

NEUROMUSCULAR INSTITUTE	§	BEFORE THE STATE OFFICE
OF TEXAS, PA,	§	
<b>Petitioner</b>	§	
V.	§	OF
	§	
VIA METROPOLITAN TRANSIT,	§	
<b>Respondent</b>	§	ADMINISTRATIVE HEARINGS

**DECISION AND ORDER**

This case is an appeal by the Neuromuscular Institute of Texas, PA (“Petitioner”), from a decision of an independent review organization (“IRO”) on behalf of the Texas Workers’ Compensation Commission (“Commission”) in a dispute regarding requested preauthorization for psychotherapy sessions. The IRO found that the Via Metropolitan Transit (“Respondent”)—acting as a self-insurer—properly denied preauthorization of the psychotherapy sessions for the treatment of claimant suffering from a back injury.

This decision disagrees with that of the IRO, finding that preauthorization of the disputed services should be approved.

**JURISDICTION AND VENUE**

The Commission has jurisdiction over this matter pursuant to § 413.031 of the Act. The State Office of Administrative Hearings (“SOAH”) has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(k) of the Act and TEX. GOV’T CODE ANN. ch. 2003. No party challenged jurisdiction or venue.

**STATEMENT OF THE CASE**

The hearing in this docket was convened on September 11, 2003, at SOAH facilities in the William P. Clements Building, 300 W. 15<sup>th</sup> St., Austin, Texas. Administrative Law Judge (“ALJ”) Mike Rogan presided. Petitioner was represented by David T. Duncan, attorney. Respondent was represented by Lisa Crissman. After presentation of evidence and argument, the hearing was adjourned and the record was closed on that same date.<sup>1</sup>

The record revealed that on, the claimant suffered a compensable back injury. Subsequently, he experienced severe chronic back pain, despite spinal fusion, physical therapy, and medication.

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<sup>1</sup>The staff of the Commission formally elected not to participate in this proceeding, although it filed a general “Statement of Matters Asserted” with the notice of the hearing.

Dr. Daniel Bradley Burdin, a board-certified chiropractic neurologist who practices with Petitioner, began treating the claimant shortly after his accident.

On February 10, 2003, Dr. Burdin assessed the need for additional measures to ameliorate the patient's recurrent pain and decided to refer him to Monty Bobele, PhD., for an evaluation to determine whether biofeedback therapy might be beneficial.

Dr. Bobele interviewed the claimant on February 19 and 26, 2003. In the first interview, Dr. Bobele reported that he had difficulty focusing the claimant upon information that would be helpful in evaluating his potential for biofeedback treatment. Dr. Bobele stated:

When I tried to explain the possibility of biofeedback training, he dismissed the idea saying "I already know all that stuff about relaxation." I tried to clarify with him what I might be able to help him with, and he insisted he was not interested in learning any methods of managing his own comfort levels.

At the outset of the second interview, the claimant began telling Dr. Bobele how he had been affected by a recent breakup with a girlfriend. Dr. Bobele summarized the rest of the meeting as follows:

When I tried, again, to refocus the interview to my role in evaluating him for biofeedback, he insisted that such would not be of any interest to him. He seemed to think that because I was a psychologist, I would be able to help him with some of the personal issues that are taking place in his life. He thought I could tell him "the underlying cause of my pain." He said that after his surgery, Dr. Denno told him that it might still be three or four years before he was recovered. He seemed to think that he was just going to have to ride out the time until then.

Dr. Bobele decided that the claimant was not then an immediate candidate for biofeedback and expressed the following conclusion about his case:

He is currently experiencing a significant amount of anxiety and depression, due to his work-related injury, that is interfering with his concentration, judgment, and interpersonal abilities. I recommend that we request a minimum of 10 sessions of individual psychotherapy to assist him in gaining some confidence in himself and reducing his depression to a point where biofeedback would be of some assistance.

When Petitioner subsequently sought preauthorization for such individual counseling, Respondent denied it on the grounds that "other significant personal issues exist which are not related to the compensable injury"—an opinion stated by Dean K. Parson, D.C., who had reviewed the record (without examining the claimant) on behalf of Respondent. Dr. Parsons also stated that "Additional documentation does not support the necessity for individual psychological counseling." Petitioner sought medical dispute resolution through the Commission.

The IRO to which the Commission referred the dispute issued a decision on June 25, 2003, concluding that Respondent had properly denied the requested preauthorization. As its basis for decision, the IRO declared:

During the interview with the psychologist, the patient explained that he had been affected by a recent breakup with his girlfriend. This was not related to the accident.

