

II. EVIDENCE

1. Petitioner's Evidence

Petitioner relied on its Submission to the IRO and Other Relevant Documents,³ filed with SOAH prior to the hearing. Susan Stambush, a licensed physical therapist in private practice since 1989, also testified as to the medical necessity of the additional PT sessions that were provided.

Claimant sustained a left knee injury on _____. Following an arthroscopy of the left knee on December 7, 2001, Claimant was diagnosed as having a bucket handle tear of his medial meniscus. On that same date, Barry Nelms, an orthopedic surgeon, performed a partial medial meniscectomy⁴ on Claimant's left knee. After the surgery, Dr. Nelms referred Claimant to PT so that rehabilitation of the knee could begin. Claimant reported to Petitioner's facility for PT on December 20, 2001, and continued through January 11, 2002, receiving eight sessions of intensive PT. Those sessions were fully reimbursed by the Carrier. Thereafter, 20 additional visits, 15 minutes each, of supervised therapeutic exercises through March 7, 2002, were also approved by the Carrier. After the 28 sessions of supervised PT, Petitioner continued to provide Claimant more supervised PT through July 19, 2002, billing most of those sessions at \$35, the maximum allowable reimbursement (MAR), per session under CPT Code 97110.⁵ The Carrier, however, refused to reimburse for those sessions, arguing that supervised PT after March 7, 2002, was not medically necessary.

Mrs. Stambush testified that in this case, more than the usual four to six weeks of PT was required in order for Claimant to achieve full function in the knee. She stated that Dr. Nelms recommended continued PT in part because of atrophy in Claimant's left thigh and leg. (*See* Pet. Ex. 1, ORD, p.19).⁶ Moreover, supervised PT was required because Claimant needed to increase the strength in his knee, and needed to work out the instability that he felt because most of the meniscus had been removed from his left knee. During the sessions, Petitioner worked to control the pain and swelling that would interfere with rebuilding the muscle. Mrs. Stambush further testified that supervised PT was required so that the muscle could be stimulated in a manner that would not aggravate the knee and cause it to swell. She stated a trained therapist knows how a patient should approach physical exercises (warm up, corrective exercise, cool down followed by cold pack) as well as how to select appropriate exercises that caused fibers in a muscle to fire and thus strengthen. If Claimant had been allowed to do the PT on his own, he could have performed exercises that were not as effective as those performed at the facility, and he could have re-injured himself by not

³ Petitioner's Exhibit 1 (Pet. Ex. 1), more than 500 pages, consisted primarily of documents that had been provided to the IRO. However, it also included a tab labeled "Other Relevant Documents," which apparently had not been sent to the IRO. References to documents from that tab are indicated as Pet. Ex. 1, ORD with the corresponding page numbers.

⁴ According to *Dorland's Illustrated Medical Dictionary*, 28th Ed., a partial medial meniscectomy is a surgical procedure in which a portion of the meniscus (a crescent-shaped disk of fibrocartilage attached to the medial margin of the superior articular surface of the tibia) is removed. In Claimant's case, most of the medial meniscus was removed.

⁵ Therapeutic exercises under CPT Code 97110 are defined as exercises used to develop strength and endurance, range of motion and flexibility. Examples include the use of graded resistance ranging from manual resistance to a variety of equipment including isokinetic, isometric, or isoinertial in one or more planes. *See* 1996 MFG, p. 32.

⁶ Mrs. Stambush stated there were signs of atrophy in Claimant's thigh and calf, in that they measured smaller on the left than on the right, i.e., left thigh 46 cm. vs. 48 cm. on the right, and left calf, 37 cm. vs. 38 cm. on the right. *See* Petitioner Ex. 1, ORD, p. 20.

following the proper procedures. In general, Mrs. Stambush testified that Claimant's knee had improved significantly because of the supervised PT. On cross examination, however, she testified that the only type of PT offered at her clinic was supervised PT.

Petitioner further pointed to the fact that not only had Dr. Nelms, the treating doctor, agreed that the PT had helped Claimant's knee, but the doctor who performed an independent medical examination (IME) had also recognized the benefit. On June 18, 2002, Dr. Zale found that Claimant had not yet reached maximum medical improvement (MMI) and opined that Claimant would benefit from continued PT and probably from 4-6 weeks of work hardening. (*See* Pet. Ex. 1, ORD, p. 20). Mrs. Stambush stated that the treatment notes showed the PT was effective-range of motion was improved early on and the knee gained strength and flexibility as a result of the sessions. Claimant worked on equipment at the facility that he did not have at home, and it was important when working with such equipment that Petitioner's employees set up the weights so that Claimant would not injure himself. With regard to the home exercise program, Mrs. Stambush testified that she monitored Claimant's home exercises by discussing them with him. While she did not record her discussions, she stated she talked to him about performing his home exercises and could see if he did them by how he performed on the PT at the clinic.

Petitioner's Ex. 1, ORD, pp. 4 - 13, contains notes of Dr. Nelms' follow-up visits during which he checked Claimant's progress after referral to PT. While the notes indicated that he believed supervised PT was required through early March 2002, on March 12, 2002, Dr. Nelms wrote that Claimant should "continue to do his exercise program *and continue a home program of exercises for strengthening.*" (*Id.* p. 11). Later, on July 17, 2002, he noted that Petitioner had not instructed Claimant on a home exercise program and sent Claimant back for one more session so that he could get such instruction. (*Id.* p. 7).

1. Carrier's Evidence

The Carrier introduced Respondent's Ex. A, the curriculum vitae of Scott Herbowy, who testified at the hearing, and Ex. B, a transcript of the oral deposition of John Charles Pearce, M.D. Dr. Pearce and Mr. Herbowy reviewed Claimant's medical records in this case and gave their opinions about the treatment at issue.

Mr. Herbowy, a licensed physical therapist in private practice for more than ten years, testified that some initial one-on-one PT is appropriate in this type of case while a patient learns what exercises to do on his own. However, Mr. Herbowy stated that a patient should be encouraged to perform PT at home because PT normally is an ongoing activity that a patient must continue to do to improve the affected limbs or muscles and return them to the pre-injury condition. He stated that after more than 28 sessions of PT, Claimant should have been capable of independently performing his PT. Had Petitioner placed Claimant on a home exercise program, Petitioner then should have checked his progress to ensure the exercises were being performed correctly and to make any adjustments to the exercise program that might be necessary. Mr. Herbowy testified that a patient who is not encouraged to do PT on his own could become unduly dependent on the PT therapist or facility for rehabilitation, instead of assuming responsibility for achieving rehabilitation himself.

Dr. Pearce, an orthopedic surgeon, testified that the vast majority of patients who have undergone the type of surgery Claimant had would require between nine to twelve visits of PT

several weeks after the surgery. Ordinarily that number of PT visits would be sufficient because during the PT, the patient would be taught how to exercise his knee on his own. (R. Ex. 2, p. 13). In Claimant's case, however, it does not appear Claimant was taught how to do PT on his own until sometime in July, even though it appears the treating doctor anticipated that would be done earlier. Dr. Pearce stated that teaching a patient to exercise on his own is very beneficial because exercise is something a person with this type of knee injury requires on a long-term basis. He indicated there was nothing in Claimant's medical records that would support more than nine to twelve sessions of supervised PT. (R. Ex. 2, p. 17). Further, Dr. Pearce stated he saw no specific need for Claimant to use elaborate equipment in performing his PT, and stated that Claimant could have been given exercises that did not require equipment to perform at home. *Id.* Dr. Pearce opined that it is important to get a patient to do home exercises so he may begin rehabilitative exercises on his own and not have him become dependent on a physical therapist.

According to the Carrier, the IRO decision was correct. The physical therapy provided by Petitioner after March 7, 2002, was not medically necessary because the original 28 sessions of supervised PT that had already been approved and provided were sufficient. The Carrier argued the evidence clearly showed that Petitioner should have taught Claimant how to perform PT on his own at home; had it done so, there would have been no need for additional supervised PT by Petitioner.

III. LEGAL STANDARDS AND DISCUSSION

A. Entitlement to Medical Benefits.

Section 408.021 of the Texas Workers' Compensation Act (Act) provides that 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. Section 401.011(19) of the Act defines "health care" to include "all reasonable and necessary medical . . . services." The Commission adopted a Medical Fee Guideline (MFG) in 1996 that, among other things, set out in more detail the type and quantity of treatments that could be provided injured workers, when specific treatments should be provided, and how such treatments should be billed. In the introductory section of the MFG, under "TWCC and the Importance of Proper Coding," the Commission set out the importance of proper coding for treatment by providers and indicated the following as one of its general purposes:

Medical review is mandated by law to monitor health care providers and to ensure the quality of care and *cost effectiveness*. The consistent submission of proper codes is a large part of this process. By using the proper codes, participants in the workers compensation system can help speed the review and reimbursement of the claims/services. (Emphasis added).

B. Discussion

The issue in this case is whether the Carrier should be required to pay for the supervised PT sessions from March 7, through July 19, 2002. Petitioner contends the sessions were medically necessary because the treating doctor indicated additional PT was required after March 7, 2003, to address atrophy on Claimant's left thigh and leg and because the left knee needed strengthening.

Carrier argues that the treating doctor's instructions reflect Petitioner should have formulated a home exercise program for Claimant and monitored his progress periodically, instead of providing the one-on-one PT, which was much more expensive. In addition to the home exercise program being more cost effective as required by the workers compensation system, it would also have benefitted Claimant because he would have acquired the skills needed to allow him to rehabilitate his knee for the rest of his life.

Although Petitioner offered evidence that the sessions helped to increase the range of motion in and strengthen Claimant's knee, Carrier presented persuasive evidence from two medical experts that the intensive PT by Petitioner was not necessary 12 weeks after surgery and after 28 sessions of approved PT. Dr. Pearce and Mr. Herbowy, who have extensive experience with the type of injury involved in this case, testified that the better course for Petitioner to have followed at that stage was to instruct Claimant in a home exercise program that he could have continued on his own. Both testified this is the approach commonly used in this type of injury, not simply to reduce the cost of treatment, but also to equip the claimant with knowledge and skills that he will be able to use throughout his life in rehabilitating the knee. Indeed, the treating doctor's notes also contemplated this approach; Dr. Nelms referenced a home exercise program as early as March 12, 2002. However, he appeared surprised in a later visit in July, when he noted that Claimant had not yet been instructed in such a program and sent Claimant to Petitioner for one more day so that he could be given such instruction. Thus, the evidence establishes that Petitioner should have transitioned Claimant off of supervised PT as early as mid March 2002 and should have placed him on a home exercise program.

Based on the evidence, the ALJ concludes Petitioner did not prove by a preponderance of the evidence that the supervised PT from March 7 to July 19, 2002 was medically necessary

IV. FINDINGS OF FACT

1. Claimant sustained an injury to his left knee on ____, while working.
2. At the time of the injury, Claimant's employer, ____, had workers' compensation insurance through Texas Mutual Insurance Company (Carrier).
3. After diagnostic tests, Claimant was diagnosed with a tear of the medial meniscus of the left knee. It was determined that surgery was necessary.
4. On December 7, 2001, Barry Nelms, orthopedic surgeon, performed a meniscectomy on Claimant's left knee.
5. Several weeks after the surgery, Dr. Nelms referred Claimant to Stambush Health Care Services, Ltd. (Petitioner) for physical therapy (PT).
6. Petitioner began treating Claimant on December 20, 2001, and provided eight sessions of PT through January 11, 2002. Carrier paid for the eight sessions of supervised PT.
7. An additional twenty sessions of supervised PT (15-minutes each) were also approved and paid for by the Carrier. In total, Carrier paid for 28 sessions of PT that was provided to Claimant by Petitioner through March 7, 2002.

