SOAH DOCKET NO. 453-04-24-75.M4

JEFFREY S. STANDIFER, D.C., **Petitioner**	'	**BEFORE THE STATE OFFICE**
v.	'	**OF**
LIBERTY INSURANCE CORPORATION, **Respondent**	'	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Jeffrey S. Standifer, D.C. (Provider) disputes the decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (the Commission, TWCC) denying his request for reimbursement from Liberty Insurance Corporation (Carrier) of more than $4,295[1] for treatment provided to Claimant from November 4, 2002, through June 30, 2003. The Administrative Law Judge (ALJ) finds the disputed treatment was not reasonable and medically necessary. Therefore, Provider is not entitled to reimbursement.

I. PROCEDURAL HISTORY

Notice and jurisdiction are not contested and are addressed in the Findings of Fact and Conclusions of Law set out below.

ALJ Sharon Cloninger convened and recessed the hearing on March 18, 2004, in the William P. Clements State Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Provider appeared *pro se* via telephone. Attorney Charlotte Salter represented Carrier. The hearing reconvened and closed on May 7, 2004.

II. APPLICABLE LAW

The only issue in this case is whether, by a preponderance of the evidence, the requested treatment is medically necessary. Medical necessity is defined at TEX. LAB. CODE ANN. ' 408.021(a), which states:

(a) An employee who sustains a compensable injury is entitled to all health care

[1] The only documentary evidence of the amount in dispute is found in an April 11, 2003 letter to Carrier from Provider, in which Provider identifies the dates of service as November 4, 2002, through March 17, 2003, and the amount due as $4,295. (Provider's Exh. 1, 83). The record does not include an itemized list of the disputed charges, or copies of bills submitted to Carrier. Claimant testified that Provider only charged Carrier for office visits from January 6, 2003, through June 30, 2003. From the information in the record, the ALJ cannot determine the disputed amount for the dates of service after March 17, 2003, through June 30, 2003.

reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that:

(1) cures or relieves the effects naturally resulting from the compensable injury;

(2) promotes recovery; or

(3) enhances the ability of the employee to return to or retain employment.

Under 28 TEX. ADMIN. CODE (TAC) ' 148.21(h), the appealing party has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. ' 413.031. Thus, Provider, as the petitioner, must prove the requested treatment is reasonably required within the meaning of TEX. LAB. CODE ANN. ' 408.021(a).

III. DISCUSSION

1. Background

Claimant suffered a compensable injury on ___, when she developed a ganglion cyst[2] in her right wrist, with resulting soreness, swelling, and pain on the dorsal surface of her wrist. Claimant underwent excision of the ganglion cyst on June 14, 2002, by hand surgeon Arnold V. DiBella, M.D. Claimant returned to work July 8, 2002, but suffered continuing pain and swelling because she was performing repetitive, strenuous work with no light duty available. According to a physical therapy note dated July 29, 2002, there was crepitation[3] and locking of the long finger on Claimant's right hand, with increased pain over her dorsal wrist and into her fingers. Claimant stopped working around mid-August 2002.[4]

Dr. DiBella's August 29, 2002 progress note indicates he observed Claimant to have increased range of motion and grip strength, with a significant improvement in decreased swelling. He noted Claimant was not doing her hand stretching exercises firmly enough to make gains.

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[2] A ganglion cyst is a small cystic tumor, as on the back of the wrist, containing viscid fluid and connected either with a joint membrane or a tendon sheath. *Merriam Webster's Medical Dictionary* (1995), p. 252.

[3] Crepitation is a grating or crackling sound or sensation (as that produced by the fractured ends of a bone moving against each other). *Id.* at 147.

[4] At the time of the hearing, she was working part-time as a maintenance person at her apartment complex, a position she has held since November 2002.

