

SOAH DOCKET NO. 453-04-3418.M5
TWCC MR NO. M5-04-064001

TEXAS MUTUAL INSURANCE COMPANY, Petitioner	·	BEFORE THE STATE OFFICE
	·	
	·	
V.	·	OF
	·	
THERAPY WORKS, INC., Respondent	·	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Petitioner, Texas Mutual Insurance Company (Carrier), appealed the Findings and Decision of the Medical Review Division (MRD) of the Texas Workers Compensation Commission (TWCC) ordering reimbursement to Therapy Works, Inc., (Provider) for medical services provided to____, (Claimant). Carrier disputes the IROs conclusion that these services were medically necessary. The Administrative Law Judge (ALJ) concludes that Carrier has not met its burden of proof with respect to the services in dispute provided to Claimant between October 2, 2002, and December 19, 2002. Thus, Carrier should reimburse Provider for all disputed services provided between October 2, 2002, and December 19, 2002, to Claimant for his compensable injury.

I. PROCEDURAL HISTORY

ALJ Penny Wilkov conducted a hearing in this case on August 12, 2004, at the State Office of Administrative Hearings, Austin, Texas. Attorney Patricia Eads represented Carrier. Attorney Nick Caridas represented Provider. The hearing concluded and the record closed on the same day.

The parties did not contest notice or jurisdiction, which are addressed in the Findings of Fact and Conclusions of Law.

II. DISCUSSION

1. Background

Claimant, a fifty-five-year old male, sustained a work-related right shoulder and back injury on____, when he tripped and fell onto a concrete floor at work, landing on his right shoulder. Claimant is not currently working.

Claimant has been diagnosed with mechanical cervical and lumbar spine pain and a right rotator cuff tear.¹ Claimant describes symptoms of persistent pain in his right shoulder as well as constant lower back pain aggravated by bending, lifting, pushing or pulling. The medical records reflect that Claimant has seen several physicians and therapists since the date of the injury, but at the time period in issue, Claimant has been under the care of Therapy Works, Inc. Claimants history of treatments has included medications, surgery, and physical therapy in conjunction with various diagnostic tests including MRIs, x-rays, and nerve conduction tests.²

Carrier denied payment, using denial code V³ for the following treatments administered between October 2, 2002, and December 19, 2002: office visits,⁴ therapeutic exercises,⁵ ultrasound treatments,⁶ electrical stimulation,⁷ massage,⁸ and hot packs.⁹

¹ Petitioners Exhibit A, page 4 (January 22, 2002, Examination by E. Brooke Roberts, M.D.).

² Petitioners Exhibit A, pages 119-137 (Shaver Medical Clinic, East Houston Orthopedics, Fairmont Diagnostic Center, Doctors Outpatient Surgicenter, River Oaks Imaging, Therapy Works, Inc.).

³ Denial Code V is used when the insurance carrier is denying payment because the treatment or service is medically unreasonable and unnecessary based on a peer review.

⁴ CPT Code 99204 (new patient with comprehensive history and examination) and 99213 (established patient with expanded problem focused history and expanded problem focused examination).

⁵ CPT Code 97110 (therapeutic procedure and exercises to develop strength and endurance, range of motion and flexibility).

⁶ CPT Code 97035.

⁷ CPT Code 97014 (unattended).

⁸ CPT Code 97124.

⁹ CPT Code 97010.

2. Evidence and Argument

1. Carrier

Carrier argues that it should not be required to reimburse Provider for all medical services provided between October 2, 2002, and December 19, 2002, since Claimant was misdiagnosed and therefore, the types of treatments provided were medically unnecessary. Specifically, Carrier disagrees that physical therapy with a high level of supervision, described as one-on-one, and related office visits were indicated. Carrier also argues that the ultrasound, electrical stimulation, massage, and hot packs (passive modalities) provided were only appropriate during the acute phase of the injury, described as four weeks post-injury and four weeks post-surgery.¹⁰

Carrier presented Claimants medical records and called Nicholas Tsourmas, M.D., as a witness. Dr. Tsourmas, a board-certified orthopedic surgeon, testified that in his private practice he treats shoulder, rotator cuff, and lower back injuries, all similar to Claimants injuries. Based on his review, Dr. Tsourmas disputes the diagnosis of adhesive capsulitis, a painful cessation of shoulder movement, referred to as frozen shoulder. Instead, Dr. Tsourmas asserts that the limited movement of the rotator cuff is a natural byproduct of surgery, enabling the body to heal slowly by immobilizing the shoulder. Dr. Tsourmas points to Providers initial evaluation of Claimant on October 2, 2002, attesting that Claimant had a 75 to 80 percent normal range of motion six months after surgery, an excellent post-operative result.¹¹ According to Dr. Tsourmas, in the first week of Providers physical therapy, Claimant showed steady improvement. This is also contrary to a correct diagnosis of adhesive capsulitis, which normally involves a long painful period of recovery.¹² However, on cross-examination, Dr. Tsourmas did concede that a treating physician would be more likely to correctly diagnose adhesive capsulitis than a reviewing doctor, as occurred here.

¹⁰ Ultrasound, electrical stimulation, massage, and hot packs.

¹¹ Three measures of Claimants range of motion were taken: abduction, a movement of arms to the side, external rotation, a movement of pointing upward, and internal rotation, a movement of pointing downward. On October 2, 2002, abduction was measured at 100 degrees range of motion out of a normal range of 180 degrees; external rotation was measured at 45 degrees range of motion out of a normal range of 90 degrees; and internal rotation was measured at 45 degrees range of motion out of a normal range of 90 degrees.

¹² Petitioners Exhibit A, page 61 (October 4, 2002, measurement showed that the external rotation had improved to 60 degrees range of motion out of a normal range of 90 degrees).

As to the treatments provided, Dr. Tsourmas takes issue with the benefit of the one-on-one physical therapy and passive modalities. According to Dr. Tsourmas, passive modalities are only appropriate directly after an injury or after surgery and are not effective to improve range of motion or strength. Instead, Dr. Tsourmas contends, a home-based exercise program would be optimal, allowing Claimant to actively exercise his shoulder and back for two or three hours daily for at least a year to make a full recovery. One-on-one supervision is not necessary except to initially train Claimant on home exercises and to intermittently check on his progress.

Lastly, Dr. Tsourmas takes issue with the IRO decision, noting that the review was made by a chiropractor and not an orthopedic surgeon, who would be well-versed in the symptoms, diagnosis, and treatment of adhesive capsulitis, shoulder, and back injuries.

Carrier also presented the oral deposition of John Mark Miller, a licensed physical therapist. Mr. Miller testified that, based on his review of the medical records, he concurred with Dr. Tsourmas on the incorrect diagnosis of adhesive capsulitis, credited to Claimants exhibition of an uncharacteristic, wide range of motion. He also believes that the one-on-one physical therapy was unnecessary since Claimant had extensive instructions on exercises from a prior therapist and would not need further direction on the exercises.

2. Provider

Provider argues that Carrier should be required to reimburse Provider for all medical services provided between October 2, 2002, and December 19, 2002, since the therapy and treatments were medically necessary, attributable to complications of Claimants injuries, including adhesive capsulitis and lumbar radiculopathy. Specifically, Provider points to the series of events: Claimant suffered a serious rotator cuff tear in January 2002, underwent surgery on April 15, 2002, wore a sling for three months thereafter, and then developed adhesive capsulitis or frozen shoulder. Further, because Claimant was diagnosed with lumbar radiculopathy related to the injury, the treatments were necessary to alleviate the pain from this condition. Thus, based on these two circumstances, the one-

on-one physical therapy and passive modalities provided and prescribed by Claimants orthopedic surgeon were medically necessary during the dates of disputed services.