8. Petitioner continued to provide Claimant supervised PT through July 19, 2002, indicating such PT was necessary to strengthen Claimant's knee and obtain full function of the knee.
9. On March 12, 2002, Dr. Nelms had a follow-up visit with Claimant and indicated in his office notes that Claimant needed to continue a home exercise program for strengthening.
10. Petitioner's treatment notes do not reflect that Claimant was placed on a home exercise program or that he was instructed on how to perform exercises on his own at home between March 7, 2002, and July 19, 2002.
11. Petitioner, who only provides supervised PT, continued to provide supervised PT to Claimant through July 19, 2002, despite the extensive PT that Claimant had already received.
12. After initial supervised PT, a home exercise program is more cost effective than supervised PT and is beneficial for persons with Claimant's type of injury, because rehabilitation of a knee is normally a long-term process. A patient's learning how to exercise on his own is helpful toward that long-term rehabilitation.
13. On July 18, 2002, Dr. Nelms referred Claimant to Petitioner's facility for one more session so that Petitioner could instruct Claimant on a home exercise program, as Petitioner had not yet provided such instruction.
14. Nothing in Claimant's medical records indicated that Claimant could not have been placed on a home exercise program; in fact, Claimant's treating doctor envisioned such a program for Claimant as early as March 12, 2002.
15. Petitioner billed the Carrier for the addition sessions of supervised PT through July 19, 2002. Carrier refused to pay for such sessions as not medically necessary.
16. Petitioner appealed the Carrier's denial to the Texas Workers' Compensation Commission (the Commission). The dispute was sent to an independent review organization (IRO) for consideration.
17. After reviewing the disputed claim, the IRO agreed with the Carrier. On May 12, 2003, the Commission's Medical Review Division adopted the recommendation of the IRO and denied reimbursement of Petitioner's claim for the supervised PT sessions after March 7, 2002.
18. On May 28, 2003, Petitioner appealed the MRD's decision, and sought reimbursement for the claim.
19. The Commission sent notice of the hearing to the parties on June 26, 2003. The hearing notice informed the parties of the matter to be determined, the right to appear and be represented, the time and place of the hearing, and the statutes and rules involved.
20. The hearing was held on September 29, 2003. Petitioner was represented by attorney Scott Stambush, and the Carrier was represented by attorney Patricia Eads. The record of the hearing closed on October 10, 2003 with written closing arguments.

V. CONCLUSIONS OF LAW

- 1 The Texas Workers' Compensation Commission has authority 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(d) and TEX. GOV'T CODE ANN. ch. 2003.
- 3 The Petitioner timely filed notice of appeal of the MRD decision, as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
- 4 Proper and timely notice of the hearing was given to the parties according to TEX. GOV'T CODE ANN. ch. 2001 and 28 TAC § 148.4(b).
- 5 Pursuant to 28 TAC §148.21(h) and (i), Petitioner had the burden of proving by a preponderance of the evidence that its claim should be reimbursed.
- 6 The Commission's 1996 Medical Fee Guideline (MFG) indicates that medical review is mandated by law to monitor health care providers and to ensure the quality of care and cost effectiveness of that care.
- 7 Petitioner did not prove by a preponderance of the evidence that supervised PT following twelve weeks after knee surgery was medically necessary or the most cost effective treatment as is required under the Commission's MFG.
- 8 Based on the foregoing findings of fact and conclusions of law, Petitioner's appeal should be denied.

ORDER

IT IS HEREBY ORDERED that the appeal of Petitioner Stambush Health Care Services, Ltd. is Denied.

SIGNED on November 18, 2003.

RUTH CASAREZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARING