

SOAH DOCKET NO. 453-04-1161.M5
TWCC MDR NO. M5-03-3190-01

SOUTHWESTERN BELL TELEPHONE	§	BEFORE THE STATE OFFICE
CO., C/O LIBERTY MUTUAL	§	
INSURANCE COMPANY	§	
Petitioner	§	
	§	
V.	§	OF
	§	
NEUROMUSCULAR INSTITUTE OF	§	
TEXAS,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Petitioner Southwestern Bell Telephone Company (Southwestern Bell), represented in this matter by Liberty Mutual Insurance Company (Carrier), appealed the findings and decision of the Texas Workers' Compensation Commission's (Commission's) designee, an independent review organization (IRO), which found that the electrical muscle stimulation, heat, therapeutic exercises, myofascial release, office visits for re-evaluation, and manipulations that the Neuromuscular Institute of Texas (Institute) provided to ____, a workers' compensation claimant (Claimant), were medically necessary health care. This decision finds that the treatments provided Claimant were not medically necessary.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction or notice. Those issues are set out in the Findings of Fact and Conclusions of Law.

The hearing in this matter convened on January 20, 2004, before State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Katherine L. Smith. Attorney Charlotte Salter represented the Carrier. Attorney Alan Craddock represented the Institute. The record closed on January 30, 2004.

II. DISCUSSION

A. Background

Claimant sustained a compensable injury on _____. On April 30, 2002, Claimant began treatment for her injury at the Institute, where her treating physician was Brad Burdin, D.C., a chiropractic neurologist. Dr. Burdin diagnosed her injury as bilateral carpal tunnel and cubital tunnel syndromes, bilateral pronator syndrome, and myofasciitis of the forearms and neck. Prior to undergoing surgery on December 6, 2002, she was treated with trigger point injections, carpal tunnel

and cubital tunnel injections, and the disputed treatments, which were billed under the following CPT codes: 97010 (hot packs); 97014 (electric muscle stimulation); 97035 (ultrasound); 97250 (myofascial release); 97110 (one-on-one physical therapy); and 99213 (office visit).

B. Legal Standards

Carrier 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 Texas Workers' Compensation Act, an employee who sustains 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, chiropractic, and physical therapy services. TEX. LAB. CODE ANN. § 401.011(19)(A).

C. Carrier's Position

Carrier presented the testimony of its expert, Casey Cochran, D. O., who is board certified in family medicine and occupational medicine. His primary objection to the treatments in question is that Claimant already had had a substantial amount of occupational therapy, physical therapy, trigger point injections, and chiropractic treatment between April 30 and August 12, 2002, that proved ineffective. He testified that, for Claimant's injury, the standard timing for those types of treatment is five to six visits over eight weeks. Further, he was unaware of any literature supporting the benefit of electric stimulation, soft-tissue mobilization, heat, physical therapy, and ultra-sound for carpal and cubital tunnel syndromes. He further stated that once Claimant was shown how to do stretching exercises, there was no need for additional pre-operative physical therapy. He also stated that post-injection occupational therapy was an unnecessary adjunct of the injections.

Carrier argues that a health care provider has an obligation under 28 TAC §180.22(c)(2) to efficiently manage the health care provided to an injured worker, which it alleges was not done in this case.

D. The Institute's Position

Dr. Burdin testified that the post-injection therapy helped to disperse the different medications and is supported in the medical literature and by David Hirsch, D.O., who is board certified in pain management and who prescribed the treatment. He testified further that the manipulations to the cervical region were for the subluxations of the joint. In his view, the periodic evaluations performed by the occupational therapist were necessary to document Claimant's progress, and eight months of treatment were necessary because of Claimant's different conditions and to avoid surgery.

E. Analysis

The ALJ found the testimony of Dr. Cochran challenging the efficacy of the disputed

treatments to be highly credible. Looking through the medical record, the ALJ was struck by the lack of progress that Claimant made with all the treatment she received. As early as August 16, 2002, Mr. Dedmon, the physician assistant administering the injections, noted that Claimant reported no benefit after the injection. Institute Ex. 4 at 72. A month later Mr. Dedmon noted that the Claimant reported no change in the level and frequency of her pain. *Id.* at 68. And on September 26, 2002, Dr. Burdin reported that the “injection has been helpful for a little, but then gradually the symptoms are beginning to return.” Institute Ex. 3 at 48. The ALJ also notes that the occupational therapy daily treatment logs do not document that Claimant derived any benefit from the passive physical medicine modalities provided or the therapeutic exercises she underwent after the injections. Nor do Dr. Burdin’s medical notes document the necessity and purpose of the treatments. *Id.* at 46-49. And when the decision was made on October 31, 2002, that the current treatment was not working and that Claimant should have surgery on her right hand, the same ineffective treatment continued up til December 3, 2002. Institute Ex. 6 at 124.

