, and that "all treatment should have been completed no later than January 15, 2002." Carrier Ex. 1 at 350. Carrier points out further that there were no complications requiring additional therapy. Carrier notes additionally that the occupational therapist wrote on February 1, 2002, the last day of the six sessions, that the goals had been met on January 9, 2002, the last day of the 12 sessions. Carrier's Ex. 1 at 344.

Although it may have been true that the goals set at the onset of the 12 sessions may have been met during that period, the occupational therapist also noted that after the six additional sessions, Claimant increased her right wrist flexion and ulnar deviation range of motion and reported an increase in grip strength. According to Dr. Burdin's testimony, increase in grip strength was a goal that he hoped to accomplish with the additional sessions, as well as therapy to complement the trigger point injections she was receiving. *See also* Petitioner's Ex. 4 at 33. Furthermore, on January 9, 2002, the last of the 12 sessions, Claimant was still complaining of pain in the right hand. Petitioner's Ex. 6 at 159. Finally, Dr. Westfield reported on February 7, 2002, that Claimant was doing well following her carpal tunnel release. Carrier's Ex. 1 at 346.

Based on the foregoing, the ALJ concludes that the office visit of August 24, 2001, was medically necessary because it was during this visit that Dr. Burdin referred Claimant for carpal tunnel release surgery. The ALJ also concludes that the six additional sessions of occupational therapy proved efficacious so that Carrier should not have denied reimbursement for the dates of service on January 25, 2002, and January 28, 2002.

IV. FINDINGS OF FACT

1. Claimant ___ sustained a work-related injury on ___, as a result of repetitive motion from typing over an 18-year period and was diagnosed with bilateral carpal tunnel syndrome.
2. At the time of the injury, Claimant's employer, ___, had its workers' compensation insurance through Insurance Company of the State of PA (Carrier).
3. The Neuromuscular Institute of Texas, P.A. (Institute) treated Claimant with carpal tunnel release surgery on her right hand on October 16, 2001, and then 18 sessions of chiropractic occupational therapy.

4. Carrier reimbursed the Institute for 16 sessions of therapy but denied payment for two sessions of therapy on January 25, 2002, and January 28, 2002, and one office visit on August 24, 2001.
5. The Institute requested medical dispute resolution before the Texas Workers' Compensation Commission (Commission).
6. The Commission's designee, an independent review organization (IRO), upheld Carrier's decision denying reimbursement for the disputed dates of service.
7. The IRO found that the Provider failed to show substantive, continued measures of improvement.
8. The Institute filed a timely request for a hearing on April 9, 2003.
9. The Commission sent notice of the hearing to the parties on May 2, 2003. The hearing notice informed the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the statutes and rules involved; and the matters asserted.
10. The office visit of August 24, 2001, was reasonable and medically necessary because it was during this office visit that Dr. Brad Burdin referred Claimant for carpal tunnel release surgery.
11. The occupational therapy provided on January 25, 2002, and January 28, 2002, was medically necessary because it resulted in continuous improvement in Claimant's condition.

V. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented, pursuant to the Texas Workers' Compensation 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 TEX. LAB. CODE ANN. §§ 402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. The Institute timely filed a notice of appeal of the independent review organization decision, as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
4. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE ANN. ch. 2001 and 28 TAC § 148.4(b).
5. The Institute had the burden of proving the case by a preponderance of the evidence, pursuant to 28 TAC § 148.21(h) and (i).

6. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the compensable injury as and when needed. The employee is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LAB. CODE ANN. § 408.021(a).
7. Based on Finding of Fact No. 10, the Institute proved that the office visit was medically necessary.
8. Based on Finding of Fact No. 11, the Institute proved that the two disputed dates of occupational therapy were medically necessary.
9. Based on the foregoing findings of fact and conclusions of law, the Institute met its burden of proof that its request for reimbursement of two sessions of occupational therapy and the office visit should be granted.

ORDER

It is hereby ordered that Carrier shall reimburse the Institute for the August 24, 2001, office visit and the January 25, 2002, and January 28, 2002, occupational therapy sessions.

SIGNED April 6, 2004.

KATHERINE L. SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARING