

STATE OFFICE OF ADMINISTRATIVE HEARINGS
300 West 15th Street, Suite 502
Austin, Texas 78701

DOCKET NO. 453-03-3328.M5
[MDR TRACKING NO. M5-03-0554-01]

DARSHAN S. GILL, M.D., Petitioner	§ §	BEFORE THE
VS.	§ § § § §	STATE OFFICE OF
_____, Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Darshan S. Gill, M.D. (Petitioner) appealed an Independent Review Organization (IRO) decision finding certain services he rendered to Claimant not medically necessary. This decision agrees with the IRO decision that the services, for the dates of service in question, were not medically necessary and that the reimbursement claim should be denied.

I. JURISDICTION AND HEARING

Petitioner requested medical dispute resolution from Respondent's October 17, 2002, payment denial. The IRO rendered its decision on April 22, 2003, denying Petitioner reimbursement for services rendered. On April 29, 2003, Petitioner filed a request for a State Office of Administrative Hearings (SOAH) hearing. There was no challenge to notice or jurisdiction and those matters are stated in the findings of fact and conclusions of law without further discussion here.

The hearing was held on August 25, 2003, before Bill Zukauckas, Administrative Law Judge (ALJ), at the SOAH hearing facility, 300 West 15th Street, William B. Clements Building, Austin, Texas. Dr. Gill appeared by phone representing himself. Respondent _____

(Respondent) was represented by Lisa D. Crissman, Hearings Representative. The record closed that same day.

I. DISCUSSION

A. Background

1. Factual

On _____, while working as a custodian for Respondent in one of Respondent's schools, _____ (Claimant) turned and slipped onto her right knee, and injured her knee, right shoulder, and neck. On February 5, 2001, Claimant had an x-ray to her knee that revealed no osseous trauma. An MRI of the right knee, performed on March 2, 2001, however, revealed a tear of the posterior horn of the medial meniscus and a likely tear of the anterior horn. A March 14, 2001, x-ray report of her cervical spine and right ankle were normal. Claimant had an MRI of her right shoulder on March 30, 2001, that revealed normal degenerative changes, but no tear of the rotator cuff.

On April 11, 2001, Jorge Tijmes, M.D., performed arthroscopic surgery to Claimant's right knee to address the meniscus injury.

On September 11, 2001, Claimant had an MRI of her cervical spine. The MRI report reveal disc bulging at C5-6 and C6-7, with some mild impression on the anterior cord at the C5-6 level.

On September 21, 2001, Claimant was examined by Dr. Donald Henderson Nowlin, M.D., the independent review doctor, who reported that she had zero impairment and cleared her to return to work. Dr. Nowlin also reported that Claimant was recovering properly, but slowly, from her knee surgery, and that he did not believe that any other symptomology she was reporting had anything to do with her original work injury. He also believed Claimant was magnifying some of her reported symptoms.

Petitioner provided the medical services in question to Claimant between October 17, 2001, and January 8, 2002. Those medical services included office visits, physical therapies (including application of modality, electrical stimulation, myofascial release) and functional capacity exams (FCE). By agreement at the hearing, the parties stipulated that office visits on November 11, 2001, and December 3, 2001, and the FCE performed on January 8, 2002, were not at issue in this hearing.

2. Legal

1. Entitlement to Health Care

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: cures or relieves the effects naturally resulting from the injury; promotes recovery; or enhances the ability to return to or retain employment. TEX. LABOR CODE ANN. § 408.021. "Health care" includes "all reasonable and necessary medical . . . services." TEX. LABOR CODE ANN. § 401.011(19).

2. Medical Fee Guideline

The Commission-adopted *Medical Fee Guideline*, at 28 TEX. ADMIN. CODE § 134.201, includes the following:

MEDICINE GROUND RULES

In addition to the General Instructions, several other instructions pertaining specifically to the Medicine Section are contained in the Medicine Ground Rules and Notes below. This information shall be utilized for correct reporting and billing of the procedure codes.

II Physical Medicine

1. The following criteria shall be met for physical medicine treatment to qualify for reimbursement:
 2. The treatment shall be specific to the injury and provide for the potential improvement of the patient's condition.
2. Whether Treatments Were Medically Necessary/ Documented as Medically Necessary

1. Petitioner

Dr. Gill testified that he had taken care of Claimant from very near the date of her job injury. In his medical opinion, she clearly needed the treatments he provided for the dates at issue. He believes most of the Carrier's denials came after the negative independent review exam report was rendered by Dr. Nowlin. Dr. Gill disagrees with Dr. Nowlin's assessment that Claimant has a zero percent impairment rating. He believes Claimant has some impairment and that Dr. Nowlin's opinion in this case is consistent with other carrier-based zero impairment ratings he has rendered for other injured claimants.

2. Carrier

The Carrier argued that the treatment Petitioner provided Claimant was not medically necessary. The Carrier notes that Claimant reached maximum medical improvement on March 21, 2001, and was seen by Dr. Nowlin, on September 21, 2001, for an independent medical evaluation. Dr. Nowlin noted that Claimant had already returned to work as of the date of his exam and that he concurred that she should return to work. Carrier based its decision on Dr. Nowlin's findings that Claimant had nothing significantly wrong with her, that he agreed with the zero percent impairment

rating previously assigned to her, that her knee was doing very well (although the arthroscopic

surgery had produced delay in the full recovery), that there was no causal connection between Claimant's current symptomology and her work accident, and that Claimant exhibited some symptom magnification .

3. ALJ's Analysis

The ALJ concludes Petitioner has not shown that the services he provided Claimant, between October 17, 2001, and January 8, 2002, were medically necessary to treat Claimant's compensable injury.

Petitioner had the burden of proving the services he rendered to Claimant on the dates in question were medically necessary. While Petitioner has good records about the CPT codes billed on each date of service in question, the ALJ did not find many records supporting how these individual treatments were designed to benefit Claimant's compensable injury. This is particularly true in light of Dr. Nowlin's examination on September 21, 2001, where he extensively documented Claimant's condition and concluded that her knee was healing slowly but surely, and that it was unclear that any of her other symptomology was tied to her compensable injury. The Carrier also makes a persuasive argument that the treatments Petitioner provided, for the dates of service in question, were well more the accident date than 10 months past and not shown to be effective that far in time from the injury.

Petitioner points out that Carrier's preauthorization of 8 trigger-point injections on September 6, 2001, is arguably inconsistent with its subsequent denial of payment for treatment of the same injuries. The ALJ notes, however, that the costs for these services are distinguishable in that they were not disputed costs and were approved by the Carrier prior to Dr. Nowlin's report where he indicated Claimant's injuries were mostly resolved.

The ALJ does not find any problem with Carrier's actions. At the time Carrier preauthorized

the trigger-point injections, it was not challenging medical necessity of those services. After Dr. Nowlin's report indicated Claimant's compensable injury was mostly resolved and that maybe she was magnifying her symptoms or had complaints unrelated to the compensable injury, the Carrier began denying reimbursement. The ALJ finds Carrier's subsequent denial of the services in question was appropriate based on the medical records available and not inconsistent with approval of trigger-point injections.

III. FINDINGS OF FACT

1. ____ (Claimant) suffered a compensable injury to her right knee, right shoulder, and neck, on _____, while working as a custodian for _____ (Respondent) when she turned and slipped onto her right knee.
2. Claimant had x-rays and MRIs to her knee, shoulder, and neck. Based on readings from those tests and multiple physician evaluations, Dr. Jorge Tijmes performed arthroscopic surgery to address the tear in her right knee meniscus and likely tear to the anterior horn of the right knee meniscus on April 11, 2001.
3. As of September 21, 2001, Claimant had returned to work without a doctor's approval, but received after-the-fact approval to return to work on that date from Donald Henderson Nowlin, M.D., the independent review doctor. As of that date, Claimant had mostly recovered from her knee injury. She did not display other complaints at that time that were tied to her _____, work injury.
4. Petitioner provided the medical services in question to Claimant between October 17, 2001, and January 8, 2002. Those medical services included office visits, physical therapies (including application of modality, electrical stimulation, myofascial release) and functional capacity exams (FCE).
5. By agreement at the hearing, the parties stipulated that office visits on November 11, 2001, and December 3, 2001, and the FCE performed on January 8, 2002, were not at issue in this hearing.
6. Provider requested medical dispute resolution by the Texas Worker's Compensation Commission's Medical Review Division (MRD), which referred the matter to an Independent Review Organization (IRO).
7. After conducting medical dispute resolution, the IRO physician reviewer determined that the services were not medically necessary.
8. On April 29, 2003, Carrier requested a hearing and the case was referred to the State Office

of Administrative Hearings (SOAH).

9. Notice of the hearing was sent by the Commission to all parties.
10. On August 25, 2003, Administrative Law Judge Bill Zukauckas convened a hearing in this case. Carrier appeared by Lisa D. Crissman, Hearings representative. Dr. Darshan S. Gill, M.D., appeared by phone representing himself.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. § 413.031(d) and TEX. LABOR CODE ANN. ch. 2003.
2. The request for hearing was timely made pursuant to 28 TEX. ADMIN. CODE §148.3.
3. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. The treatments at issue were not medically necessary to treat the patient's post-operative knee injury or her original neck and shoulder injuries. TEX. LABOR CODE ANN. § 408.021.
5. Petitioner's claim should be denied. TEX. LABOR CODE ANN. § 408.021.

ORDER

IT IS, THEREFORE, ORDERED that Darshan S. Gill, M.D.'s claim for reimbursement of medical treatment to ____ for dates of service between October 17, 2001, and January 8, 2002, is hereby **denied**.

ISSUED October 23, 2003.

**BILL ZUKAUCKAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**