There is no documentation in the records that the patient ever complained of depression, anxiety, or PTSD symptoms in relation to the accident. The psychologist noted on the March 5, 2003 evaluation that the patient complained of anhedonia, decreased energy, sleep disturbance and feelings of hopelessness, worthlessness or guilt. These types of symptoms would be better assessed by a single visit to a psychiatrist. It is not clear whether these symptoms were related to the accident or to his interpersonal problems.

Petitioner subsequently made a timely request for review of the IRO decision before SOAH.

## **THE PARTIES' EVIDENCE AND ARGUMENTS**

### **A. Petitioner**

Petitioner argued that the IRO's rationale for decision in this case is simply not supported by the record. The reports of Dr. Burdin and Dr. Bobele clearly reflect their intention to utilize psychotherapy as a means of alleviating pain that the claimant had suffered ever since his injury and that clearly had a physiological basis. Fundamentally, they envisioned a need for such treatment to address the direct effects of the injury—not to resolve other incidental anxieties or maladjustments from which the claimant might be suffering.

In Petitioner's view, the reviewers for both the insurer and the IRO inappropriately seized upon brief statements in Dr. Bobele's report about the claimant's describing a breakup with a girlfriend, then illogically assumed that addressing such personal issues was the principal object of the proposed psychological treatment. The reviewers compounded the doubtful logic of their analyses, Petitioner asserted, by failing to recognize that the depression and anxiety that Dr. Bobele sought to treat may have been a root *cause* of interpersonal problems described by the claimant, rather than a *result* of such problems.

### **B. Respondent**

According to Respondent, the IRO correctly concluded that the counseling sessions at issue in this case are not sufficiently related to the compensable injury, but rather would address personal problems of the claimant that are tangential to the injury and its treatment. Respondent noted that the record includes no documentation of depression, anxiety, or related psychological problems prior to Dr. Bobele's interviews with the claimant, which ended up focusing upon specific episodes of difficulty in the claimant's interpersonal relationships.

## ANALYSIS

Petitioner bears the burden of proving those deficiencies that it contends should invalidate the IRO's decision in this case. In the ALJ's view, it has sufficiently discharged that burden.

The medical evidence in the record that is pertinent to this dispute is rather sparse. Essentially, it consists of 1) frequent brief passages in Dr. Burdin's clinical reports, indicating that chronic pain has continued to plague the claimant since his injury and occasionally noting the patient's "frustrations" or "difficulty" with the pain, 2) the report of Dr. Bobele, recommending psychotherapy to prepare the claimant for pain-alleviation through biofeedback training, 3) Dr. Parsons' statement, after reviewing the record for Respondent, that "other significant personal issues exist which are not related to the compensable injury," and 4) the IRO reviewer's statement that the claimant's psychological symptoms are unrelated to the compensable injury.

The assessments by the reviewers for Respondent and the IRO deserve little weight. Neither has examined the claimant, and neither has provided more than an extremely sketchy and conclusory explanation of the rationale for denying preauthorization. More fundamentally, they presented inaccurate or misleading characterizations of the basis and goal of the proposed treatment in question. They indicated that Dr. Bobele's evaluation and plan focused upon the claimant's breakup and similar emotional issues. In fact, however, Dr. Bobele's report emphasized his efforts to steer the claimant away from discussion of these issues and toward the more abstract subject of positively marshaling the claimant's psychological abilities through systematic biofeedback.

While Dr. Bobele apparently was not wholly successful in engaging the claimant upon the subject of biofeedback, he did elicit more general reflections from him about his emotional state—including the claimant's rather fatalistic belief that he would simply have to endure his condition for three or four years, because a surgeon had stated that full recovery might take that long. Dr. Bobele's explicit conclusion, based upon a logical assessment of the claimant's statements as a whole, was that this patient was suffering significant anxiety and depression "due to his work related injury." He also found that these conditions were "interfering with his . . . interpersonal abilities"—not that interpersonal problems were causing the depression and anxiety.

Ultimately, Dr. Bobele found that the claimant's emotional state was a barrier to achieving the kind of concentration needed for biofeedback training—and thus a barrier to alleviating the chronic pain that is an integral aspect of the claimant's injury. The weight of the record indicates that this emotional state was itself a product, primarily, of the injury and its aftermath. However, even if personal issues arguably incidental to the injury had actually caused much of the claimant's depression and anxiety, overcoming that emotional condition would still be an imperative in the overall treatment of the injury's effects, according to Dr. Bobele's unrebutted analysis.

Because the weight of the evidence in the record supports Petitioner's position and because the evidence supporting Respondent reflects inaccurate or misleading premises, the ALJ concludes that the IRO's decision should be reversed.

## CONCLUSION

The ALJ finds that, under the record provided in this case, the medical services at issue have been shown to be medically necessary. Accordingly, preauthorization for these services (10 sessions of individual psychotherapy conducted by a psychologist) should be approved, contrary to the prior decision by the IRO.

## FINDINGS OF FACT

1. On, the claimant suffered a back injury that was a compensable injury under the Texas Worker's Compensation Act ("the Act"), TEX. LABOR CODE ANN. § 401.001 *et seq.* Subsequent to the injury, the claimant experienced severe chronic lower back pain, despite spinal fusion, physical therapy, and medication.
2. Dr. Daniel Bradley Burdin, a chiropractic neurologist practicing with the Neuromuscular Institute of Texas, PA ("Petitioner"), began treatment of the claimant shortly after the injury. On February 10, 2003, Dr. Burdin assessed the need for additional measures to ameliorate the claimant's recurrent pain and to refer him to Monty Bobele, PhD., for an evaluation to determine whether biofeedback therapy might be beneficial.
3. Dr. Bobele interviewed the claimant on February 19 and 26, 2003, and concluded that significant anxiety and depression suffered by the claimant "due to his work related injury" needed to be overcome before the claimant could achieve pain-alleviation through biofeedback training. Dr. Bobele therefore recommended 10 sessions of individual psychotherapy conducted by a psychologist to address the claimant's emotional condition.
4. Petitioner sought preauthorization for the psychotherapy sessions noted in Finding of Fact No. 3 from Respondent, the claimant's employer, which was acting in the role of self-insurer.
5. Respondent denied the requested preauthorization on grounds that the record did not support the need for psychological counseling and that "other significant personal issues exist which are not related to the compensable injury."
6. Petitioner made a timely request to the Texas Workers' Compensation Commission ("Commission") for medical dispute resolution with respect to the requested preauthorization.
7. The independent review organization ("IRO") to which the Commission referred the dispute issued a decision on June 25, 2003, concluding that Petitioner's request for preauthorization should be denied because the claimant's psychological symptoms were not clearly related to the compensable injury and would be better assessed by a single visit to a psychiatrist.

8. Petitioner requested in timely manner a hearing with the State Office of Administrative Hearings (“SOAH”), seeking review and reversal of the IRO decision regarding preauthorization.
9. The Commission mailed notice of the scheduling of a hearing in this matter to the parties at their addresses on August 8, 2003.
10. A hearing in this matter was convened on September 11, 2003, at the William P. Clements Building, 300 W. 15<sup>th</sup> St., Austin, Texas, before Mike Rogan, an Administrative Law Judge with SOAH. Petitioner and Respondent were represented.
11. Biofeedback training may offer potential alleviation of the chronic pain associated with claimant’s compensable injury.
12. The claimant’s depression and anxiety which both reduce his current quality of life and prevent his ability to concentrate upon biofeedback training are primarily a result of his compensable injury.
13. The psychotherapy sessions noted in Finding of Fact No. 3 offer the potential to effectively overcome claimant’s current depression and anxiety.

### **CONCLUSIONS OF LAW**

1. The Texas Workers’ Compensation Commission has jurisdiction related to this matter pursuant to the Texas Workers’ Compensation Act (“the 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(k) 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. ADMINISTRATIVE CODE (“TAC”) § 133.305(g) and §§ 148.001-148.028.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 .
5. Petitioner, the party seeking relief, bore the burden of proof in this case, pursuant to 28 TAC ' 148.21(h).
4. Based upon the foregoing Findings of Fact, the requested sessions of individual psychotherapy for the claimant, conducted by a psychologist, as noted in Finding of Fact No. 3, represent elements of health care medically necessary under ' 408.021 of the Act.
7. Based upon the foregoing Findings of Fact and Conclusions of Law, the findings and decision of the IRO in this matter issued on June 25, 2003, were incorrect; preauthorization

for the requested sessions of individual psychotherapy, as noted in Finding of Fact No. 3, should be granted.

**ORDER**

**IT IS THEREFORE, ORDERED** that the appeal of the Neuromuscular Institute of Texas, PA., seeking preauthorization for 10 sessions of individual psychotherapy to address the claimant's emotional condition, conducted by a psychologist, be granted, contrary to the findings and decision of the independent review organization in this matter, issued on June 25, 2003.

**SIGNED this 19<sup>th</sup> day of September, 2003.**

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**MIKE ROGAN**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**