

NEUROMUSCULAR INSTITUTE OF TEXAS, PA Petitioner	§ § § § § § § § § §	BEFORE THE STATE OFFICE    OF   ADMINISTRATIVE HEARINGS
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**DECISION AND ORDER**

Neuromuscular Institute of Texas, PA (Provider), challenged the decision of San Antonio ISD (Carrier) denying preauthorization for eight counseling sessions for \_\_\_\_\_ (Claimant). In this decision, the Administrative Law Judge (ALJ) finds that Provider met its burden of showing that the requested counseling sessions are reasonable and necessary medical care and should be preauthorized. Therefore, the ALJ orders Carrier to authorize the requested counseling sessions.

The hearing convened and closed on November 18, 2003, before ALJ Steven M. Rivas. Provider appeared and was represented by Allen T. Craddock. Carrier appeared and was represented by Dean G. Pappas, attorney.

**I. DISCUSSION**

1. Background Facts

Claimant sustained a compensable right knee injury on \_\_\_\_\_, when she hit her knee on a filing cabinet while carrying file papers. She was initially diagnosed with a right knee sprain and contusion. Following her injury, Claimant was referred to Provider and began a physical therapy program in October 2002. On September 10, 2003, Claimant underwent arthroscopic surgery on her knee, and following her surgery, continued her physical therapy program with Provider.

On May 5, 2003, Cherith Moore, a license professional counselor with Provider, evaluated Claimant and recommended she undergo eight sessions of counseling. Provider requested preauthorization for the counseling sessions, which were denied by the Carrier as not medically necessary. The dispute was referred to an Independent Review Organization (IRO), which agreed with Carrier. Provider appealed the IRO decision to the State Office of Administrative Hearings.

2. Applicable Law

Pursuant to the Texas Workers' Compensation Act ("the Act"), TEX. LAB. CODE ANN. § 408.021 *et seq.*, an employee who sustains a compensable injury is entitled to all 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.

Under TEX. LAB. CODE ANN. § 401.011(19), health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical

evaluations, and medical services.

Certain categories of health care identified by the Commission require preauthorization, which is dependant upon a prospective showing of medical necessity under § 413.014 of the Act and 28 TEX. ADMIN. CODE (TAC) § 134.600. In this instance under 28 TAC §134.600(h)(7), preauthorization is required for the counseling sessions requested by Provider.

### 3. Evidence and Arguments

Ms. Moore testified she interviewed and evaluated Claimant and found Claimant was frustrated and depressed as a result of her injury and subsequent pain.<sup>1</sup> Additionally, Ms. Moore testified the counseling sessions were recommended in order to “increase (Claimant’s) motivation level to get back to work, change her perception of the injury, allow her to see improvements, and change the expectations she has about the workers’ compensation system.”

Ms. Moore additionally testified that Claimant has been under psychiatric care for post traumatic stress disorder (PTSD). Claimant informed Ms. Moore in her initial interview that she was being treated for PTSD, but Ms. Moore admitted she did not inquire as to the psychiatrist’s name, nor did she attempt to retrieve any records regarding Claimant’s psychiatric care. Furthermore, Claimant informed Ms. Moore her psychiatrist currently prescribes Zoloft and Xanax for Claimant’s PTSD symptoms. Ms. Moore admitted these medications are typically prescribed for depression, but asserted she did not believe they were prescribed for depression in this case.

According to Ms. Moore, Claimant has been suffering from PTSD symptoms for “several years” since the death of her father. Ms. Moore asserted the medications Claimant has been taking for PTSD have “apparently” not treated her depression. Furthermore, Ms. Moore testified medications are usually helpful but are not always all that is necessary to relieve depression.

Carrier’s main argument centered on Ms. Moore’s decision not to obtain the records from Claimant’s psychiatrist regarding Claimant’s treatment for PTSD symptoms. Carrier argued it is being asked to pay for something (Claimant’s depression) that may have already been addressed by someone else, namely Claimant’s psychiatrist. Additionally, Carrier asserted there was no way to determine if the requested counseling was medically necessary because, without Claimant’s psychiatric records, Ms. Moore was unable to measure Claimant’s depression level before her initial interview. Carrier did not present any witnesses or any other evidence supporting its position.

