

TEXAS MUTUAL INSURANCE COMPANY,	§	BEFORE THE STATE OFFICE
	§	
Petitioner	§	
VS.	§	
	§	OF
GALAXY HEALTH CARE CENTER,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

**DECISION AND ORDER**

Liberty Mutual Insurance Company (the “Carrier”) appeals the decision of an Independent Review Organization (IRO) requiring reimbursement for a series of passive and active physical therapy sessions provided to workers’ compensation claimant\_\_\_\_ (the “Claimant”). The Administrative Law Judge (ALJ) concludes the Carrier did not meet its burden of proving the disputed services were not medically necessary. Accordingly, this decision requires payment of \$4,644 for the disputed services.

**I. NOTICE AND HEARING**

The hearing convened September 10, 2003, at the hearing facilities of the State Office of Administrative Hearings (SOAH) before SOAH ALJ Kerry D. Sullivan. The Carrier was represented by Patricia Eads; the Provider was represented by Alex Kurt Riley, D.C., the Respondent’s Clinic Director. The Commission did not participate in the hearing. After receipt of evidence, the record was closed the same day.

**II. EVIDENCE AND BASIS FOR DECISION**

The Claimant is a 42-year-old female who sustained compensable injuries to her back on\_\_\_\_\_, while lifting a patient as part of her nursing duties. Since the accident, the Claimant has undergone extensive passive and active physical therapy, but she continued to report severe pain. Accordingly, she underwent a manipulation under anesthesia (MUA) on January 28 and 29, 2002 in an effort to improve her range of motion and decrease her pain.<sup>1</sup> The procedures

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<sup>1</sup> MUA is a manipulation or series of manipulations performed under conscious sedation to allow the provider to make desired stretching, mobilizations, and adjustments that the body would resist in the absence of sedation. The Carrier is separately challenging the need for the MUA in a proceeding which remains pending at the Commission.

were directed to the Claimant's lumbar and cervical spine. Following the MUA, Respondent Galaxy Health Care Centers provided fifteen additional sessions of passive and active physical treatment. The treatment provided in these sessions included manipulation, ultrasound, interferential currents, myofascial release, traction, and active exercises. It is reimbursement for these post-MUA sessions that is in dispute in this proceeding.

The Carrier argues that the MUA was not medically necessary and did no good. According to the Carrier, follow-up treatments to an unnecessary medical procedure are also unnecessary. Alternatively, the Carrier argues that, even if some follow-up treatment were required, it could have been provided in a less costly setting. The Carrier presented the testimony of David Alvarado, D.C., as well as one of the Carrier's claims analysts, in support of its contention. The Respondent cross examined the Carrier's witnesses and relied on the documents submitted to the IRO in support of its position. It called no witnesses at the hearing.

The ALJ concludes the Carrier has not shown that the disputed services were unnecessary. Although the medical necessity of the MUA itself is not to be determined here, Dr. Alvarado acknowledged on cross examination that the claimant met most of the criteria for an MUA.<sup>2</sup> In his view, however, the patient's psychological profile, including treatment for depression and an apparent instance of hoarding drugs, rendered her an unsuitable candidate for an MUA. But as pointed out by the Provider, this assessment conflicts with that of the Carrier's own physician advisor. In separately recommending denial of a chronic pain management program for the Claimant, the physician advisor wrote that "there is no medical evidence of psych problems impacting clinical course. . . ." In the ALJ's view, this discrepancy was not explained adequately to warrant finding the treatment unnecessary based on the claimant's psychological profile. Under these circumstances, the follow-up therapy should not be denied on the basis that the MUA itself was unnecessary.<sup>3</sup>

The follow up physical therapy was also not shown to be unnecessary on any other basis. The Provider's documentation shows that "almost all authors recommend post operative

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<sup>2</sup> The criteria the claimant met included failed conservative care, reduced range of motion with pain, pain interfering with activities of daily life and sleep, muscle spasms, and the existence of scar tissue.

<sup>3</sup> The ALJ makes no specific finding in this case regarding the medical necessity of the MUA since that issue is being addressed in another proceeding. To the extent it bears on the need for follow-up care, the ALJ simply observes that the Carrier did not prove in this proceeding that it was not necessary. The ALJ also does not decide whether performance of an unnecessary procedure automatically renders follow-up care to that procedure unnecessary.

manipulation and therapy” following MUA and the recommended duration ranges from two to six weeks. The fifteen sessions offered by the Provider fall within this range. While it is possible that some of the treatment could have been provided in a less expensive group setting, the literature indicates a fairly high level of supervision is warranted, and the overall treatment plan appears to have been reasonable.

Based on the above, the ALJ finds that the Carrier should be required to reimburse the Provider \$4,644 for the disputed services. Additional facts and analysis in support of this decision are set out in the Findings of Fact and Conclusions of Law, below.

### **III. FINDINGS OF FACTS**

1. Claimant \_\_\_\_\_ is a 42-year-old female who sustained compensable injuries to her back on \_\_\_\_\_, while lifting a patient as part of her nursing duties.
2. Texas Mutual Insurance Company (the “Carrier”) was the worker's compensation provider for the Claimant's employer.
3. Since the accident, the Claimant has undergone extensive passive and active physical therapy, but she continued to report severe pain. Accordingly, she underwent a manipulation under anesthesia (MUA) on January 28 and 29, 2002 in an effort to improve her range of motion and decrease her pain. The procedures were directed to the Claimant's lumbar and cervical spine.
4. The Carrier is separately challenging the MUA at the Commission.
5. Following the MUA, Respondent Galaxy Health Care Centers (the Provider) provided fifteen follow-up sessions of passive and active physical treatment. Reimbursement for these sessions is in dispute in this proceeding.
6. The treatment provided in these follow-up sessions included manipulation, ultrasound, interferential currents, myofascial release, traction, and active exercises.
7. The Provider seeks recovery of \$4,644 for the follow-up treatment sessions.
8. The Carrier denied reimbursement for the follow-up treatment sessions on the basis that they were medically unnecessary.
9. The Provider filed a request for medical dispute resolution with the Texas Workers' Compensation Commission, which referred the matter to an Independent Review Organization (IRO).
10. The IRO found in favor of the Provider.
11. The Carrier filed a timely appeal of the IRO decision.
12. Notice of the hearing was sent July 24, 2003.

13. 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.
14. The hearing was held September 10, 2003, with representatives of Petitioner and the Carrier participating. The hearing record closed the same day.
15. Some amount of post-MUA operative manipulation and therapy is medically necessary. The duration typically required ranges from two to six weeks. The treatment provided fell within this range.
16. The evidence submitted by the Carrier fails to establish that the services in dispute were not medically necessary.

#### **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(k) 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. The Carrier is the petitioner in this proceeding and has the burden of proof. 28 TEX. ADMIN. CODE §148.21(h).
4. The Carrier did not establish that the services in dispute were not medically necessary.
5. The Provider's request for reimbursement should be upheld.

#### **ORDER**

**IT IS, THEREFORE, ORDERED** that Texas Mutual Insurance Company pay Galaxy Health Care Center \$4,644 for the post-MUA passive and active therapy services provided to workers' compensation claimant \_\_\_\_\_.

**Signed November 7, 2003.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**Kerry D. Sullivan**  
**Administrative Law Judge**