Provider points to the examination performed by E. Brooke Roberts, M. D., the treating orthopedic surgeon, who, after the dates of disputed treatment, confirmed that Claimant has had persistent pain and discomfort and some evidence of a frozen shoulder.¹³ Prior to the dates of disputed service, on October 31, 2002, Dr. Roberts had expressed that Claimant would benefit both from physical therapy to maximize range of motion and strength and from (passive) modalities to decrease discomfort.¹⁴ The treatments were also necessary because, on September 10, 2002, as a result of the nerve conduction tests, Claimant received a first-time diagnosis of lumbar radiculopathy related to the injury.

Provider also called Elisa Miranda, a licensed physical therapist, as a witness. Ms. Miranda testified that she treated Claimant for his injuries beginning October 2, 2002 through December 19, 2002, the dates of disputed services, based on the referral from Dr. Roberts. She stated that she considered the one-on-one supervision necessary for therapy on the frozen shoulder due to Claimants severe pain, lack of mobility, and need for aggressive shoulder stretching and strengthening of the tightened muscles and tendons. She testified that she also instructed Claimant on home exercises to improve strength and increase range of motion as part of the physical therapy provided. As to the passive modalities, these treatments were specifically prescribed by Dr. Roberts for pain and discomfort and to relax the muscles and improve circulation.

As a result of the therapy, Claimant showed substantial improvement in range of motion and strength during the disputed period and did receive training in a home exercise program as a component of his treatment.¹⁵

Provider also notes that the Independent Review Organization (IRO) concurred that the passive modalities, physical therapy, and office visits were medically necessary.¹⁶

¹³ Respondents Exhibit 1, page 000093 (February 10, 2003).

¹⁴ Respondents Exhibit 1, page 000090 (October 31, 2002) and page 000091(December 5, 2002).

¹⁵ Respondents Exhibit 1, page 000095.

3. Applicable Law

Under the workers compensation system, 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. LAB. CODE ANN. ' 401.011(19).

4. Analysis

Carrier has not met its burden of proof with respect to the services in dispute provided to Claimant between October 2, 2002, and December 19, 2002. The issue in this case seems to focus on whether Claimant actually had the condition of adhesive capsulitis or frozen shoulder, diagnosed by Claimants treating orthopedic surgeon and disputed by Carriers expert witness, and whether the treatments rendered were appropriate for Claimants condition. It is difficult to override the medical assessment and judgment of the treating physician, E. Brooke Roberts, M.D., an orthopedic surgeon, who has examined and analyzed Claimants injured shoulder, rotator cuff, and lower back and who has similar expertise as Carriers witness, Nicholas Tsourmas, M.D., also an orthopedic surgeon. Based on Dr. Roberts examination, he concluded that Claimant had evidence of frozen shoulder following rotator cuff surgery, resulting in persistent pain and discomfort, all of which would be alleviated by physical therapy and passive modalities. The one-on-one physical therapy and passive modalities were within the parameters of Dr. Roberts prescribed treatment for Claimant and should be accordingly, reimbursed.

5. Conclusion

Carrier should reimburse Provider for all services provided to Claimant between October 2, 2002, and December 19, 2002.

¹⁶ Petitioner=s Exhibit A, page 117.

III. FINDINGS OF FACT

1. Claimant sustained a work-related right shoulder and back injury on____, when he tripped and fell onto a concrete floor at work, landing on his right shoulder.
2. At the time of the injury, Claimants employer had its workers compensation insurance through Texas Mutual Insurance Company (Carrier).
3. Claimant is diagnosed with mechanical cervical and lumbar spine pain and a right rotator cuff tear along with adhesive capsulitis, referred to as frozen shoulder.
4. Claimant has persistent pain in his right shoulder as well as constant lower back pain aggravated by bending, lifting, pushing or pulling.
5. Claimant has seen several physicians and therapists since the date of the injury, but at the time period in issue, Claimant has been receiving physical therapy and treatment at Therapy Works, Inc., (Provider).
6. Provider submitted a claim to Carrier for treatment rendered to Claimant from October 2, 2002 until December 19, 2002, including procedures billed under CPT codes 99204 and 99213 (new and established patient office visits), 97110 (therapeutic procedure and exercises), 97035 (ultrasound treatments), 97014 (electrical stimulation), 97124 (massage), and 97010 (hot packs).
7. Carrier denied Providers request for reimbursement.
8. On January 26, 2004, Petitioner requested medical dispute resolution with the Texas Workers Compensation Commissions (Commission) Medical Review Division (MRD).
9. An Independent Review Organization concluded that treatments rendered from October 2, 2002 until December 19, 2002, were medically necessary.
10. Provider filed a request for a hearing before the State Office of Administrative Hearings on February 12, 2004.
11. The Commission sent notice of the hearing to the parties on March 24, 2004. The hearing notice informed the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the statutes and rules involved; and the matters asserted.
12. The hearing convened on August 12, 2004, at the State Office of Administrative Hearings, Austin, Texas. Attorney Patricia Eads represented Carrier. Attorney Nick Caridas represented Provider. The hearing concluded and the record closed on the same day.
13. The medical assessment and judgment of Claimants treating orthopedic surgeon, who had personally examined and analyzed Claimants injured shoulder and rotator cuff, was that Claimant had adhesive capsulitis, following rotator cuff surgery.

14. On September 10, 2002, as a result of nerve conduction tests, Claimant received a first-time diagnosis of lumbar radiculopathy related to the injury.
15. The adhesive capsulitis and lumbar radiculopathy resulted in persistent pain and discomfort, which would be alleviated by physical therapy and passive modalities.
16. The one-on-one physical therapy and passive modalities were within the parameters of Dr. Roberts prescribed treatment for Claimant.
17. The one-on-one supervision was necessary for treatment of adhesive capsulitis due to Claimants severe pain, lack of mobility, and need for aggressive shoulder stretching and strengthening of the tightened muscles and tendons.
18. The passive modalities treatments were specifically prescribed by Claimants treating orthopedic surgeon for pain and discomfort and to relax the muscles and improve circulation.
19. Carrier has not shown that the disputed services rendered between October 2, 2002 until December 19, 2002, were not medical necessary.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. ' 413.031(K) and TEX. GOV=T CODE ANN. ch. 2003.
2. Provider timely filed a request for hearing before SOAH, as specified in 28 TEX. ADMIN. CODE ' 148.3.
3. The parties received proper and timely notice of the hearing pursuant to TEX. GOV=T CODE ANN. ch. 2001 and 1 TEX. ADMIN. CODE ' 155.27.
4. Carrier had the burden of proving the case by a preponderance of the evidence pursuant to 28 TEX. ADMIN. CODE ' 148.21.
5. An employee who has sustained 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).
6. Health care includes all reasonable and necessary medical services. TEX. LAB. CODE ANN. ' 401.011(19)(A).
7. Carrier failed to establish that the physical therapy modalities billed under CPT codes 99204 and 99213 (new and established patient office visits), 97110 (therapeutic procedure and exercises), 97035 (ultrasound treatments), 97014 (electrical stimulation), 97124 (massage),

and 97010 (hot packs) are not reimbursable under TEX. LAB. CODE ANN. " 401.011(19) and 408.021(a).

8. Carrier should reimburse Provider for all services provided to Claimant for his compensable injury.

ORDER

IT IS **ORDERED** that Therapy Works, Inc. is entitled to reimbursement by Texas Mutual Insurance Company for the physical therapy modalities billed under CPT codes 99204 and 99213 (new and established patient office visits), 97110 (therapeutic procedure and exercises), 97035 (ultrasound treatments), 97014 (electrical stimulation), 97124 (massage), and 97010 (hot packs) , provided to Claimant between October 2, 2002, and December 19, 2002.

SIGNED October 5, 2004.

**PENNY WILKOV
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**