The only relief that Dr. Burdin mentioned was on August 29 and October 17, 2002, when he referred to manipulations performed by Dr. Kothman. Yet, with regard to the specific chiropractic manipulations in dispute, (*i.e.*, October 16, 30, and November 5), the ALJ observes, as did Dr. Cochran, that there are no treatment notes documenting the service. Without those, there is no basis for substantiating medical necessity.

The ALJ is also struck by what she sees as “over-coding.” Regarding the evaluations performed by the occupational therapist on August 21, October 3 and 10, and November 12, 2002, which were coded as CPT code 99213 (office visit), that coding is not appropriate unless there is either an expanded problem-focused history or expanded focused examination. Furthermore, use of 99213 seems to require treatment by a physician (in contrast to 99211). The ALJ also questions the use of CPT code 97110 (one-on-one physical therapy), when the occupational therapist’s notes do not document such physical therapy, but instead indicate that the Claimant was performing exercises independently. On only three occasions did the therapist even mention having to give verbal cues: August 12, October 14, and November 14, 2002. Although some instruction may have been necessary with new exercises, no such instruction was documented.

Because the medical record shows that Claimant derived little or no benefit from the treatments provided and that no assessment or evaluation of the treatments’ efficacy was made, the ALJ finds that Carrier has met its burden of proof and denies reimbursement of the disputed claims.

III. FINDINGS OF FACT

1. On _____, Claimant _____sustained an injury compensable under the Texas Workers’ Compensation Act.
2. At the time of the compensable injury, Claimant’s employer had workers’ compensation insurance coverage with the Liberty Mutual Insurance Company (Carrier).
3. Claimant began treatment on April 30, 2002, at the Neuromuscular Institute of Texas (Institute). Brad Burdin, D.C., was Claimant’s treating physician at the Institute.

4. Dr. Burdin diagnosed Claimant's compensable injury as bilateral carpal tunnel and cubital tunnel syndromes, bilateral pronator syndrome, and myofasciitis of the forearms and neck.
5. Prior to undergoing surgery on December 6, 2002, Claimant was treated with trigger point injections and carpal tunnel and cubital injections, as well as ultrasound, hot packs, electric muscle stimulation, myofascial release, therapeutic exercises, occupational therapy evaluations, and spinal manipulations.
6. The disputed treatments provided between August 12 and December 3, 2002, were billed under the following CPT codes: 97010 (hot packs); 97014 (electric muscle stimulation); 97035 (ultrasound); 97250 (myofascial release); 97110 (therapeutic exercise); and 99213 (office visit).
7. After Carrier denied reimbursement for the treatments, Petitioner appealed to the Texas Workers' Compensation Commission (Commission), which referred the dispute to its designee, an independent review organization (IRO).
8. On October 9, 2003, the IRO overturned the Carrier's denial of reimbursement, except for the ultrasound, which was found not to be beneficial.
9. The Carrier timely appealed the IRO's decision on October 20, 2003.
10. On November 13, 2003, the Commission issued the notice of hearing, which stated the date, time, and location of the hearing and cited to the statutes and rules involved, along with a short, plain statement of the factual matters involved.
11. The medical record fails to show that the ultrasound, hot packs, electric muscle stimulation, myofascial release, therapeutic exercises, occupational therapy evaluations, and spinal manipulations reduced Claimant's pain or increased the benefits of the injections Claimant received.
12. Little or no scrutiny was given as to whether the disputed treatments were efficacious.
13. The treatments provided between August 12 and December 3, 2002, and billed under CPT codes 97035 (ultrasound); 97010 (hot packs); 97014 (electric muscle stimulation); 97250 (myofascial release); 97110 (one-on-one physical therapy); and 99213 (office visit) were not shown to be reasonably required by the nature of Claimant's injury.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Commission has jurisdiction over this matter pursuant to the Texas Workers' Compensation Act (Act), TEX. LAB. CODE ANN. § 413.031.

2. The State Office of Administrative Hearings 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 Carrier had the burden of proof in this proceeding. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41.
5. A health care provider is required to efficiently use and manage the health care provided to an injured worker. 28 TAC § 133.202(c)(2).
6. Based on Findings of Fact Nos. 11 through 13, the Institute failed to show that the treatments provided to Claimant were an efficient use of health care.
7. Based on Findings of Fact Nos. 11 through 13, the Institute's treatment provided to Claimant in the form of hot packs, electric muscle stimulation, physical therapy, myofascial release, office visits, and spinal manipulations from August 12 to December 3, 2002, was not medically necessary health care under TEX. LAB. CODE ANN. §§ 401.011 and 408.021(a).
8. Based upon the foregoing Findings of Fact and Conclusions of Law, the Institute's request for reimbursement should be denied.

ORDER

IT IS THEREFORE, ORDERED that the Carrier's appeal of the IRO's decision of October 9, 2003, is granted and that the request by the Neuromuscular Institute of Texas for reimbursement in this case is denied.

SIGNED April 6, 2003.

**KATHERINE L. SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**