On cross-examination, Ms. Moore testified she would have obtained Claimant’s psychiatric records if she thought it would impact Claimant’s current condition of pain. Furthermore, Ms. Moore testified “looking back” it would have been a good idea to retrieve Claimant’s psychiatric records, but since she determined Claimant’s depression was caused by the pain from her compensable injury, her psychiatric records were “almost irrelevant.”

### 4. Analysis and Conclusion

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<sup>1</sup> Ms. Moore’s interview with Claimant on May 5, 2003, revealed Claimant was experiencing tearfulness, depression, increased weight, anger, worry, frustration, disappointment, irritability, increased stress, social withdrawal, and sleeping/relaxation difficulties.

Claimant is entitled to the requested counseling sessions because they will assist Claimant in overcoming her personal turmoil brought on by the effects of the compensable injury. Both parties submitted similar documents of Provider's medical records and Carrier's denial letters. Carrier presented no evidence suggesting that the counseling sessions were not medically necessary at this time. Instead, Carrier relied on Ms. Moore's own testimony that although Ms. Moore was aware that Claimant was under psychiatric care, she did not request Claimant's psychiatric records before recommending counseling sessions to treat Claimant's depression.

Carrier suggests that Claimant's current symptoms of depression may be related to her ongoing treatment of PTSD. This position might have merit considering Claimant is currently being treated with medications (Zoloft and Xanax) typically used to treat depression. However, Ms. Moore's testimony that her current depression is due to the affects of her knee injury, and not PTSD, was not controverted.

Carrier's position that Provider should have requested Claimant's psychiatric records also might have merit. It seems reasonable that if Claimant is suffering from symptoms of depression, Provider should have requested her psychiatric records based on the possibility that Claimant will be undergoing concurrent treatment for her psychological issues. However, no evidence was presented that established the significance of obtaining Claimant's psychiatric records.

Unfortunately for Carrier, it presented no evidence to support its positions. Without any evidentiary support for denying the proposed counseling sessions, the ALJ is unable to make such a decision. Conversely, Provider correctly pointed out that Ms. Moore is the only qualified expert who has rendered an opinion in this matter regarding the medical necessity of the counseling sessions, and her testimony was uncontroverted.

While Carrier's arguments were persuasive, the ALJ can only render a decision based on the testimony of the witnesses and evidence submitted. Therefore, the counseling sessions should be preauthorized.

## **II. FINDINGS OF FACT**

1. \_\_\_\_\_ (Claimant) sustained a compensable knee injury on \_\_\_\_\_.
2. Claimant came under the care of Neuromuscular Institute of Texas, PA (Provider) for physical therapy.
3. Cherith Moore, a licensed professional counselor with Provider, recommended Claimant undergo eight counseling sessions.
4. Provider sought preauthorization from San Antonio ISD (Carrier) and was denied.
5. Provider sought medical dispute resolution with the Texas Workers' Compensation Commission's Medical Review Division, which referred this matter to an Independent Review Organization (IRO). The IRO report concurred with Carrier and denied preauthorization.
6. Provider timely requested a hearing before the State Office of Administrative Hearings (SOAH).

7. Notice of the hearing in this case was mailed to the parties on September 29, 2003. 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.
8. The hearing convened and closed on November 18, 2003, before Steven M. Rivas, Administrative Law Judge (ALJ). Provider appeared and was represented by Allen T. Craddock, attorney. Carrier appeared and was represented by Dean G. Pappas, attorney. The hearing was adjourned and the record closed the same day.
9. Claimant currently experiences frustration and depression over her knee injury and ongoing treatment.
10. Claimant has been under psychiatric care for several years for symptoms of post traumatic stress disorder (PTSD).
11. The proposed counseling sessions will treat Claimant's depression unrelated to her symptoms of PTSD.

### **III. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. ("the Act").
2. SOAH has jurisdiction over 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. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. The Provider, as Petitioner, had the burden of proof on appeal by a preponderance of the evidence under § 413.031 of the Act, and 28 TEX. ADMIN. CODE §148.21(h).
5. The requested counseling sessions will promote Claimant's recovery by increasing her motivational level.
6. The requested counseling sessions are medically necessary for treating Claimant's compensable injury.

**ORDER**

**IT IS, THEREFORE, ORDERED** that preauthorization for the requested eight counseling sessions be granted.

**SIGNED December 11, 2003.**

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**STEVEN M. RIVAS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**