During Claimant's final visit with Dr. DiBella, on September 9, 2002, she was found to have significant pain and inflammation, with increased range of motion and grip strength. On that same date, Claimant saw Fernando Mallou, M.D., for a designated doctor exam, and was found to be at MMI with a 13 percent whole body impairment rating, mainly related to decreased range of motion in her wrist.[5]

Because Claimant's wrist was not improving and she was frustrated with the care she was receiving from Dr. DiBella, she initiated chiropractic care with Provider on September 23, 2002. She told him she had numbness in her fingers, and that her right middle finger locked in flexion in the mornings. Provider measured the flexion in her right wrist to be 40 degrees,[6] the extension to be 35 out of 70 degrees; the right wrist ulnar deviation to be 15 out of 30 degrees; and her right wrist radial deviation to be 10 degrees out of 20 degrees, with discomfort. Provider diagnosed her to have limb pain, wrist neuralgia,[7] and restriction of motion.

Provider's treatment of Claimant from her initial visit through November 1, 2002, included moist heat, electrical stimulation, ultrasound, and massage to: decrease pain, swelling, inflammation, and muscle spasm; increase range of motion, function, flexibility, and the ability to perform activities of daily living; and reduce the frequency and severity of probable exacerbations. Her treatment also included myofascial release and paraffin baths.[8] Provider's notes of November 1, 2002, indicate Claimant had edema, muscle spasm, and crepitation and grinding with the pronation and supination of her right elbow and wrist. Carrier reimbursed Provider for the 18 dates of service from September 23, 2002, through November 1, 2002. (Carrier's Exh. 1, A0027-A0034).

During the 40 disputed dates of treatment between November 4, 2002, and June 30, 2003, Claimant's condition did not change. Throughout her treatment Provider noted edema, muscle spasm, taut/tender fibers, limited range of motion, and crepitation and grinding during pronation and supination of right elbow and wrist. Her pain level fluctuated between 6 and 10, with no overall downward trend. There continued to be no evidence of peripheral nerve lesions or significant pathology, other than subjective reports of pain and decreased range of motion.

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[5] Dr. DiBella examined Claimant prior to the June 14, 2002 surgery, and found her to have full flexion and extension of her wrist.

[6] Provider said 90 degrees is normal; Carrier's witness Casey Cochran, M.D., said 60 degrees is normal.

[7] Neuralgia is acute paroxysmal pain radiating along the course of one or more nerves usually without demonstrable changes in the nerve structure. *Merriam Webster's Medical Dictionary* (1995), p. 453.

[8] The record does not indicate the medical purpose for these treatments.

A December 3, 2002 MRI of Claimant's hand was normal, but her wrist MRI demonstrated some tenosynovitis[9] of the various extensor tendons of the wrist, and there appeared to be a small ganglion cyst. There was no other evidence of wrist internal derangement. (Carrier's Exh. 1, A0071).

Provider's treatment of Claimant from November 4, 2002, through March 17, 2003, included myofascial release, hot packs, ultrasound, electrical stimulation, paraffin baths, therapeutic exercises, neuromuscular education, Biofreeze,[10] and glucosamin sulfate. From March 24, 2003, through June 30, 2003, Claimant mainly received wrist manipulations and cold laser therapy. (Carrier's Exh. 1, A0051-A0089; Carrier's Exh. C-1). By August 8, 2003, Claimant's right wrist extension was 50 out of 70 degrees, and her flexion was 35 out of 60 or 90 degrees, as compared to 35 out of 70 degrees and 40 out of 60 or 90 degrees respectively when she began treatment with Provider on September 23, 2002. (Carrier's Exh. 1, A0101-A0105).

Provider requested reimbursement for the treatment from Carrier, which Carrier denied on the grounds that the treatment was not reasonable or medically necessary. Provider then requested medical dispute resolution before the Commission's Medical Review Division (MRD), pursuant to 28 TAC ' 134.600(g). The Commission referred the dispute to an IRO, as permitted under 28 TAC ' 133.308. On December 15, 2003, the IRO determined reimbursement was not warranted for the disputed treatment. On December 16, 2003, the MRD issued a decision denying reimbursement. By letter dated December 29, 2003, Provider requested a hearing on the matter before SOAH.

B. Evidence

Provider testified on his own behalf, called two witnesses, and offered 12 exhibits, 11 of which were admitted. Carrier called one witness, and offered two exhibits, which were admitted.

