

**DOCKET NO. 453-03-2990.M5**  
**MDR Tracking Number: M5-02-3128-01**

<b>LIBERTY MUTUAL</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>INSURANCE COMPANY,</b>	§	
<b>Petitioner</b>	§	
	§	
<b>VS.</b>	§	<b>OF</b>
	§	
<b>HEIGHTS PHYSICAL THERAPY,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

This is a dispute over reimbursement for physical therapy services performed for a carpal tunnel syndrome patient. The Administrative Law Judge (ALJ) concludes the services were not medically necessary and denies reimbursement.

**I. Factual and Procedural History**

The Claimant reported a work-related repetitive stress injury to her right hand on \_\_\_\_\_. She underwent right carpal tunnel surgery on November 28, 2001. After the surgery, she underwent 53 physical therapy sessions with Heights Physical Therapy (Heights) from January 4, 2002, to May 3, 2002. Liberty Mutual Insurance Company (LMIC), the insurance carrier, reimbursed Heights for the sessions up to March 12<sup>th</sup>. It declined to reimburse Heights for 21 physical therapy sessions from March 12<sup>th</sup> through May 3<sup>rd</sup>, considering those sessions not to have been medically necessary.

Heights filed a timely Request for Medical Dispute Resolution. The Independent Review Organization (IRO) agreed with Heights that the treatments were medically necessary. On March 25, 2003, the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC) issued its Findings and Decision, which ruled that Heights was entitled to reimbursement of \$2,212,00 for the disputed services.

On \_\_\_\_\_, LMIC filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH). The hearing was held July 2, 2003, before ALJ Henry D. Card. Representatives of LMIC and Heights participated in the hearing, which was adjourned the same day.

Under 28 TEX. ADMIN. CODE (TAC) §148.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. §413.031.

**II. Discussion**

Nick Tsourmas, M.D., an orthopaedic surgeon, testified that typically he prescribes no more than six to eight sessions of physical therapy after carpal tunnel operations. He follows those sessions with at-home exercises. Dr. Tsourmas acknowledged there may extenuating circumstances, such as infection, that require more than the usual number of sessions. He testified, however, that no such circumstances were present in this case. He stated that thirty sessions of physical therapy, which is the number for which LMIC paid, were more than enough for an injury of the type sustained by the Claimant.

Dr. Tsourmas' testimony was supported by written opinions from Antoinette Thaxton-Brooks, M.D., and Virginia Cullipher, R.N., each of whom reviewed the case for LMIC.. Dr. Thaxton-Brooks wrote that six to ten sessions would be typical, but that as many as twenty might be indicated if there were complications.

Joseph Dajose, a licensed physical therapist, testified on behalf of Heights. He observed that the physical therapy sessions had resulted in improved mobility and reduced swelling for the Claimant. He pointed out that Ms. Cullipher was neither an M.D. nor a licensed physical therapist, and questioned the value of her opinion. Mr. Dajose stated it had been necessary to check the Claimant's progress and modify her exercises if necessary. He testified the sessions were medically necessary.

Mr. Dajose's testimony was supported by the opinion of the IRO physician reviewer, who considered the therapy necessary to restore strength to the Claimant's right hand after surgery. The IRO review did not address at-home exercises as an alternative to the physical therapy sessions.

Under TEX. LAB. CODE ANN. §4018.021,

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 injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment.

"Health care" includes "all reasonable and necessary medical . . . services." TEX. LAB. CODE ANN. § 401.011(19).

The ALJ was convinced by Dr. Tsourmas' testimony that at-home exercises could have accomplished the same purpose as the disputed physical therapy sessions. That testimony, and the written opinion of Dr. Thaxton-Brooks, established that six to ten sessions of physical therapy are typical after carpal tunnel surgery. There were no complications that necessitated more sessions, although LMIC did pay for more. Therefore, even though the Claimant showed improvement after the disputed sessions, the preponderance of the evidence shows those sessions were not required.. The ALJ concludes that the disputed sessions were not reasonable or necessary medical services, and denies reimbursement for them.

### **III. Findings of Fact**

1. The Claimant reported a work-related repetitive stress injury to her right hand on \_\_\_\_.
2. The Claimant underwent right carpal tunnel surgery on November 28, 2001.
3. After the surgery, the Claimant underwent 53 physical therapy sessions with Heights from January 4, 2002, to May 3, 2002.

4. LMIC, the insurance carrier, reimbursed Heights for the sessions up to March 12, 2002.
5. LMIC declined to reimburse Heights for 21 physical therapy sessions from March 12 through May 3, 2002, considering those sessions not to have been medically necessary.
6. Heights filed a timely Request for Medical Dispute Resolution.
7. The IRO agreed with Heights that the treatments were medically necessary.
8. On March 25, 2003, the MRD issued its Findings and Decision, which ruled that Heights was entitled to reimbursement of \$2,212,00 for the disputed services.
9. On April 9, 2003, LMIC filed a timely request for a hearing before SOAH.
10. Notice of the hearing was sent to all parties May 5, 2003.
11. 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.
12. The hearing was held July 2, 2003, before ALJ Henry D. Card. Representatives of LMIC and Heights participated in the hearing, which was adjourned the same day.
13. At-home exercises could have accomplished the same purpose as the disputed physical therapy sessions.
14. Six to ten sessions of physical therapy are typical after carpal tunnel surgery.
15. There were no complications that necessitated more physical therapy sessions than are typical, although LMIC did pay for more.
16. Even though the Claimant showed improvement after the disputed sessions, those sessions were not required.

#### **IV. Conclusions of Law**

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
3. Under 28 TEX. ADMIN. CODE (TAC) §148.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. §413.031.

4. The disputed services were not reasonable or necessary medical treatments under TEX. LAB. CODE ANN. §401.011(19).
5. LMIC should not be required to reimburse Heights for the physical therapy sessions in dispute.

**ORDER**

Liberty Mutual Insurance Company is not required to reimburse Heights Physical Therapy for the disputed physical therapy sessions provided the Claimant from March 12 through May 3, 2002.

**Signed this 2<sup>nd</sup> day of September, 2003.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**Henry D. Card**  
**Administrative Law Judge**