

**DOCKET NO. 453-04-4231.M5
MDR NO. M5-04-1115-01**

ODESSA PHYSICAL THERAPY,	·	BEFORE THE STATE OFFICE
Petitioner	·	
	·	
VS.	·	OF
	·	
	·	
CONTINENTAL INSURANCE	·	
COMPANY,	·	
Respondent	·	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Odessa Physical Therapy (Provider) challenges an Independent Review Organization (IRO) decision confirming the denial of reimbursement for physical therapy services provided to an injured worker (Claimant). The Administrative Law Judge (ALJ) concludes the disputed services were not shown to be medically necessary to treat Claimant’s injury. Consequently, reimbursement should be denied.

I. STATEMENT OF THE CASE

Administrative Law Judge (ALJ) Gary Elkins convened and closed the hearing on September 21, 2004. Larry Feeler, Provide’s owner, appeared at the hearing on behalf of Provider. Continental Insurance Company (Carrier) appeared and was represented by Attorney David Swanson.

Notice and jurisdiction, which were not disputed, are addressed in the Findings of Fact and Conclusions of Law.

II. DISCUSSION

A. Background.

Claimant suffered a compensable injury to her left elbow in ___ while she was performing therapeutic exercises related to prior shoulder injuries. The injury was diagnosed as acute lateral epicondylitis, or Atennis elbow.@ Treatment was delayed until November 14, 2002, pending a decision on the compensability of the injury. On that date, Provider began treating Claimant with passive physical therapy modalities that included paraffin baths, ultrasound, use of a TENS unit, soft tissue mobilization, range-of-motion and strengthening exercises, iontophoresis, and myofascial release. The treatments ended on January 23, 2003.

Carrier denied reimbursement for the services rendered during weeks eight through tenBJanuary 2, 2003, to January 23, 2003Bas not medically necessary. Provider responded by filing a request for medical dispute resolution. An Independent Review Organization reviewing assigned

to review Provide's claim concluded the services were not medically necessary. In response, Provider

requested a hearing before the State Office of Administrative Hearings, which culminated in a hearing and this Decision and Order.

B. Summary of Evidence and Argument

In support of its position that the services provided to Claimant were necessary for the treatment of her injuries, Provider argued the following:

- ! Just because passive modalities are normally considered most effective at the acute phase of injury does not mean they are not helpful at other stages of treatment, including the sub-acute or chronic phases.
- ! The passive modalities were used as adjunctive treatments to complement joint and tissue mobilization administered to Claimant.
- ! Claimant continued to show improvement throughout the treatment period and has not sought professional medical care since completing the disputed treatment and returning to her full employment duties.
- ! Other factors that contributed to the treatments as reasonable included the chronicity of Claimant's injury, her age (53 years), and the two-month period that elapsed after her injury but before Provider was able to initiate treatment.

Consistent with Carrier's position that the disputed services were not medically necessary to treat Claimant's injury, its witnesses testified to the following:

- ! The best treatment for epicondylitis is rest, bracing of the injured area, and anti-inflammatory medication.
- ! The passive modalities administered by Provider may have been appropriate for four to six weeks during the acute phase of injury, but Provider administered it for ten weeks, well beyond the acute phase.
- ! Although the acute phase of injury can vary, its expected duration for tendinitis such as that suffered by Claimant is four-to-six weeks with treatment. Claimant was not in the acute phase of injury during weeks eight through ten, the disputed dates of service.
- ! The treating medical doctor's referral prescription to Provider was too broad, leaving Provider with too much latitude regarding the type and frequency of treatments to be provided. Instead, the doctor should have requested specific treatments and detailed their nature and intensity rather than simply listing the goals he wished to achieve through physical therapy.
- ! Claimant experienced fluctuations in results that would not be expected in a successful passive treatment program.

- ! The three range-of-motion measurements taken during the duration of treatment were not sufficient to adequately measure Claimant's progress from the passive treatments. Instead, both range-of-motion and functional ability measurements should have been taken weekly or bi-weekly.

C. Analysis and Conclusion

Provider did not prove the disputed services were medically necessary. Claimant's tennis elbow did improve over time, and she ultimately returned to her full employment duties. Nevertheless, Claimant was beyond the acute phase of injury, the evidence demonstrated that the use of passive modalities beyond the acute phase required special circumstances, and Provider failed to demonstrate that Claimant presented such special circumstances. Furthermore, Claimant was not sufficiently evaluated at reasonable intervals to determine the extent to which the treatments were working. The ALJ also found persuasive Dr. Sedighi's testimony that the improvement in Claimant's tennis elbow during the period she was treated might have been the product of the natural healing process.

As Provider argued, exceptional circumstances such as Claimant's age, a delay in initiating treatment, or other factors might support the use of passive modalities beyond the acute stage of injury. Nevertheless, Provider failed to demonstrate that Claimant was affected by such circumstances. The ALJ also found problematic the broad nature of Dr. Garza's physical therapy prescription and the infrequency with which Claimant's range-of-motion and functional activity levels were measured. As noted by Dr. Sedighi, the prescription failed to describe the nature, frequency, or intensity of the prescribed therapy. The existence of only three range-of-motion measurements and no functional activity evaluations over the ten weeks of treatment further support the conclusion that the course of treatment in during the disputed dates of service was not reasonably calculated to specifically address the compensable injury.

Because Provider failed to prove that circumstances surrounding Claimant's elbow injury supported the use of passive physical therapy modalities during weeks eight through ten of her physical therapy treatment, reimbursement is not warranted

III. FINDINGS OF FACT

1. An injured worker (Claimant) suffered a compensable elbow injury in ___ while she was performing therapeutic exercises related to prior shoulder injuries.
2. At the time of Claimant's injury, her employer held workers' compensation insurance coverage with Continental Insurance Company (Carrier).
3. Claimant's injury was diagnosed as acute lateral epicondylitis, or Atennis elbow.@
4. On November 14, 2002, Odessa Physical Therapy (Provider) began treating Claimant with passive physical therapy modalities that included paraffin baths, ultrasound, use of a TENS unit, soft tissue mobilization, range-of-motion and strengthening, iontophoresis, and myofascial release. The treatments ended on January 23, 2003.

5. Carrier denied reimbursement for the treatments provided from January 2, 2003, to January 23, 2003, as not medically necessary.
6. In response to Carrier's denial of reimbursement, Provider filed a request for medical dispute resolution. An Independent Review Organization (IRO) assigned to review Provider's claim concluded the services were not medically necessary.
7. In response to the IRO decision, Provider timely requested a hearing before the State Office of Administrative Hearings.
8. Notice of the hearing was sent to the parties on March 31, 2004. The notice informed the parties of the date, time, and location of the hearing; a statement of the matters to be considered; the legal authority under which the hearing would be held; and the statutory provisions applicable to the matters to be considered.
9. The hearing convened and closed on September 21, 2004.
10. At the time the disputed services were provided, from January 2, 2003, to January 23, 2003, Provider was well beyond the acute phase of her ___ injury and had already undergone eight weeks of physical therapy.
11. Absent special circumstances, passive physical therapy modalities for the treatment of Claimant would have been appropriate for four to six weeks during the acute phase of her ___ injury.
12. No special or aggravating circumstances were shown that would have supported the use of passive modalities eight-to-ten weeks after Claimant's physical therapy began and over four months after her date of injury.
13. The three range-of-motion measurements taken during Provide's treatment of Claimant were not sufficient to adequately measure Claimant's progress.
14. No functional activity evaluations were performed over the ten weeks of passive physical therapy modalities administered to Claimant.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding pursuant to ' 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. ' ' 2001.051 and 2001.052.

3. As Petitioner, Odessa Physical Therapy (Provider) bears the burden of proof in this matter. 28 TEX. ADMIN. CODE (TAC) ' 148.21(h).
4. Provider failed to prove the disputed physical therapy services were reasonably required by the nature of the claimant's injury, cured or relieved the effects naturally resulting from the compensable injury, promoted Claimant's recovery, or enhanced Claimant's ability return to or retain employment. TEX. LAB. CODE ANN. ' 408.021.
5. The disputed services were not medically necessary to treat Claimant's compensable injury.
6. Provider is not entitled to reimbursement for the disputed services.

ORDER

IT IS ORDERED that the reimbursement claim of Odessa Physical Therapy for physical therapy services provided to Claimant from January 2, 2003, through January 23, 2003, is denied.

Signed November 22, 2004

**GARY W. ELKINS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**