

**SPINE AND REHABILITATION
CENTER,
Petitioner**

V.

**TEXAS MUTUAL INSURANCE
COMPANY,
Respondent**

§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. SUMMARY

Spine & Rehabilitation Center (Provider) sought review of a decision issued on May 9, 2003, by the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission). In that decision, the MRD declined to order reimbursement to Provider for sessions of physical medicine performed on behalf of ___ (Claimant). The treatment sessions were conducted between January 23, 2002, and November 12, 2002, both before and after Claimant underwent wrist surgery in mid-2002. Texas Mutual Insurance Company (Carrier) had denied reimbursement on the grounds the treatments were not medically necessary.

The hearing was held on September 15, 2003. The record closed on October 3, 2003, to permit parties to file additional information on the items under dispute. Mark Yezak, D.C., appeared on behalf of Provider. Katie Kidd, attorney, appeared on behalf of Carrier. The Texas Workers' Compensation Commission did not participate in the hearing.

Based on the evidence, the Administrative Law Judge (ALJ) concluded that Provider failed to meet its burden of proof to show that the treatments, and also equipment and supplies used to administer them, were medically necessary so it is not entitled to reimbursement.¹

II. DISCUSSION

Claimant in this case was subjected to a variety of treatments during the two years that elapsed between the date of her wrist injury and the dates of service at issue. Claimant injured her wrist on ___, while moving some heavy uniforms. Over the next two years, a series of treating and consulting doctors rendered a variety of diagnoses, as set forth below in more detail in the Findings. However, in the end, Provider was unable to demonstrate that the mild and intermittent wrist symptoms Claimant was experiencing in January 2002 warranted extensive physical medicine treatments. Further, Provider failed to show any link at all between upper arm symptoms claimant

¹ At the hearing, there was some discussion concerning a medical disability examination (CPT Code 99455) that Provider performed on September 17, 2002. After the hearing, Carrier stated it would reimburse Provider for that activity so that charge is no longer in dispute and will not be addressed further in this Decision. (Carrier Response, October 6, 2003).

presented in January 2002 and the original wrist injury. No prior examinations or testing showed any arm injury or involvement. Objective testing and medical examinations, conducted in the latter part of 2001 and early 2002, indicated that Claimant's wrist had returned to a normal, or nearly normal condition. Provider argued that the medical condition which necessitated extensive sessions of physical medicine and ultimately a surgery had been overlooked by previous medical care providers.² However, that argument did not fully account for the normal findings that registered in a variety of objective tests that Claimant underwent prior to the period of service at issue and did little to pinpoint the medical reasons for extensive therapy. The ALJ found persuasive the results of both the objective tests and the medical examinations demonstrating no lingering effects of claimant's original that would warrant the treatment in question..

Based on the evidence in this case, the ALJ concludes that no sessions of physical medicine administered to Claimant between January 23, 2002, and November 12, 2002, should be reimbursed as they were not medically necessary to treat the compensable injury. No reimbursement should be made for office visits or supplies used during the service period.

III. FINDINGS OF FACT

1. On ____, ____ (Claimant) injured her right wrist while moving or lifting uniforms.
2. Texas Mutual Insurance Company (TMIC) was the responsible insurer on Claimant on the date of injury.
3. Claimant's initial diagnosis was tendonitis (inflammation of a tendon). No bone was fractured.
4. Claimant was initially treated with conservative care.
5. During a period beginning in October 2000, Claimant's wrist was treated by casting it. In December 2000, Claimant underwent a course of hand occupational and physical therapy.
6. On November 27, 2000, a nerve conduction study showed normal responses, with no evidence of radiculopathy.
7. On January 26, 2001, Alan Rosen, M. D., an orthopedic specialist, treated Claimant with a steroid injection and a removable splint.
8. On January 25, 2001, Claimant was diagnosed as having tendinosis (chronic degeneration of the tendon without inflammation) in one area of the wrist, mild tenosynovitis (inflammation of the tendon sheath) in one area on the back of the hand, and a small ganglion on the wrist.
9. On February 9, 2001, Claimant had no swelling, a normal active range of motion in her wrist and all fingers, good blood circulation, and normal motor nerve function. There was no wrist damage visible on X-rays, including stress views, taken on February 9, 2001, by Fred B.

² There was no information in the record as to whether Carrier reimbursed the surgeon who performed the releases in June 2002 and March 2003. Nor is there any detailed information concerning the surgery or the surgeon's instructions to Provider. This being the case, the picture of Claimant's treatment for the latter half of the service period issue is not complete.

Kessler, M.D.

10. On February 9, 2001, Claimant did not have pain in her forearm.
11. In mid-2001, Claimant underwent a course of work hardening.
12. On July 30, 2001, in the middle of the work hardening, Claimant had some wrist tenderness, but normal range of motion, sensation, and reflexes.
13. In an examination performed on November 5, 2001, to determine her degree of medical improvement, Claimant displayed normal wrist range of motion, no swelling or synovitis (inflammation of a synovial membrane). Claimant was examined on November 5, 2001, by Samuel J. Alianell, M.D.
14. In November 2001, Claimant experienced intermittent pain in her right wrist.
15. In November 2001, Claimant was able to work, but with lifting limited to between five and ten pounds. In November 2001, Claimant was employed full time.
16. Claimant had been off work for some period of time after her injury. It is unknown how often she worked between the date of her injury and the period of service in question, or the physical demands of any employment.
17. Mark Yezak, D.C., treated Claimant between January and November 2002. Dr. Yezak is affiliated with the Spine and Rehabilitation Center (Provider).
18. In January 2002, Claimant stated she had diffuse arm pain, upper arm weakness, coldness, and color change. No arm symptoms had been observed in examinations or tests Claimant underwent in earlier treatment of her wrist injury.
19. In January 2002, Claimant was experiencing only mild and intermittent episodes of pain in her injured wrist.
20. In January 2002, Ana Allison, M.D., referred Claimant to Provider for administration of physical medicine treatments. In that referral, Dr. Allison gave Provider general “evaluate and treat” directions.
21. On March 18, 2002, a right wrist arthrogram showed there were no tears in ligaments of the wrist. A follow-up CT scan of the right wrist showed no abnormalities.
22. On April 4, 2002, Claimant reported pain on the outside of her right wrist, but showed no swelling and was able to move her wrist through nearly the normal range of motion. Her sensory responses were normal and her condition was stable.
23. On April 5, 2002, Claimant’s upper arms showed normal nerve conduction.
24. On April 12, 2002, Claimant had full range of motion in her wrist, but had mild swelling of the outside of her right wrist, as well as some pain on resisted extension of her fingers and some reduced grip strength.

25. On April 12, 2002, Claimant was able to work at light duty with her splint.
26. In April 2002, Marcos Masson, M.D., an orthopedic surgeon, diagnosed Claimant as having right radial tunnel syndrome, with possible occult ganglion cyst. Dr. Masson continued conservative care between April 22, 2001, through June 21, 2002, to permit further observation and evaluation before performing the surgery.
27. In June 2002, Claimant was employed as an assistant at dry cleaners. It is unknown when she began that job.
28. On June 21, 2002, Dr. Masson performed a right radial tunnel release.
29. Dr. Masson referred Claimant to Provider for post-surgery therapy between June 21, 2002 and November 12, 2002.
30. On the dates of services at issue, Provider used hot and cold packs, electrical stimulation, myofascial release, massage therapy, therapeutic exercises, ultrasound therapy and mechanical traction. Provider also used items of durable medical equipment and supplies during the service period to administer the physical medicine treatments.
31. Provider evaluated Claimant's condition and progress during office visits at intervals during the service period in connection with the therapy sessions.
32. It is unknown whether Claimant's activities after ____, either on or off the job, contributed to symptoms she was experiencing in January 2002 and thereafter.
33. Carrier denied reimbursement to Provider on the grounds that none of the treatments during the service period were medically necessary to treat the compensable injury, so declined to reimburse Claimant for any services, for any supplies or items of durable medical equipment used to administer the treatment, and for any office visits during the period of service.
34. Provider appealed Carrier's denial of benefits to the Medical Review Division (MRD) of the Texas Workers Compensation Commission (TWCC), which referred the dispute to an Independent Review Organization (IRO).
35. On May 9, 2003, the MRD, based on the analysis of the IRO, ____, concluded that the services were not medically necessary, so did not require the Carrier to reimburse Provider.
36. On June 5, 2003, Provider filed a timely request for a hearing at the State Office of Administrative Hearings (SOAH) on the MRD decision.
37. On July 8, 2003, the Commission issued a notice of hearing which included the date, time, and location of the hearing, the applicable statutes under which the hearing would be conducted, and a short, plain statement on the nature of the matters asserted.
38. SOAH Administrative Law Judge (ALJ) Cassandra Church convened a hearing on these issues on September 15, 2003, and the record closed on October 3, 2003, to allow the parties to submit additional documentation.

IV. CONCLUSION OF LAW

1. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a Decision and Order, pursuant to TEX. LABOR CODE ANN. § 413.031 and TEX. GOV'T CODE ANN. ch. 2003.
2. The notice of hearing issued by the Commission was sufficient under the terms of TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. As the petitioning party, Provider has the burden of proving by a preponderance of the evidence that it should prevail in this matter, pursuant to TEX. LABOR CODE ANN. § 413.031 and 28 TEX. ADMIN. CODE § 148.21 (h).
4. Provider failed to prove by a preponderance of the evidence that the physical medical sessions, office visits, and any equipment or supplies used in those session, that it provided between January 23, 2002, through November 12, 2002, were reasonable and medically necessary to treat Claimant's work-related injury, within the meaning of TEX. LABOR CODE ANN. §§ 408.021 and 401.011(19).

ORDER

IT IS ORDERED that Texas Mutual Insurance Company is not required to reimburse Spine and Rehabilitation Center for any sessions of physical medicine provided on behalf of Claimant _____ between January 23, 2002, through November 12, 2002, for supplies or durable medical equipment used in those sessions, or for office visits during the service period.

SIGNED December 2, 2003.

**CASSANDRA J. CHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**