

INDUSTRIAL MEDICAL ASSOC.,	§	BEFORE THE STATE OFFICE
Petitioner,	§	
	§	
VS.	§	OF
	§	
HAMMERMAN & GAINER LM	§	
INSURANCE CORP.	§	
Respondent	§	ADMINISTRATIVE HEARINGS

**DECISION AND ORDER**

Claimant \_\_\_ developed acute right forearm and wrist pain on \_\_\_. He was diagnosed with right carpal tunnel syndrome and deQuervain’s tenosynovitis. Following surgery, \_\_\_ received 41 sessions of physical therapy from March 12 to May 29, 2002. The carrier, Hammerman & Gainer LM Insurance Corporation (Carrier), paid for some of the physical therapy. However, asserting a lack of medical necessity, Carrier denied reimbursement for the sessions from April 23, 2002, to May 29, 2002.<sup>1</sup> An Independent Review Organization (IRO) concluded that the disputed sessions were not medically necessary. The provider, Industrial Medical Associates (IMA), requested a hearing.

The Administrative Law Judge (ALJ) concludes that the disputed sessions were not reasonable and necessary.

**I. DISCUSSION**

**A. Procedural History**

The IRO decision is dated June 27, 2003. The Texas Workers’ Compensation Commission’s Medical Review Division (MRD) issued the decision as an order on July 2, 2003. IMA made a timely request for hearing. The Commission issued notice of the hearing on May 26, 2004. Following a continuance, the hearing was convened on December 13, 2004, before State Office of Administrative Hearings (SOAH) Judge Shannon Kilgore. A.J. Morris, Jr., M.D., appeared by telephone for IMA. Attorney Charlotte Salter represented Carrier. The hearing concluded, and the record closed, that same day.

**B. The Disputed Services**

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<sup>1</sup> The record indicates that the amount in dispute also includes services rendered on March 25, 2002. Provider Ex. 1 at 5-8 (Table of Disputed Services). The parties did not address why this additional, earlier date is part of this case.

At issue in this case are the following treatments, supplies, or services and the corresponding CPT Codes:

<b>Treatment</b>	<b>CPT Code</b>
range of motion measurements and report	95851
paraffin bath	97018
therapeutic exercises	97110
massage	97124
therapeutic procedures, group	97150
supplies and materials	99070

The total amount in dispute, according to the parties, is \$2,036.00.<sup>2</sup>

**C. Applicable Law**

The Texas Labor Code contains the Texas Workers' Compensation Act (Act) and provides the relevant statutory requirements regarding compensable treatment for workers' compensation claims.<sup>3</sup> In particular, the Act provides in pertinent part that:

- (a) An employee who sustains 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:
  - (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.

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<sup>2</sup> The parties stated at hearing that they agree the amount in dispute is \$2,036.00. The ALJ notes, however, that the record indicates this amount reflects the amount billed, as opposed to the maximum allowable reimbursement. *See* Provider Ex. 2 at 5-8 (Table of Disputed Services).

<sup>3</sup> TEX. LAB. CODE § 408.021.

Health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.<sup>4</sup>

The 1996 Medical Fee Guideline (MFG), which is applicable to services provided prior to August 1, 2003, establishes some billing parameters for services provided to workers' compensation claimants.<sup>5</sup>

The burden of proof in this case is on IMA to show by a preponderance of the evidence that the disputed services were reasonable and necessary medical treatments.<sup>6</sup>

**D. IRO Decision**

The IRO decision<sup>7</sup> stated that post-operative physical therapy after a simple carpal tunnel release and first extensor compartment steroid injection typically involves 12 to 16 visits. While there is reference in the records to reflex sympathetic dystrophy, there is no actual diagnosis of this condition and documentation to support such a diagnosis is poor. Further, the patient's response to the first month of therapy was poor. For these reasons, the IRO reviewer concluded that the continued physical therapy was not medically necessary.

**E. General Description of the Evidence**

The evidence in this case consists of: (1) medical records; (2) the testimony of Dr. Morris; (3) the testimony of Richard McGuire, a physical therapist with IMA; and (4) the testimony of Neal Blauzvern, D.O., a pain management specialist who testified for Carrier.

The medical records show that Dr. Morris, who works at IMA, first saw \_\_\_ on September 26, 2001, shortly following the onset of pain. Claimant was seen at IMA throughout the rest of 2001, through 2002, and at least into May 2003. He had surgery (a right endoscopic carpal tunnel release and first dorsal compartment injection) on February 20, 2002, performed by Linden Dillin,

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<sup>4</sup> TEX. LAB. CODE § 401.011(19).

<sup>5</sup> Medical Fee Guideline (1996). *See* 30 TEX. ADMIN. CODE § 134.201 (Commission's rule adopting the Medical Fee Guideline by reference). For services rendered after August 1, 2003, the 2002 Medical Fee Guideline is applicable. 28 TEX. ADMIN. CODE § 134.202; *Texas AFL-CIO v. Texas Workers Compensation Commission*, 137 S.W.3d 342 (Tex. App. Austin 2004, no pet. hist.).

<sup>6</sup> 28 TEX. ADMIN. CODE §§ 133.308(p)(5), 148.21(h)-(i). *See also* TEX. LAB. CODE § 413.031. The IRO decision is entitled to presumptive weight. 28 TEX. ADMIN. CODE § 133.308(w).

<sup>7</sup> Provider Ex. 1 at 3-4.

M.D. Except for more severe pain at the very beginning, \_\_\_ usually reported pain levels of five to seven (on a scale of one to ten) throughout the entire course of his treatment. A peer review performed at Carrier's request concluded that post-operative physical therapy from April 29 through May 3, 2002, was unnecessary.<sup>8</sup>

Dr. Morris is a family practice physician certified in pain management. In his testimony he pointed to a letter he had received from Dr. Dillin, dated April 26, 2002, stating that following the surgery \_\_\_ had developed palmar hypersensitivity and pain probably representing reflex sympathetic dystrophy (RSD). Dr. Dillin's letter states that he advocated a series of steroid Bier blocks and deep friction massage, and that \_\_\_ "should remain on physical therapy."<sup>9</sup> Dr. Morris testified that the physical therapy was successful. Richard McGuire, a physical therapist at IMA involved in \_\_\_'s care, also emphasized that Dr. Dillin ordered further physical therapy in late April.

Dr. Morris explained that RSD or, as it is sometimes known, extreme regional pain syndrome, is a common complication of carpal tunnel syndrome. It is a disorder involving the sympathetic nervous system in which a nerve near the site of trauma fires in a seizure-like manner. It can result from surgery or accidental injury, and it can become permanent if not treated.

Dr. Blauzvern, who is board-certified in anesthesia and pain management, testified that the standard for physical therapy sessions following arthroscopic carpal tunnel release syndrome is 14 visits. He stated that the possible diagnosis of RSD put forward by Dr. Dillin was unfounded. According to Dr. Blauzvern, RSD presents with a constellation of symptoms, often including burning pain, swelling, color or temperature changes, extreme hypersensitivity, pain responses to non-painful stimuli, and sweatiness or dryness. While not all of these symptoms must be present, nonspecific tenderness alone is not a sufficient basis for diagnosing RSD. Dr. Blauzvern also asserted that the course of therapy did not improve \_\_\_'s condition. He further noted that Dr. Dillin proceeded with a series of five steroid Bier block injections that produced no significant relief. On cross-examination, Dr. Blauzvern stated that a licensed physical therapist must follow a doctor's orders, but can ask questions or raise concerns. He stated that Dr. Morris, being a physician, did not have to follow Dr. Dillin's recommendations.

## **F. Analysis and Decision**

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<sup>8</sup> Provider Ex. 2 at 100-102. Because the billing records are not in evidence, the ALJ cannot determine if the peer review was used by Carrier to support its denials of reimbursement.

<sup>9</sup> Provider Ex. 2 at 97.

Carrier paid for approximately 22 sessions of post-surgical physical therapy from March 12 through April 19, 2002. There was little or no improvement from those treatments. IMA's rationale for continuing with physical therapy was the possibility that \_\_\_ had RSD. However, the evidentiary record supports the IRO's determination that any diagnosis of RSD was unfounded. IMA has not offered sufficient reason to disturb the IRO's conclusion that the disputed services were not reasonable or necessary.

## II. FINDINGS OF FACT

1. Claimant \_\_\_ developed acute right forearm and wrist pain on \_\_\_.
2. Hammerman & Gainer LM Insurance Corporation (Carrier) is the workers' compensation insurer with respect to the claims at issue in this case.
3. \_\_\_ first saw Dr. Morris at IMA on September 26, 2001, shortly following the onset of pain.
4. \_\_\_ had surgery (a right endoscopic carpal tunnel release and first dorsal compartment injection) on February 20, 2002, performed by Linden Dillin, M.D.
5. \_\_\_ began post-operative physical therapy on March 12, 2002.
6. From March 12, 2002, through April 19, 2002, \_\_\_ underwent approximately 22 sessions of physical therapy for which Carrier paid.
7. The physical therapy from March 12, 2002, through April 19, 2002, provided little or no benefit to \_\_\_
8. The standard for physical therapy sessions following arthroscopic carpal tunnel release syndrome is 14 visits.
9. Following the surgery, \_\_\_ developed some palmar hypersensitivity, but any diagnosis of reflex sympathetic dystrophy was unfounded.
10. From April 23 through May 29, 2002, \_\_\_ underwent additional multiple physical therapy sessions for which Carrier, asserting a lack of medical necessity, denied reimbursement.
11. At issue in this case are the following treatments, supplies, or services and the corresponding CPT Codes:

<b>Treatment</b>	<b>CPT Code</b>
range of motion measurements and report	95851
paraffin bath	97018

therapeutic exercises	97110
massage	97124
therapeutic procedures, group	97150
supplies and materials	99070

12. Claimant was seen at IMA throughout the rest of 2002 and at least into May 2003. Except for more severe pain at the very beginning, \_\_\_ usually reported pain levels of five to seven (on a scale of one to ten) throughout the entire course of his treatment.
13. Following Carrier's determination that it would not pay for the physical therapy sessions from April 23, 2002, through May 29, 2002, IMA requested medical dispute resolution.
14. An independent review organization (IRO) rendered a decision dated June 27, 2003, determining that the disputed services were not medically necessary. The Texas Workers' Compensation Commission's Medical Review Division (MRD) issued the decision as an order on July 2, 2003.
15. IMA made a timely request for hearing.
16. The Commission issued notice of the hearing on May 26, 2004.
17. 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.
18. Following a continuance, the hearing was convened on December 13, 2004, before State Office of Administrative Hearings (SOAH) Judge Shannon Kilgore. A.J. Morris, Jr., M.D., appeared by telephone for IMA. Attorney Charlotte Salter represented Carrier. The hearing concluded that same day.
19. The disputed physical therapy sessions from April 23 through May 29, 2002, were not reasonable or necessary treatment for \_\_\_'s compensable injury.

### **III. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter. pursuant to § 413.031 of the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ch. 401 *et seq.*
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE § 413.031; TEX. GOV'T CODE ch. 2003.
3. IMA timely filed a request for hearing as specified in 28 Texas Administrative Code § 148.3.
4. Adequate and timely notice of the hearing was provided in accordance with the Administrative Procedure Act. TEX. GOV'T CODE § 2001.052.

5. IMA has the burden of proof in this matter. 28 TEX. ADMIN. CODE §§ 133.308(p)(5) and (w), 148.21(h)-(i).
6. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. TEX. LAB. CODE § 408.021.
7. Based on the above Findings of Fact and Conclusions of Law, the Act does not require Carrier to reimburse IMA for the disputed physical therapy sessions from April 23 through May 29, 2002.

### **ORDER**

**IT IS THEREFORE ORDERED** that, in connection with claimant \_\_\_\_, Hammerman & Gainer LM Insurance Corporation need not pay for the disputed physical therapy sessions from April 23 through May 29, 2002.

**ISSUED February 11, 2005.**

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**SHANNON KILGORE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**  
**ADMINISTRATIVE LAW JUDGE**