1. Provider's testimony

Provider testified that Claimant's pain levels set out in the medical records reflect what she reported at the beginning of each office visit, not the improved level she reported at the end of each treatment. He pointed to documents in evidence to show that ultrasound does help alleviate pain at the chronic stage, not just at the acute stage; and that weather influences pain.

[9] Tenosynovitis is inflammation of a tendon sheath. *Merriam Webster's Medical Dictionary* (1995), p. 691.

[10] Biofreeze is topically applied and formulated to relieve pain, using cold therapy. (Provider's Exh. H).

2. Claimant's testimony

Claimant testified via telephone[11] that her right hand was still painful and swollen, to the point she has to write with her left hand. She said that at times she cannot grip things, and drops them. She said using ice packs and a heating pad, and exercising at home decrease the pain, but the pain returns as soon as she stops her self-treatment.

She said her pain level decreased Asome@ after Provider's treatments, allowing her to get through the day. She said Provider could not refer her to an orthopedic specialist, because Carrier had stopped paying for her treatment. She is concerned she will never get her hand Astraightened out.@

3. Testimony of Ronnie D. Shade, M.D.

Ronnie D. Shade, M.D., an orthopedic surgeon who specializes in the care and treatment of musculoskeletal injuries, testified on behalf of Provider. He evaluated Claimant on April 23, 2004, (after the March 18, 2004, hearing recessed) and observed her middle finger to lock and her wrist to be swollen. He said for Claimant to still be in pain nearly two years after her June 14, 2002 surgery is unusual, given the typical recovery time of six-to-eight weeks, and speculated she could have an injury to her small nerves, or an irritation of tendons.

He found Claimant to have tenosynovitis in the middle finger and small finger of her right hand, and chronic tendinitis[12] of the right dorsal wrist. He said if she were his patient, he would continue chiropractic care and treatment, as well as probably order an MRI of her wrist, prescribe non-steroidal anti-inflammatory medication, start her on steroid injections, send her to physical therapy, continue physical rehabilitation with ultrasound, cold laser, and electrical stimulation, and prescribe home hand exercises to increase her strength. He said she needs further medical treatment, and possibly surgery, for the swelling, and for the locking of her finger. (Dr. Shade's testimony and Provider's Exh. L).

4. Testimony of Casey Cochran, D.O.

Casey Cochran, D.O., who is board certified in occupational medicine, testified on behalf of Carrier, and said recovery from ganglion cyst surgery should take no more than a few weeks. He said Claimant's locking finger is triggered by flexion tendons on the opposite side of the ganglion, so is not related to the surgery, and that the surgery should not have affected Claimant's range of motion. He said it is her tenosynovitis that is causing her wrist to swell.

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[11] Claimant testified at the hearing on March 18, 2004.

[12] Tendinitis is inflammation of a tendon. *Merriam Webster's Medical Dictionary* (1995), p. 691.

Dr. Cochran testified that research shows passive modalities, such as those used by Provider to treat Claimant, are not effective for chronic pain and are not appropriate after about two weeks. He said Provider's passive treatment of Claimant so long after surgery had no benefit and would actually impede recovery, reinforce pain behavior, and promote physician dependence. Dr. Cochran said the American Physical Therapy Association has concluded that ultrasound is not effective for a chronic condition, such as Claimant's. He said neuroselective CPT is not an accepted form of diagnostic testing. He said even though Claimant testified Provider's treatment helped, her pain level stayed virtually the same, which shows the treatment did not make a difference.

Dr. Cochran said objective measurements of range of motion and strength, for instance, are part of the standard of care, yet the record contains no firm objective evidence with which to measure Claimant's progress. Dr. Cochran concluded that Provider's treatments could not have been expected to relieve Claimant's condition, and did not. He said Claimant's current condition is worse than the last time she saw Dr. DiBella and the first time she saw Provider, with treatment from November 1, 2002, onward being ineffective.

5. Independent Medical Evaluation by Jack Kern, M.D.

Orthopedic surgeon Jack Kern, M.D., performed an Independent Medical Examination (IME) of Claimant on August 4, 2003. She told him Provider's treatment Awas helping,@ and now that she is not receiving treatment, she is in Alots of pain.@ He observed some mild soft tissue swelling along the dorsal carpal area, and some mild restriction of range of motion in extension of the wrist, compared to the opposite side, with these ranges being 50 degrees of extension and 35 degrees of flexion. He observed her right hand grip strength to be decreased compared to the left hand. He said her locking finger catches on the interphalangeal joint, and palpation of the joint is tender, suggesting early osteoarthritis. He said it is not unusual to lose range of motion following a dorsal cyst ganglionectomy, but it is unusual to have persistent swelling and pain. He recommended another MRI to determine if there is any avasular change in the proximal carpal row to account for Claimant's condition. He said if the MRI looked benign, he would complete the report regarding whether Claimant should have work restrictions and if she needs further treatment. (Carrier's Exh. 1, A0101-0105).

After the recommended MRI was done, Dr. Kern wrote to Carrier on August 25, 2003, that the films did not show any evidence of scapholunate dissociation, avascular collapse of the lunate, or ganglion cyst. He opined that Claimant's wrist pain would improve once she ceased physical therapy and chiropractic care, and a bit more time passes. It was also his opinion that the tenosynovitis and intermittent triggering are not related to her April 24, 2002 work injury, and that her condition would improve with a home exercise program. He said her initial pain was along the dorsal surface of the wrist, and did not involve the volar surface in the area of flexor tendons. He concluded that Claimant did not require further diagnostic studies, formal physical therapy, chiropractic care, or surgical treatment at that time in relation to her April 24, 2002 work injury. (Provider's Exh. 2, A-3 and A-4).

IV. ANALYSIS

Provider failed to meet his burden of proving the disputed treatment was reasonable and medically necessary. Dr. Kern's IME and Dr. Cochran's testimony established that passive modalities used to treat Claimant beginning nearly five months after surgery were not reasonable or medically necessary to improve Claimant's function by increasing her strength or range of motion, or relieving her chronic pain. Because passive modalities are appropriate for the acute phase of care, but not for a chronic condition, it was not reasonable for Provider to use treatments such as ultrasound, electrical stimulation, hot packs, myofascial release, or paraffin baths to treat Claimant, particularly after using passive modalities from September 23, 2002, through November 1, 2002, with no change in Claimant's condition. While Claimant testified that Provider's treatment relieved her pain Asome,@ the treatment did not alleviate Claimant's swelling or finger locking. Even the pain relief appears to have been very temporary. On each of the 40 dates of service from November 4, 2002, through June 30, 2002, Claimant reported pain of at least a level 6, and nearly all of Provider's objective observations describe edema, muscle spasm, and taut/tense fibers. It was neither reasonable nor medically necessary to continue treatment that was obviously not curing or relieving the effects naturally resulting from Claimant's compensable injury, promoting her recovery, or allowing her to return to work or retain employment, pursuant to TEX. LAB. CODE ANN. ' 408.021(a). The ALJ agrees with the IRO doctor's conclusion that there Awas never any objective evidence of ongoing pathology as it related to the ganglion cyst problem to warrant the amount and type of care that was rendered@ and A[t]emporary palliative relief of symptoms that have no organic basis is an insufficient reason for ongoing treatment.@ Therefore, Provider is not entitled to reimbursement for treatment rendered to Claimant.

V. FINDINGS OF FACT

1. Claimant suffered a compensable injury on ___, when she developed a ganglion cyst on her right wrist.

2. On that same date, Liberty Insurance Corporation (Carrier) was the workers' compensation insurance carrier for Claimant's employer.

3. On June 14, 2002, Claimant underwent surgical removal of the ganglion cyst.

4. Following the surgery, Claimant developed swelling in her right wrist, and the middle finger on her right hand began locking in flexion.

5. Claimant returned to work July 8, 2002, but quit in mid-August 2002 due to continued swelling and pain in her right hand and wrist. Since November 2002, she has been working part-time at her apartment complex picking up trash, cleaning the laundry room, and inspecting apartments.

6. Claimant sought treatment from Jeffrey S. Standifer, D.C. (Provider) on September 23, 2002.

7. Provider diagnosed Claimant to have limb pain, wrist neuralgia, and restriction of motion.

8. On September 23, 2002, Claimant's right wrist flexion was 40 degrees with either 60 degrees or 90 degrees being normal, and her wrist extension was 35 out of 70 degrees. By August 8, 2003, Claimant's wrist flexion was 35 degrees, and her extension was 50 degrees.

9. On November 1, 2002, Provider observed Claimant to have edema, muscle spasm, and crepitation and grinding with the pronation and supination of the right elbow and wrist. On June 23, 2003, Provider observed Claimant to have edema, muscle spasm, and taut/tender fibers.

10. From November 4, 2002, through June 30, 2003, Claimant's subjective pain level fluctuated between 6 and 10, with 10 being the highest level, with no overall downward trend. Her pain level on June 30, 2003, was 7.

11. A December 3, 2002 MRI of Claimant's hand and wrist revealed her hand to be normal, but demonstrated some tenosynovitis of the various extensor tendons of the wrist, with what appeared to be a small ganglion cyst. There was no other indication of internal wrist derangement.

12. Tenosynovitis is causing Claimant's wrist to swell.

13. Provider's treatment of Claimant from November 4, 2002, through March 17, 2003, included myofascial release, hot packs, ultrasound, electrical stimulation, paraffin baths, therapeutic exercises, neuromuscular education, Biofreeze, and glucosamin sulfate.

14. From March 24, 2003, through June 30, 2003, Provider's treatment of Claimant consisted mainly of wrist manipulations and cold laser therapy.

15. Claimant's wrist pain decreased "some" after Provider's therapy, allowing her to get through the day.

16. For Claimant to still be in pain nearly two years after her June 14, 2002 surgery is unusual, given the typical recovery time for ganglion cyst removal is six-to-eight weeks.

17. Passive modalities, such as those used by Provider to treat Claimant, are not effective treatment for chronic pain and had no medical benefit.

18. Carrier reimbursed Provider for Claimant's treatment rendered from September 23, 2002, through November 1, 2002, but disputed the medical necessity of treatment provided November 4, 2002, through June 30, 2003.

19. The treatment provided to Claimant from November 4, 2002, through June 30, 2003, did not increase her strength or range of motion, reduce her pain level, or promote the healing of her tenosynovitis.

20. Following Carrier's denial of reimbursement, Provider filed a timely request with the Commission for medical dispute resolution.

21. Provider's request was assigned to an independent review organization (IRO) by the Commission's Medical Review Division (MRD). On December 15, 2003, the IRO determined reimbursement was not warranted.

22. The MRD issued a decision December 16, 2003, denying reimbursement on the basis that the disputed treatment and services were not reasonable or medically necessary.

23. On December 29, 2003, Provider requested a hearing before the State Office of Administrative Hearings (SOAH).

24. Notice of the hearing was sent to the parties on January 29, 2004.

25. 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.

26. Administrative Law Judge Sharon Cloninger convened and recessed the hearing on March 18, 2004, in the William P. Clements State Office Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Provider appeared *pro se* via telephone. Carrier was represented by Charlotte Salter, attorney. The hearing reconvened and closed May 7, 2004.

VI. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. ' 413.031(d) and TEX. GOV'T CODE ANN. CH. 2003.

2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. CH. 2001 and SOAH's rules, 1 TEX. ADMIN. CODE (TAC) CH. 155.

3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN.'' 2001.051 and 2001.052.

4. Under 28 TAC ' 148.21(h), the appealing party, in this case Provider, has the burden of

proof in hearings,

5. Based on the above Findings of Fact and Conclusions of Law, Provider failed to meet his burden of establishing the disputed treatment was medically necessary and reasonably required within the meaning of TEX. LAB. CODE ANN. ' 408.021(a).

6. Based on the foregoing Findings of Fact and Conclusions of Law, Provider is not entitled to reimbursement.

ORDER

IT IS, THEREFORE, ORDERED that Liberty Insurance Corporation shall not reimburse Jeffrey S. Standifer, D.C., for treatment provided to Claimant from November 4, 2002, through June 30, 2003.

SIGNED July 6, 2004.

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SHARON CLONINGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS