

DOCKET NO. 453-04-4288.M5
[TWCC MR NO. M5-04-0761-01]

TEXAS MUTUAL INSURANCE COMPANY	:	BEFORE THE STATE OFFICE
	:	
	:	
V.	:	OF
	:	
DALE R. PRESSLER, P.T.	:	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Texas Mutual Insurance Company (Carrier) has appealed the decision of the Independent Review Organization (IRO) granting reimbursement for physical therapy treatments provided to injured worker ____ (Claimant). After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that Carrier has shown by a preponderance of the evidence that most of the services billed under CPT Code 97110 were not medically necessary. However, at the hearing Carrier agreed to provide additional reimbursement for some services, and the ALJ also concludes the evidence shows that some additional services were medically necessary. Therefore, as set forth in more detail below, the ALJ finds that Dale R. Pressler, P.T. (Provider) is entitled to total additional reimbursement of \$764.

I. BACKGROUND

Claimant suffered compensable, work-related injuries to his right wrist and leg when he fell approximately 10 feet from a ladder on _____. As a result of his fall, Claimant fractured his wrist and leg. On January 18, 2003, Claimant had surgery. On April 2, 2003, Claimant started a physical therapy program administered by Provider. Carrier reimbursed all of the physical therapy treatments between April 2, 2003, and April 20, 2003. From April 21, 2003, through June 5, 2003, Carrier reimbursed only two units of physical therapy per date of service. Carrier declined to reimburse any additional treatments or office visits, including all treatments between June 6, 2003 and July 22, 2003.

At issue in this case are two office visits (billed under CPT Code 99213) and 128 units of physical therapy (billed under CPT Code 97110) between April 21, 2003, and July 22, 2003.¹

¹ Originally, 136 units of CPT Code 97110 were in issue. However, at the hearing, the parties reached an

Carrier, as the workers' compensation insurance carrier for Claimant's employer, declined to reimburse the treatments, contending they were not medically necessary. The total amount currently in dispute is \$4,576.

Based on Carrier's denial of reimbursement, Provider sought medical dispute resolution through the Texas Workers' Compensation Commission (Commission). The matter was referred to an IRO designated by the Commission for the review process. The IRO determined that the services in issue were medically necessary treatment for Claimant's compensable injury. Carrier then requested a hearing before the State Office of Administrative Hearings (SOAH). The hearing convened on September 9, 2004, with ALJ Craig R. Bennett presiding. Provider appeared by telephone and represented himself. Carrier appeared through its attorney, Katie Kidd. The hearing concluded and the record closed that same day. No parties objected to notice or jurisdiction.

II. DISCUSSION AND ANALYSIS

This case involves a dispute over the necessity of one-on-one physical therapy treatments following Claimant 's injury. Except for two office visits in dispute, all of the services in issue were billed under CPT Code 97110. Carrier reimbursed some units of one-on-one therapy, but declined to reimburse all, claiming that not all were medically necessary. Carrier asserts that any additional benefits from therapeutic exercises could have been obtained through group exercise or a home exercise program and should not have required extensive supervision or one-on-one treatment. Therefore, Carrier contends the disputed treatments provided to Claimant between April 21, 2003, and July 22, 2003, were unnecessary.

In support of its position, Carrier offered the testimony of Susan Dunlap, P.T., and John Pearce, M.D. Both of these individuals reviewed the medical documentation related to Claimant and opined that Claimant did not need continued monitored treatment, but could have achieved any additional benefits through group therapy and the use of a home exercise program. They each pointed out that Claimant appeared to have no problem performing the exercises in the physical therapy program and was very motivated two factors that support the use of a home exercise or

agreement regarding reimbursement of eight of the units of treatment.

group therapy program, instead of one-on-one treatment. In contrast, ongoing one-on-one treatment is usually only necessary to monitor improvement and help a patient who has difficulty performing the exercises in the program. Because Claimant was motivated, was properly performing his exercises, and was progressing well, he should have been able to perform his exercises on his own or as part of a group at Provider's office, and should not have needed Provider's extensive one-on-one attention.² Further Carrier notes that, although Claimant injured both his wrist and leg, Provider did not treat his wrist injury at all. Rather, all therapy was directed toward Claimant's leg injury alone.

In response, Provider points out that Claimant needed additional physical therapy to help increase his range of motion and to improve his ambulation. Provider testified that Claimant was actually in therapy for two or more hours per day, but Provider only billed for the time that Provider saw Claimant one-on-one, which was usually slightly more than one hour per day of treatment. Provider asserts that the medical documentation shows that Claimant had not fully recovered from his injury and continued to have soreness and limitation in his leg, thus justifying the continued one-on-one treatment.

Ultimately, the ALJ agrees that Carrier has shown that most of the disputed treatments provided to Claimant between April 21, 2003, and July 22, 2003, and billed under CPT Code 97110 were not medically necessary. The medical and legal authority is amply clear that CPT Code 97110 is to be used only when the health care provider has worked directly one-on-one with the patient in regard to that patient's therapy alone.³ In this case, Claimant was progressing well and had no apparent problems in performing the exercises required of his physical therapy program. From the evidence presented, the ALJ sees no justified reason why Claimant would have continued to need

² At the hearing, Carrier's witnesses testified that some additional, limited treatment (beyond what Carrier reimbursed) was reasonable. Specifically, Susan Dunlap testified that, after June 5, 2003, two units of one-on-one therapy and two units of group therapy per week would have been appropriate, at least for an additional two weeks. In light of this, Carrier offered during the hearing to reimburse Provider an additional four units of group therapy and four units of one-on-one therapy. Provider agreed to downcode four units of one-on-one therapy to group therapy and accepted this offer, thus reducing the number of treatment units in dispute from 136 to 128. Beyond this additional treatment, Carrier's witnesses were clear in testifying that ongoing one-on-one treatment was simply not necessary.

³ See SOAH Docket No. 453-01-1188.M5 (April 3, 2002)(ALJ Smith); SOAH Docket No. 453-00-2051.M4 (December 1, 2000)(ALJ O'Malley); SOAH Docket No. 453-01-1081.M4 (May 25, 2001)(ALJ Smith); SOAH Docket No. 453-01-1492.M5 (July 23, 2001)(ALJ Cunningham); see the American Medical Association's *CPT Assistant*.

over an hour of ongoing one-on-one treatment three times per week. The ALJ finds persuasive Carrier ' s expert testimony that indicates Claimant should have been able to perform most of his exercises in a group setting or at home.

However, even if Claimant were performing his exercises in a group setting, it still would have been appropriate for Provider to meet with him initially one-on-one each day to determine his functioning level and to explain and discuss the exercise and treatment regimen for the day. Carrier does not dispute that physical therapy was appropriate for Claimant, nor does Carrier deny that the exercises performed were medically necessary. As such, the ALJ concludes that Provider is entitled to recover one unit of one-on-one therapy (billed under CPT Code 97110) during the time that Claimant was continuing in his physical therapy for each of the following dates of service in issue: 6/11, 6/18, 7/2, 7/3, 7/7, 7/9, 7/11, 7/14, 7/16, 7/18, 7/21, and 7/22. This is a total of 12 units at a reimbursement of \$35 per unit, for a total additional reimbursement of \$420 for services billed under CPT Code 97110. Otherwise, Carrier is not required to reimburse any other services billed under CPT Code 97110.

Carrier also denied reimbursement for two office visits billed under CPT Code 99213. At the hearing, Carrier's expert witness, Dr. Pearce, testified that regular office visits would be appropriate to monitor Claimant's improvement during the physical therapy. Based on this, the ALJ concludes that the two office visits in dispute on June 20 and July 9, 2003 were medically necessary and should be reimbursed. For these two office visits, Provider is entitled to reimbursement of \$48 each.

In conclusion, the ALJ finds that Provider is entitled to additional reimbursement of \$764, which includes \$248 agreed to by Carrier at the hearing, \$420 for twelve units of one-on-one therapy billed under CPT Code 97110, and \$96 for two office visits billed under CPT Code 99213. Carrier is ordered to reimburse Provider for these amounts. In support of this determination, the ALJ makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. Claimant suffered compensable, work-related injuries to his right wrist and leg when he fell approximately 10 feet from a ladder on ____.
2. Texas Mutual Insurance Company (Carrier) is the provider of workers' compensation insurance covering Claimant for his compensable injury.
3. As a result of his fall, Claimant fractured his wrist and leg.
4. On January 18, 2003, Claimant had surgery for his injuries.
5. From April 2, 2003, through July 22, 2003, Claimant was in a physical therapy program provided by Dale Pressler, P.T. (Provider).
6. Carrier reimbursed all of the Claimant's physical therapy treatments between April 2, 2003, and April 20, 2003.
7. From April 21, 2003, through June 5, 2003, Carrier reimbursed only two units of physical therapy per date of service. Carrier declined to reimburse any additional treatments or office visits, including all treatments between June 6, 2003 and July 22, 2003.
8. At the hearing, the parties reached an agreement regarding reimbursement of eight of the units of treatment for which Carrier agreed to reimburse Provider the sum of \$248.
9. Currently in dispute are two office visits (billed under CPT Code 99213) and 128 units of physical therapy (billed under CPT Code 97110) between April 21, 2003, and July 22, 2003. The total amount currently in dispute is \$4,576.
10. Carrier denied reimbursement for the services, contending they were not medically necessary.
11. One unit of one-on-one therapy (billed under CPT Code 97110) was reasonable, medically necessary, and designed to relieve Claimant's pain and/or improve his mobility and functioning for each of the following dates of service in 2003: 6/11, 6/18, 7/2, 7/3, 7/7, 7/9, 7/11, 7/14, 7/16, 7/18, 7/21, 7/22. The proper reimbursement for these services is \$35 per unit, for a total reimbursement of \$420.
12. Regular office visits were appropriate to monitor Claimant's improvement during the physical therapy administered by Provider, and the two office visits in dispute C on June 20 and July 9, 2003 C were medically necessary treatment for Claimant. The proper reimbursement for these office visits is \$48 each, for a total reimbursement of \$96.
13. Provider requested medical dispute resolution by the Texas Workers' Compensation Commission's Medical Review Division (MRD), which referred the matter to an Independent Review Organization (IRO).

14. MRD ordered reimbursement on February 11, 2004, based on the IRO physician reviewer's determination that the services in issue were medically necessary.
15. On March 2, 2004, Carrier requested a hearing and the case was referred to the State Office of Administrative Hearings (SOAH).
16. Notice of the hearing was sent by the Commission to all parties on April 5, 2004.
17. On September 9, 2004, Administrative Law Judge Craig R. Bennett convened a hearing in this case. Provider appeared by telephone and represented himself. Carrier appeared through its attorney, Katie Kidd. The hearing concluded and the record closed that same day.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act, specifically TEX. LABOR CODE ANN. §413.031(k), 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 28 TEX. ADMIN. CODE ch. 148.
3. The request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE § 148.3.
4. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Carrier has the burden of proof. 28 TEX. ADMIN. CODE §§ 148.21(h) and 133.308(w).
6. Carrier has shown, by a preponderance of the evidence, that all but twelve units of the disputed treatment provided to Claimant between April 21, 2003, and July 22, 2003, and billed under CPT Code 97110 were not medically necessary for treatment of Claimant's compensable injury.
7. Carrier has not shown, by a preponderance of the evidence, that the office visits on June 20 and July 9, 2003 were not medically necessary for treatment of Claimant's compensable injury.
8. Carrier is liable to reimburse Provider the total sum of \$764 for: (1) the group therapy and one-on-one therapy agreed to by the parties at the hearing; (2) an additional twelve units of one-on-one therapy (CPT Code 97110); and (3) two office visits (CPT Code 99213).

ORDER

IT IS, THEREFORE, ORDERED that Texas Mutual Insurance Company reimburse Dale Pressler, P.T. the sum of \$764 plus interest for the specified treatments provided to Claimant between April 21, 2003, and July 22, 2003.

SIGNED October 20, 2004.

**CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**