

Claimant received both a lumbar x-ray and a lumbar MRI. (Exh. 1, pages 107-109). The x-ray showed minimal anterior wedging at L1 with only minimal osteophytosis and slight lower lumbar facet sclerosis. The MRI revealed degenerative disc disease at the L5-S1 level with desiccation of nucleus pulposus and posterior bulge of the disc of 2 millimeters causing displacement of the epidural fat. Claimant was treated with a variety of conservative treatments, including one epidural steroid injection, medications, and physical therapy. She is not a candidate for surgery. (Exh. 1, page 7).

Claimant continues to suffer from persistent pain averaging 6.5 on a scale of 1 to 10, with 10 being the worst pain possible; and reduced ability to engage in daily social, vocational, and recreational activities. (Exh. 1, pages 20, 26, 29, 33, 35, 36, and 41). In three functional capacity examinations, Claimant exhibited limitations on range of motion and discomfort while performing. (Exh. 1, pages 110-161)

Claimant expressed an interest in finding non-pharmaceutical solutions to her pain. She underwent psychological testing and no serious psychopathology beyond depression was noted. (Exh. 1, page 8) Her treating physician believes that Claimant is an excellent candidate for biofeedback because the intensity of Claimant's anxiety and depression warrants the attention of a mental health professional to assist her in learning relaxation techniques as she decreases her anxiety. The Provider recommended the Claimant for ten sessions of biofeedback. (Exh. 1, page 23). A Psychophysiological Stress Profile and Biofeedback Treatment Plan described an outpatient course of treatment with both short-term and long-term goals. (Exh. 1, pages 10-12).

B. IRO Decision

As a basis for the decision, the IRO reviewer wrote: “. . . While biofeedback is a valid method of treatment in a multi-disciplinary setting, in itself it would be difficult to understand its therapeutic value in this case. Lacking documentation to demonstrate scientific validation of this approach, I would believe that such therapy is neither reasonable nor necessary.” The IRO reviewer apparently believed that the recommended biofeedback sessions must be part of or related to a multi-disciplinary chronic pain management program, which was not shown to be the case.

C. Legal Standards

The Provider has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE (TAC) " 148.21(h) and (i); 1 TAC § 155.41. Pursuant to the Act, an employee who has sustained 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 compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LAB. CODE ANN. § 408.021(a). Health care includes all reasonable and necessary medical services. TEX. LAB. CODE ANN. §401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. § 401.011(31). For a carrier to be liable to reimburse a provider, certain services, including biofeedback, must be preauthorized by the carrier. 28 TAC 134.600(h).

D. Analysis

The evidence in the record does not support the IRO reviewer's conclusion that the biofeedback sessions were not medically necessary healthcare for the Claimant. The record contains ample support for the Provider's recommendation for ten biofeedback sessions. The Claimant has been treated conservatively and she is still experiencing a high level of persistent pain. She is not a candidate for surgery and she wishes to decrease her dependence on pain relief medications. The treating physician believes that the Claimant is a good candidate for biofeedback.

The Carrier's denials were simplistic at best. For instance, one denial stated that biofeedback "... has for the last two publications of the American Psychiatry Association not been recognized at all as a form of valid treatment." (Exh. 2, page 11) However, no documentation to support this assertion and the context in which it was given was made a part of the record. Additionally, the other denial stated "Deny, no medical evidence to support therapeutic intervention at efficacy. No evidence of ongoing recovery for over 10 months of pain intervention. No evidence that requested treatment sessions will cure or relieve expansive subjective complaints." (Exh. 2, page 13). The evidence in the record was that the Claimant had failed conservative treatment consisting of physical therapy and she hoped to get off of pain medication. Her treating physician documented the record and prepared a treatment plan. In response, the Carrier denied all additional requests for treatment, including a second epidural steroid injection, a second MRI, and biofeedback.

The record provided supports the Provider's request for preauthorization of ten biofeedback sessions. This decision orders preauthorization of the requested procedure.

III. FINDINGS OF FACT

1. On ____, Claimant sustained an injury compensable under the Texas Workers' Compensation Act (Act).
2. At the time of Claimant's compensable injury, American Home Assurance Company (Carrier) provided workers' compensation coverage and is responsible for paying for Claimant's healthcare for the compensable injury.
3. Claimant received both a lumbar x-ray and a lumbar MRI. The x-ray showed minimal anterior wedging at L1 with only minimal osteophytosis and slight lower lumbar facet sclerosis. The MRI revealed degenerative disc disease at the L5-S1 level with desiccation of nucleus pulposus and a posterior bulge of the disc of 2 millimeters causing displacement of the epidural fat.
4. Claimant's treating physician referred her to Neuromuscular Institute of Texas, P.A. (Provider) for biofeedback sessions to treat ongoing pain in her lower back.
5. The Provider recommended ten biofeedback sessions to treat Claimant's pain.
6. Claimant has received conservative treatment consisting of physical therapy, one epidural steroid injection, and various pain medications.

7. Claimant continues to suffer from persistent pain averaging 6.5 on a scale of 1 to 10, with 10 being the worst pain possible; and reduced ability to engage in daily social, vocational, and recreational activities.
8. Claimant is not a candidate for surgery.
9. In three functional capacity examinations, Claimant exhibited limitations on range of motion and discomfort while performing.
10. The Claimant is a good candidate for biofeedback treatment.
11. Biofeedback has proven to be an effective form of treatment.
12. The Carrier denied preauthorization of the requested ten sessions of biofeedback.
13. After the Carrier denied preauthorization, the Provider sought medical dispute resolution with the Texas Workers' Compensation Commission (TWCC).
14. After TWCC's designee, an Independent Review Organization upheld the Carrier's denial of preauthorization, the Provider timely appealed that decision.
15. TWCC sent notice of hearing to the parties on July 10, 2003. The notice informed the parties of the matter to be determined; the right to appear and be represented by counsel; the date, time, and location of the hearing; and cited to the legal statutes and rules involved.
16. The hearing convened January 26, 2004, before Michael J. Borkland, Administrative Law Judge. The Provider was represented by Allen T. Craddock, attorney. The Carrier was represented by Dan Kelley, attorney.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (Act), TEX. LABOR 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 § 413.031(d) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TEX. ADMIN. CODE (TAC) § 133.308.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Provider had the burden of proof in this proceeding. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41.

6. Pursuant to the Act, an employee who has sustained 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 compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LAB. CODE ANN. ' 408.021(a).
7. Health care includes all reasonable and necessary medical services. TEX. LAB. CODE ANN. §401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. § 401.011(31).
8. For a carrier to be liable to reimburse a provider for biofeedback, the service must be preauthorized. 28 TAC § 134.600(h).
9. Biofeedback is medically necessary healthcare for the Claimant and should be preauthorized.

ORDER

It is **ORDERED** that the request of Neuromuscular Institute of Texas, P.A., for preauthorization of biofeedback for Claimant is granted.

SIGNED February 17, 2004.

**MICHAEL J. BORKLAND
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**