

NEUROMUSCULAR INSTITUTE OF TX-PA, <i>Petitioner</i>	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	OF
	§	
SOUTHWESTERN BELL TELEPHONE COMPANY, <i>Respondent</i>	§	ADMINISTRATIVE HEARINGS
	§	
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### **DECISION AND ORDER**

Neuromuscular Institute of Tx-PA, appealed an Independent Review Organization (IRO) determination upholding a Southwestern Bell Telephone Company (SWB) decision denying it reimbursement, on the basis of medical necessity, for certain chiropractic services it provided to an injured worker (Claimant). This proposal concludes that the claim should be denied because the services at issue were not medically necessary to treat the Claimant's compensable injury.

#### **I. Procedural History and Jurisdiction**

A hearing convened on September 2, 2003, before the undersigned Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH), 300 West 15<sup>th</sup> Street, Austin, Texas. NIT appeared and was represented by Attorney David T. Duncan, Jr. SWB appeared and was represented by Attorney Charlotte Salter. The hearing concluded on September 2, 2003.

As there were no issues concerning notice or jurisdiction, those matters are stated in the fact findings and legal conclusions without further discussion here.

#### **II. Discussion**

##### **A. Background**

##### **1. Factual**

- The Claimant was a 48-year-old female who suffered a work-related injury on, when she fell in a parking lot onto her buttocks.
- She was diagnosed with sacrococcygeal sprain as well as sprain of the right sacroiliac joint and the lumbosacral junction.
- She received conservative treatment from NIT beginning in March 2000 as well as epidural steroid injections and medication management.
- She was in a pain management program from August 6, 2001, until January 4, 2002, during which time her pain dropped from eight on a scale of ten (8/10) to 6/10.

- The treatments at issue were from December 27, 2001, through August 15, 2002, consisting of two office visits and ten chiropractic manipulations.
- The issue to be decided is whether the services were medically necessary.

## 2. Legal

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. TEX. LABOR CODE ANN. § 408.021. "Health care" includes "all reasonable and necessary medical . . . services." TEX. LABOR CODE § 401.011(19).

### B. Discussion

#### 1. NIT

Based on § 408.021 of the Labor Code, NIT contended that the Claimant was entitled to medical care that relieved the effects naturally resulting from her injury. It pointed to evidence showing her pain level started at 9/10 and improved to 5-6/10 during her two-plus years of treatment.

NIT cited three physician reports in the record, which it said led to an erroneous conclusion by SWB that the services were not necessary. The first was a retrospective peer review by George Sage, D.C., dated November 3, 2000, which opined that the Claimant should receive 24 additional sessions of therapy for carpal tunnel syndrome, to end on May 23, 2000.<sup>1</sup> Recognizing that the care in dispute was not for carpal tunnel syndrome, NIT still argued that the limited nature of the approval could have affected subsequent reports that questioned the necessity of other types of treatment.

The second report was a retrospective peer review by Thomas Sato, D.C., dated March 4, 2002, recommending a clinical trial of 12 to 24 chiropractic treatments from March 16, 2000, through June 16, 2000, but saying that any future treatments after June 16 would require documentation before it could be recommended and that care on and after February 28, 2002, could not be recommended due to lack of documentation. Dr. Sato also said, "We were unable to obtain cooperation from the provider and we were unable to determine the necessity for chiropractic treatment at the date requested."<sup>2</sup> NIT argued it is not hard to see why Dr. Sato reached the conclusion he did, given the facts that the treating doctor would not return his call and the services seemed not to be working.

The third report, from James C. Womack, M.D., a September 11, 2002, peer review, concluded that the drug Nortriptyline was medically necessary for the Claimant, but that Hydrocodone, Carisoprodol, and Ambien were no longer justifiable.<sup>3</sup> NIT pointed out that this opinion dealt with drugs rather than the need for continued chiropractic care. It argued that the

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<sup>1</sup>Ex. 2 at A0058-A0059.

<sup>2</sup>*Id.* at A0061-A0062.

<sup>3</sup>*Id.* at A0064-A0068.

Claimant's history as stated in the letter, showing low-back pain, chronic sacral and coccyx region pain with sciatica or nerve root compression symptoms and upper extremity cubital syndrome, justified chiropractic care. As further justification, NIT pointed out that the Claimant had a herniated disc but she was reluctant to have surgery.<sup>4</sup>

2. SWB

SWB emphasized the IRO doctor's opinion, including the following:

- The documentation does not show that the chiropractic care rendered in 2000 and 2001 provided therapeutic gain beyond what would normally be expected.
- The documentation does not show either subjectively or objectively that significant therapeutic gain was being accomplished through chiropractic care.
- It is unclear what was gained through additional passive care and manipulations 21 months post-injury.
- Additional therapeutic gains 21 months post-injury would be unlikely.
- The Claimant was enrolled in a five-month chronic pain management program ending on January 4, 2002, chronic pain management programs are ordinarily resorted to when other care fails, and it is unlikely that a patient would achieve substantial and prolonged therapeutic gains after a five-month long pain management program.
- The Claimant's receipt of chiropractic care on a very infrequent basis, such as the care at issue in this case, is inconsistent with the standard of care, does not reflect an attempt at significant gains, and is unlikely to achieve significant gains.
- The Claimant experienced significant neurological manifestations of her injuries, including bowel and bladder dysfunctions and diminished or absent reflexes.
- Most generally accepted care standards say chiropractic care is contraindicated with neurological manifestations, especially when previous chiropractic care was ineffective.<sup>5</sup>

SWB argued that NIT had a chance to make its case at the medical dispute resolution level and to clear up any purported deficiencies in the peer reviews, but failed to convince the IRO doctor.

SWB cited Medicine Ground Rules I.A.1 and 2 of the Commission adopted *Medical Fee Guideline* (MFG),<sup>6</sup> addressing physical medicine requirements. The rules say, to qualify for reimbursement, "[T]he patient's condition shall have the potential for restoration of function;" and "[T]he treatment shall be specific to the injury and provide for the potential improvement of the patient's condition." It cited TEX. LABOR CODE ANN§401.011(31), requiring health care to cure or relieve the effects naturally resulting from the compensable injury and 28 TEX. ADMIN. CODE (TAC)

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<sup>4</sup>*Id.* at A0066; Ex. 3 at B0236 and B0246-B0247.

<sup>5</sup>Ex. 2 at A0005-A0006.

<sup>6</sup>28 TAC § 134.201.

§ 180.22(c)(2), requiring treating doctors to maintain efficient utilization of health care. SWB contended this is a clear and obvious case of overutilization. It cited the following additional evidence:

- A NIT chiropractor first saw the Claimant on March 23, 2000, and even then suspected disc herniation,<sup>7</sup> (although magnetic resonance imaging (MRI) of the lumbar spine on March 24, 2000, and May 8, 2000, did not reveal a herniation).<sup>8</sup>
- A June 5, 2000, peer review by John DeRicco, D.C., indicated eight weeks of treatment at most would be justifiable.<sup>9</sup>
- On June 7, 2000, the Claimant was experiencing severe (9/10) low-back pain.<sup>10</sup>
- As of June 12, 2000, the Claimant had pain with bowel movements.<sup>11</sup>
- On August 4, 2000, the Claimant's pain continued, including pain with defecation.<sup>12</sup>
- NIT was still providing manipulations on August 15, and September 26, 2000.<sup>13</sup>
- A physical therapy evaluation showed consistent low-back pain at an 8/10 level.<sup>14</sup>
- Manipulation continued into December 2000.<sup>15</sup>
- NIT recommended more injections for the Claimant's pain (at an 8/10 level).<sup>16</sup>
- The Claimant said her low-back pain was unchanged at 7/10 as of January 25, 2001.<sup>17</sup>

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<sup>7</sup>Ex. 3 at B0005.

<sup>8</sup>*Id.* at B0006 and B0008.

<sup>9</sup>*Id.* at B0029.

<sup>10</sup>*Id.* at B0031.

<sup>11</sup>*Id.* at B0033.

<sup>12</sup>*Id.* at B0049-B0050.

<sup>13</sup>*Id.* at B0055 and B0058.

<sup>14</sup>*Id.* at B0061.

<sup>15</sup>*Id.* at B0069 and B0072.

<sup>16</sup>*Id.* at B0070.

<sup>17</sup>*Id.* at B0081.

- The Claimant's low-back pain was reported as unchanged at 8/10 on March 1, 2001, and on March 23, 2001.<sup>18</sup>
- On May 2, 2001, Patrick W. Mulroy, M.D., opined that additional conservative care, including chiropractic manipulations, was unnecessary.<sup>19</sup>
- In a June 7, 2001, designated doctor examination, Bradley C. Sikes, D.C., a designated doctor, said the Claimant reported little or no improvement.<sup>20</sup>
- Treatments continued in May, June, and July of 2001.<sup>21</sup>
- On July 30, 2001, the Claimant said when the pain gets bad it radiates into her anal region.<sup>22</sup>
- The Claimant began chronic pain management on August 10, 2001.<sup>23</sup>
- A NIT chiropractor's record for December 27, 2001, the first day of the disputed care, said the Claimant had low-back pain of 6/10 and she would continue to have manipulative therapy from NIT.<sup>24</sup>
- A February 11, 2002, NIT record reported the Claimant's pain at 6/10.<sup>25</sup> SWB pointed out that the NIT doctor just indicated what the treatment was without any indication that the Claimant had received any benefits.
- A February 28, 2002, NIT report said the Claimant had received three epidural steroid injections for low-back pain. The Claimant reported her pain level at 5/10 but also said she had a perception of weakness in her right thigh and that her leg occasionally gives out.<sup>26</sup>

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<sup>18</sup> *Id.* at B0086 and B0095.

<sup>19</sup> *Id.* at B0104-B0106.

<sup>20</sup> *Id.* at B0113.

<sup>21</sup> *Id.* at B0109, B0116, and B0120.

<sup>22</sup> *Id.* at B0121.

<sup>23</sup> *Id.* at B0123.

<sup>24</sup> *Id.* at B0179.

<sup>25</sup> *Id.* at B0185.

<sup>26</sup> *Id.* at B0185.

- A March 5, 2002, follow-up office visit note from Jerjis J. Denno, M.D., said the Claimant had been receiving good conservative care from NIT, including pain management, but that she had not been doing well and there had not been much change in her neck, mid-back, and low-back pain.<sup>27</sup> According to SWB, this note shows the care should have stopped.
- A NIT record of March 11, 2002, showed the Claimant's pain at 6/10.<sup>28</sup>
- A June 20, 2002, NIT record said an MRI revealed a thoracolumbar-region herniated disc.<sup>29</sup> SWB pointed out that after two years and three months of manipulation, it was finally determined that the Claimant's real problem was a herniated disc.
- On July 11, 2002, Dr. Denno said the Claimant continued to have "quite a bit of pain in the lower lumbar spine with pain in both thighs" and she was "quite concerned about the ongoing pain." Dr. Denno said she was frustrated with the pain.<sup>30</sup>
- A September 3, 2002, NIT record indicated that the Claimant said she could not continue living with the pain and that she was considering surgery.<sup>31</sup> SBC contended this showed NIT had not relieved the Claimant's pain, and there was no potential for restoration of function or for improvement.
- A September 30, 2002, NIT record indicated the Claimant was considering surgery for her condition.<sup>32</sup> SBC maintained this is further evidence of a lack of improvement in her condition.
- A NIT October 15, 2002, record said the Claimant had chronic, severe low-back pain from the lumbar, sacral, and upper posterior iliac regions.<sup>33</sup>
- A February 27, 2003, NIT record said the Claimant suffers from severe back pain due to T-11-T-12 and L5-S1 herniated disc problems, she is depressed with the chronic pain, and she is unable to work.<sup>34</sup> SBC contended that it appears the Claimant got worse under NIT's care rather than better.

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<sup>27</sup> *Id.* at B0189.

<sup>28</sup> *Id.* at B0190.

<sup>29</sup> *Id.* at B0200.

<sup>30</sup> *Id.* at B0202.

<sup>31</sup> *Id.* at B0212.

<sup>32</sup> *Id.* at B0234.

<sup>33</sup> *Id.* at B0236.

<sup>34</sup> *Id.* at B0254.

### 3. Analysis

The ALJ concludes that the disputed services were not medically necessary. The primary expert opinion evidence was from an IRO doctor who said that the services were not justified. Rather than citing expert evidence to support its point of view, NIT primarily attempted to discredit the peer reviews SWB relied on and to simply argue that the services were medically necessary because the Claimant's pain improved during the treatment and that her reluctance to have surgery justified chiropractic care. To some extent, NIT is asking the ALJ to serve as his own expert in determining from the record that the services were medical necessary. By contrast, the IRO doctor provided persuasive expert detailed reasoning to support his or her opinion.

Contrary to NIT's assertions, NIT's own records show the disputed services did not improve the Claimant's condition during the treatment at issue and that there was little or no potential for improvement of the Claimant's condition or restoration of her functions. This is particularly shown by NIT's September, October, and February records and Dr. Denno's July 11, 2002, report.

The IRO doctor's opinion was persuasive that: the chiropractic care rendered prior to the disputed services did not result in therapeutic gain beyond what would normally be expected; additional therapeutic gains 21 months post-injury were unlikely; chronic pain management programs are ordinarily an end stage, resorted to when other treatments fail; it is not likely that a patient would achieve substantial and prolonged therapeutic gains after a five-month pain management program; the Claimant's chiropractic care on a very infrequent basis, as done in this case, is inconsistent with the standard of care, did not reflect an attempt at significant gains, and was unlikely to achieve significant gains; the Claimant experienced significant neurological manifestations of her injuries, including bowel and bladder dysfunctions or diminished and absent reflexes; and most generally accepted care standards say that chiropractic care is contraindicated with neurological manifestations, especially when previous chiropractic care has been ineffective.

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

1. Neuromuscular Institute of Tx-PA (NIT), appealed an Independent Review Organization determination upholding a Southwestern Bell Telephone Company (SWB) decision denying it reimbursement, on the basis of medical necessity, for certain chiropractic services it provided to an injured worker (Claimant).
2. NIT appealed not later than the 20<sup>th</sup> day after it received notice of the decision.
3. All parties received not less than 10 days' notice of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
4. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.
5. The disputed care consists of two office visits and ten chiropractic manipulations provided by NIT from December 27, 2002, until August 15, 2003.

6. The Claimant was a 48-year-old female who suffered a work-related injury on, when she fell in a parking lot onto her buttocks.
7. She was diagnosed with sacrococcygeal sprain as well as sprain of the right sacroiliac joint and the lumbosacral junction.
8. She received conservative treatment from NIT beginning in March 2000 as well as epidural steroid injections and medication management.
9. She participated in a pain management program from August 6, 2001, until January 4, 2002, during which time her pain dropped from eight on a scale of ten (8/10) to 6/10.
10. The chiropractic care rendered before the disputed services did not result in therapeutic gain beyond what would normally be expected.
11. Additional therapeutic gains 21 months post-injury would be unlikely.
12. Chronic pain management programs are ordinarily an end stage, resorted to when other treatments fail.
13. It is not likely that a patient would achieve substantial and prolonged therapeutic gains after a five-month long pain management program.
14. The Claimant's chiropractic care on a very infrequent basis, as done in this case, is inconsistent with the standard of care, did not reflect an attempt at significant gains, and was unlikely to achieve significant gains.
15. The Claimant experienced significant neurological manifestations of her injuries, including bowel and bladder dysfunctions or diminished and absent reflexes.
16. Chiropractic care is contraindicated with neurological manifestations, especially when previous chiropractic care has been ineffective.
17. The care in dispute did not improve the Claimant's condition.
18. There was little or no potential for improvement of the Claimant's condition from the care.
19. There was little or no potential for restoration of the Claimant's functions from the care.
20. The disputed services were not reasonably required by the nature of the Claimant's injury.

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

1. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE ANN. §413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.

2. All parties received adequate and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. NIT had the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).
4. NIT's treatment of the Claimant from December 27, 2001, through August 15, 2002, was not medically necessary. TEX. LAB. CODE ANN. §413.021.
5. NIT's claim for treatment to the Claimant from December 27, 2001, through August 15, 2002, should be denied.

**ORDER**

**IT IS, THEREFORE, ORDERED** that the Claim of Neuromuscular Institute of Tx-PA against Southwestern Bell Telephone Company for treatments and services to the Claimant from December 27, 2001, until August 15, 2002, be, and the same is hereby, **denied**.

**Signed September 17<sup>th</sup>, 2003.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**JAMES W. NORMAN**  
**Administrative Law Judge**