SOAH DOCKET NO. 453-04-3596.M5
TWCC MDR NO. M5-03-1876-01

TEXAS MUTUAL INSURANCE COMPANY,	:	**BEFORE THE STATE OFFICE**
vs.	:	**OF**
CHIROPRACTIC HEALTH CENTER OF GRAND PRAIRIE	:	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

The issue involved is whether Texas Mutual Insurance Company (Carrier) correctly denied payment of $9,493 billed by Chiropractic Health Center of Grand Prairie (Provider) for treatment and services provided an injured worker (Claimant). Carrier challenged the medical necessity of the treatment, but Provider contended the services were necessary. The Administrative Law Judge (ALJ) finds Carrier should reimburse Provider for the following: (1) the ultrasound therapy; (2) one office visit per week; (3) 14 days of physical therapy using Current Procedural Technology (CPT) Code 97110 for one-on-one patient contact; and (4) the remainder of the physical therapy using CPT Code 97150 for therapeutic exercises in a group setting. The ALJ further concludes that Provider is not entitled to reimbursement for the myofascial release provided Claimant.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On June 22, 2004, ALJ Georgie B. Cunningham conducted the hearing on the merits at the William P. Clements Building, 300 West 15th Street, Austin, Texas. Attorney R. Scott Placek represented Carrier, and Douglas Beaman, D.C. appeared telephonically to represent Provider. The parties did not contest jurisdiction or notice. Therefore, those issues are addressed in the findings of fact and conclusions of law without discussion. The ALJ closed the hearing on July 5, 2004, following the filing of additional documents.

II. DISCUSSION

At the hearing, Carrier presented the testimony of John Charles Pearce, M.D.; the deposition testimony of J. Mark Miller, Licensed Physical Therapist; and Dr. Bremon. Both parties presented documentary evidence. According to the documentary evidence, Claimant had a compensable knee injury on ___ which resulted in his having surgery three times. The third surgery, an anterior cruciate ligament repair, occurred on January 16, 2002. Claimant had difficulty with post-operative swelling and possible infection. At issue here are the claims for myofascial release, ultrasound therapy, and office visits between April 8 and August 7, 2002. Beginning on May 10, 2002, therapeutic exercises, billed using CPT Code 97110, were provided in addition to the myofascial release, ultrasound, and office visits. The claims for the therapeutic exercises are also at issue.

After initially challenging the medical necessity of all treatment, Carrier conceded that the ultrasound treatments were medically necessary to control the swelling in the knee. Likewise, after Dr. Pearce testified that one office visit per week or every other week would be appropriate, Carrier accepted the necessity of one office visit weekly. Dr. Pearce and the physical therapist, Mr. Miller, were adamant, however, that the documentation did not establish the medical necessity of the myofascial release. In Dr. Pearce's opinion, the soft tissue needed time to rest and recover. Too much massage could even have increased the swelling and delayed the recovery. When Mr. Miller examined the Provider's documentation, he could not see any benefit from the myofascial release.

Dr. Pearce further testified that the type of exercises performed by Claimant during his active rehabilitation sessions would not have required one-to-one direct supervision. According to Dr. Pearce, most of the exercises could have been learned within two days and then performed independently or in a group setting. Both Dr. Pearce and Mr. Miller testified that one-to-one supervision could be needed during physical therapy for safety, implementation of the program, monitoring symptom response, and progression of the program. In reviewing Provider's records, neither witness observed notes documenting that Provider monitored Claimant's symptom response

or special safety needs. The witnesses concurred that Claimant repeated the same exercises each session without progressing to more challenging exercises. Based on his previous therapy with Provider, learning time should have been minimal, according to Carrier's witnesses. Furthermore, Dr. Pearce and Mr. Miller believed that the exercises could have been done independently and would not have required direct one-to-one supervision on an on-going basis.

During his testimony, Dr. Beaman admitted that he did not attend to Claimant all of the time he was in therapy. Instead, he would get Claimant started on his routine and attend to him as needed. Although he spent a lot of time with Claimant on certain days, Dr. Beaman could not state with certainty that he spent 100 percent of the time with Claimant on any particular day. Although Claimant needed some additional instruction, he had engaged in similar physical therapy following his previous surgery. Moreover, Dr. Beaman described Claimant as physically fit, cooperative, mentally alert, and motivated to recover and return to work. He asserted that the environment was safe with grab bars readily available.

III. ANALYSIS

Although Carrier initially challenged the medical necessity of the treatment, the evidence as a whole establishes that Claimant needed rehabilitation services with one notable exception. The ALJ finds that the evidence did not show Claimant needed myofascial release. Neither the notes prepared by Claimant's orthopedic surgeon nor Provider's records documented the need. Instead, the surgeon's notes clearly and consistently referred to the need for and benefit of the ultrasound treatments. Considering Dr. Pearce's and Mr. Miller's testimony and the surgeon's notes, the ALJ did not find convincing Dr. Beaman's note on April 15, 2002, that the myofascial release helped milk the swelling and fluids out of the knee.

The critical question involves the reimbursement rate for the physical therapy. Although both parties referenced a chiropractic code book, the book was not admitted as evidence. Furthermore,

the ALJ is uncertain what weight, if any, might be attributed to it in determining correct billing in a workers' compensation hearing, had it been offered.

At the time the services were provided, the Commission used the *Medical Fee Guideline,* 28 TEX. ADMIN. CODE ' 134.202 (*Medicine Ground Rule*), to resolve billing issues.[1] To qualify for reimbursement under CPT Code 97110, a provider had to show that the physical therapy was conducted exclusively on a one-on-one basis. Additionally, prior SOAH decisions have interpreted CPT Code 97110 as requiring physical therapy on a one-on-one basis when the doctor or therapist works exclusively with the patient.[2] Provider, through the testimony of Dr. Beaman, admitted that Claimant's physical therapy was not exclusively one-on-one therapy. If the doctor or therapist is working with two or more patients or performing some other activity, the exclusive one-on-one contact is lacking. In this case, Provider's records and the type of exercises performed by Claimant indicate that exclusive one-on-one therapy was not provided or even needed for Claimant's entire therapy session.

On the other hand, it is clear from Dr. Beaman's testimony and the documentary evidence, that he spent some one-on-one time with Claimant. Balancing this testimony with Claimant's experience and independence, the ALJ believes that one weekly visit beginning on May 20, 2002, should be reimbursed using CPT Code 97110. According to the prior decisions and at the suggestions of Carrier's attorney, the physical therapy claims should be reimbursed under CPT Code 97150, which compensates for physical therapy for a group of two or more persons.

In this case, the ALJ concludes that it is reasonable that Carrier reimburse Provider for service provided Claimant, as follows: (a) for all ultrasound treatments between April 8 and August 7, 2002;

[1] This rule does not apply to services provided after September 1, 2002.

[2] As requested by Carrier, the ALJ took official notice of 453-04-0995.M5; 453-00-2051.M4; 453-01-1492.M5; and 453-0001219.M5.

(b) for one office visit per week between April 8 and August 7, 2002; (c) for physical therapy on a one-on-one basis using CPT Code 97110 on May 10 and May 14, 2002; and once

weekly thereafter beginning on May 20, 2002, (for a total of 14 visits), and (d) for physical therapy using CPT Code 97150 for treatments from May 16 through August 7, 2002. Carrier is not liable for the claims for myofascial release provided Claimant.

IV. FINDINGS OF FACT

1. On ___, Claimant suffered a compensable workers' compensation injury to his knee when he fell from a ladder.

2. In February 2001 and again in April 2001, Claimant had orthoscopic surgical repair of the knee.

3. Following a fall during his recuperation, Claimant had orthoscopic surgical repair to the meniscus and anterior cruciate ligament on January 16, 2002.

4. Following the January 2002 surgery, Claimant had elevated swelling and possible infection in his knee and his muscles began to atrophy from inactivity.

5. Chiropractic Health Center of Grand Prairie (Provider) began daily administrations of ultrasound therapy and myofascial release on April 8, 2002.

6. On May 10, 2002, Provider added cardio, stretching, and strengthening exercises with therabands, theraballs, multigym, and an eliptical runner to Claimant's regimen.

7. As of May 14, 2002, Claimant's visits to Provider were reduced from five weekly to three weekly.

8. On May 16, 2002, Provider added a wobble board to Claimant's regimen.

9. Texas Mutual Insurance Company (Carrier) denied payment for the physical therapy, ultrasound, myofascial release, and office visits Provider furnished Claimant from April 8 through August 7, 2002.

10. On July 2, 2003, the Independent Review Organization determined that the documentation did not support reimbursement for office visits, but determined ultrasound, myofascial release, and physical therapy were reasonable and medically necessary.

11. On January 5, 2004, the Medical Review Division of the Texas Workers' Compensation Commission ordered Carrier to reimburse Provider for the unpaid claims.

12. On January 20, 2004, Carrier requested a hearing on this matter before the State Office of Administrative Hearings (SOAH).

13. On March 2, 2004, the Commission sent a hearing notice advising the parties of the matters to be determined; the right to appear and be represented by counsel; the date, time, and place of the hearing; and the statues and rules involved.

14. At the hearing, Carrier withdrew its challenge about paying the ultrasound claims and agreed to pay these claims in their entirety.

15. The ultrasound reduced the swelling, relieved the pain, and accelerated the healing of the infection Claimant had in his knee following the surgery.

16. The myofascial release could have been counter-productive to the ultrasound in relieving Claimant's swelling.

17. Provider's documentation did not show the need for Claimant to have myofascial release in addition to ultrasound to relieve the swelling.

18. Claimant's orthopedic surgeon did not document the need for Claimant to have myofascial release.

19. Provider furnished Claimant active rehabilitation three times per week for twelve weeks.

20. Beginning on May 10, 2002, Provider billed Carrier for the physical therapy using CPT Code 97110.

21. CPT Code 97110 is used for billing one-on-one physical therapy.

22. One-on-one physical therapy is necessary in instructing a patient in performing new procedures, increasing the intensity and frequency of existing procedures, monitoring a patient, or when safety is a factor.

23. Claimant was physically fit, mentally alert, cooperative, and motivated to recover and return to work.

24. Claimant followed the same general regimen each session, knew how to adjust the equipment for his specific needs, and had access to safety bars on the equipment he used.

25. Provider did not spend the entire time with Claimant each visit.

26. Provider did not document Claimant's need to have one-on-one physical therapy.

27. It was reasonable for Provider to have two one-on-one sessions with Claimant initially to instruct him in his physical therapy regimen and one one-on-one session weekly thereafter.

28. It was reasonable for Provider to schedule one office visit with Claimant weekly to examine him.

29. It was reasonable for Provider to schedule a one-on-one physical therapy session with Claimant weekly to ensure his compliance and assess his progress.

30. CPT Code 97150 is the correct code to use for billing therapeutic exercises in a group setting.

V. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. ' 413.031.

2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. '' 402.073 and 413.031(k), and TEX. GOV'T CODE ANN. ch. 2003.

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

4. Myofascial release was not medically necessary for the treatment of Claimant's work-related injury, as specified in TEX. LAB. CODE ANN. ' 408.021.

5. CPT Code 97110 applies when the therapist works directly one-on-one with a patient on that patient's therapy only. *Medicine Ground Rule,* 28 TEX. ADMIN. CODE ' 134.202.

6. The group code, CPT Code 97150 is used for reimbursement of physical therapy that is not provided one-on-one. *Medicine Ground Rule,* 28 TEX. ADMIN. CODE ' 134.202.

7. Based on the findings of fact and conclusions of law, Provider is entitled to reimbursement for physical therapy under CPT Code 97110 for instructional purposes on May 10, 14, and once weekly thereafter beginning on May 20, 2002.

8. Based on the findings of fact and conclusions of law, Provider is entitled to reimbursement for the remainder of the active physical therapy under CPT Code 97150.

9. Provider is entitled to reimbursement for Claimant's ultrasound treatments and one office visit per week.

ORDER

IT IS, THEREFORE, ORDERED that Texas Mutual Insurance Company shall reimburse Chiropractic Health Center of Grand Prairie for the ultrasound treatments, 14 days of physical therapy under CPT Code 97110, the remainder of the physical therapy under CPT Code 97150, and 17 office visits for Claimant's treatment between April 8 and August 7, 2002.

SIGNED August 31, 2004.

GEORGIE B. CUNNINGHAM
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS