

NEUROMUSCULAR INSTITUTE OF TEXAS,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
VS.	§	OF
	§	
INDEMNITY INSURANCE COMPANY OF TEXAS,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Neuromuscular Institute of Texas (Petitioner) appealed an Independent Review Organization (IRO) decision denying preauthorization for Claimant to receive a repeat electromyogram/nerve conduction velocity test (EMG/NCV) of the left upper extremity. The IRO concluded that this test was not medically necessary. This decision agrees with the IRO and concludes that the test is not medically reasonable and necessary at this time. Therefore, Petitioner’s appeal is denied.

I. JURISDICTION & HEARING

There were no challenges to notice or jurisdiction, and those matters are set forth in the findings of fact and conclusions of law without further discussion here.

Administrative Law Judge (ALJ) Bill Zukauckas conducted a hearing in this case on August 21, 2003, at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, 300 West 15th Street, Austin, Texas. Attorney David Duncan appeared on behalf of Petitioner. Attorney Steven Tipton appeared on behalf of Indemnity Insurance Company of Texas (Carrier). The record closed that same day.

II. DISCUSSION

1. Background

Claimant is a 52-year-old female who injured herself at work on, when she was working as a reservationist at ___ and began developing pain in her neck and shoulders with numbness and tingling in her hand. She also complained of weakness in her hand. Dr. David Hirsch, D.O., at Neuromuscular Institute of Texas, did a thorough medical evaluation on August 21, 2001, about a month after her reported symptoms. That history stated that her hands and arms were weak and numb constantly and sometimes worse at night. Dr. Hirsch performed nerve conduction studies were performed on both upper extremities and cervical paraspinal and shoulder muscles at that time. The only abnormality detected was a prolonged latency of the right median nerve. The impression at that time was mild right carpal tunnel syndrome of the right hand.

In January of 2003, after seeing multiple physicians, Claimant had carpal tunnel surgery on both wrists. Subsequent to those surgeries, she continued to report neck and shoulder pain, and a cervical spine x-ray at the time showed some mild weakness of the median nerve distribution muscles on the left, and not as much on the right.

On March 27, 2003, Claimant visited Dr. Westfield, M.D. for a second visit, following her carpal tunnel surgery, and noted that she was having some pain and numbness in the ulnar nerve distribution on the left.

Dr. Westfield thought there was a possible problem with the ulnar nerve on the left, since the carpal tunnel release had been done on both sides already. Dr. Westfield suggested a repeat EMG might be of value to rule out cubital tunnel syndrome and her treating physician, Dr. Brad Burden, D.C., part of the Neuromuscular Institute of Texas with Dr. Hirsch, concurred in that request. Consequently, Petitioner seeks preauthorization on behalf of Claimant for a second EMG to completely rule out cubital tunnel syndrome.

B. Medical Necessity of the Procedure

1. Petitioner

Petitioner argues that Claimant has clear tingling and numbness to fingers served by the ulnar nerve and that this could be from cubital nerve syndrome. Petitioner's position is that a repeat EMG/NCV would completely answer any remaining questions about possible cubital nerve entrapment. Petitioner argues this would be helpful to the Claimant and helpful to the Carrier as well and is the recommendation of Dr. Westfield for this patient.

2. Carrier

The Carrier argues that prior EMGs/NCVs done both before and after the surgery did not indicate the presence of cubital tunnel syndrome and that nothing in Petitioner's progress notes or other documentation reflect the medical necessity of a repeat bilateral upper extremity EMG/NCV.

The Carrier called as a witness Dr. Derek Martin, D.C. who peer reviewed the medical records in this case. Dr. Martin testified that the medical records of Harry Moskoitz, D.O. and Marc Taylor, M.D., do not support the medical necessity of the repeat bilateral upper extremity EMG/NCV. The evidence from each of these individuals indicated a repeat EMG/NCV would not provide new information. Each expressed the opinion that because the first two EMG/NCVs were normal, nothing in the Claimant's medical history gave reason to believe a third test would yield different results.

The Carrier argues that Petitioner failed to prove that there was any reason to believe the original EMGs/NCVs might have yielded incorrect results or that there was some medical reason why, with negative results on the original two tests, that Claimant might now have a positive test. Even if a positive test result were obtained, Dr. Martin testified that it could not be correlated to her original work-place injury because Claimant has been out of work since the injury..

3. Analysis

An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury. 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. LAB. CODE ANN. § 408.021. "Health care" includes "all reasonable and necessary medical . . . services." TEX. LABOR CODE § 401.011(19). However, certain procedures, such as those involved in this case, require preauthorization from the carrier in order for the provider to obtain reimbursement.

The ALJ concludes that Petitioner's request for a second EMG on behalf of the Claimant should not be preauthorized at this time. Specific testimony from the Carrier's witness, Dr. Martin, indicated that there was no evidence of any sensory ulnar across the elbow slowing of the ulnar nerves on the previous two EMG studies. Dr. Martin, and Dr, Moskowitz, and Dr. Taylor make a persuasive case that Claimant's current symptoms of some tingling in her left finger, in light of the two previous negative EMGs, does not justify a repeat EMG at this time.

The ALJ also found persuasive Dr. Martin's testimony that if the two previous EMGs had been negative, and Claimant was no longer working, that any subsequent positive finding would not likely be related to the original repetitive motion injury.

III. FINDINGS OF FACT

1. Claimant sustained a compensable wrist injury on in the form of repetitious trauma.
2. On March 27, 2003, the claimant's consulting physician Terry Westfield, M.D., recommended a repeat upper bilateral extremity electromyogram/nerve conduction velocity test (EMG/NCV) to evaluate possible cubital tunnel syndrome.
3. On April 11, 2003 and April 16, 2003, Neuromuscular Institute of Texas (Petitioner) on behalf of Claimant requested preauthorization and reconsideration, respectively, for a repeat bilateral upper extremity EMG/NCV.
4. This controversy concerns the request for preauthorization for the repeat bilateral upper extremity EMG/NCV under 28 TEX. ADMIN. CODE (TAC) Sec. 134.600(h)(8).
5. Indemnity Insurance of North America (the Carrier) denied preauthorization for the repeat bilateral EMG/ NCV on April 15, 2003, and upon reconsideration on April 23, 2003.
6. An initial bilateral EMG/ NCV in 2001 and a repeat test on August 20, 2002, were negative for cubital tunnel syndrome.
7. Petitioner filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission).
8. The Independent Review Organization, Ziroc, on behalf of the Commission's Medical Review Division (MRD) issued this decision which denied preauthorization on June 18, 2003.
9. Petitioner filed a timely request for hearing regarding the MRD decision.
10. Notice of the hearing was sent July 22, 2003, containing a statement of a time, place, 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.
11. The hearing was conducted on August 21, 2003 with Administrative Law Judge (ALJ) Bill Zukauckas presiding and representatives of Provider and Carrier participating. The hearing was adjourned the same day.
12. The Claimant suffered from a compensable injury that was diagnosed as repetitive motion trauma in ____, resulting in bilateral wrist surgery.
13. EMGs/NCVs studies conducted both before and after the surgery did not indicate the presence of cubital tunnel syndrome.
14. Dr. Westfield's progress notes or other documentation do not reflect the medical necessity for a repeat bilateral upper extremity EMG/NCV.

15. The testimony Derek Martin, D.C., and the medical records from Harry Moskoitz, D.O. and Marc Taylor, M.D., do not support the medical necessity of the repeat bilateral upper extremity EMG/NCV.
16. The evidence does not show the bilateral upper extremity EMG/NCV to be medically necessary.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing, including the authority to issue a decision and order. TEX. LAB. CODE ANN. § 413.031(k).
2. All parties received proper and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. Petitioner has the burden of proof in this matter. 28 TAC § 148.21(h).
4. The repeat bilateral upper extremity EMG/NCV is a treatment /service requiring preauthorization under TEX. LAB. CODE Sec. 413.014(b) and 28 TAC § 134.600(h)(8).
6. Petitioner did not prove the repeat bilateral upper extremity EMG/ NCV was medically necessary under TEX. LAB. CODE Sec. 408.021(a).
7. The Carrier shall not be required to preauthorize and shall not be liable for the cost of the requested repeat bilateral upper extremity EMG/NCV in accordance with TEX. LAB. CODE 413.014(d).

ORDER

IT IS, THEREFORE, ORDERED that Indemnity Insurance of North America, the Carrier, shall not be required to preauthorize nor be liable to a Neuromuscular Institute of Texas, Petitioner, for the cost of the requested medical procedure (repeat bilateral upper extremity EMG/NCV).

SIGNED September 15, 2003.

BILL ZUKAUCKAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS