

Texas Mutual Insurance Company (TMIC), the workers' compensation carrier, refused to pay for electrical stimulation², a passive therapy, provided on August 6, 2003. Although it paid for that same service for August 11, 2003, it refused to pay for any electrical stimulation therapy provided on or after August 13, 2003.

TMIC refused to pay for mechanical traction³, another passive therapy, provided on August 11, 2003, but paid for it on August 13th. It refused to pay for mechanical traction therapy on August 15, 2003, and beyond.

TMIC refused to pay for office/outpatient visits⁴ on or after August 13, 2003, and for one-on-one supervised active therapeutic exercises⁵ on or after August 15, 2003.

After unsuccessfully seeking reconsideration, Galaxy filed a request for medical dispute resolution with the Commission,⁶ which referred it to the IRO. The IRO agreed with the Carrier, which led Galaxy to file a request for a hearing before the State Office of Administrative Hearings (SOAH).

The SOAH hearing was held August 17, 2005, with ALJ Henry D. Card presiding. Both Galaxy and TMIC participated and were represented by counsel. Alex Riley, D.C., testified for Galaxy. N. F. Tsourmas, M.D., and William Defoyd, D.C., testified for TMIC. The hearing was adjourned the same day; however, the record was left open for the parties to file an agreed revised table of disputed services. That document was never filed, despite an August 31, 2005, letter from the ALJ to the parties inquiring about it. The ALJ closed the record by written order on October 13, 2005.

² CPT Code 97032.

³ CPT Code 97012.

⁴ CPT Codes 99312 and 99213.

⁵ CPT Code 97110.

⁶ Under legislation effective September 1, 2005, the Texas Workers' Compensation Commission was abolished and its functions transferred to the Division of Workers' Compensation at the Texas Department of Insurance.

II. DISCUSSION AND ANALYSIS

A. Services from October 24, 2003, through January 6, 2004

Dr. Riley testified that post-ESI therapy was medically necessary. He agreed, however, that such treatment typically occurs during the days immediately after the injections. In this case, Galaxy's second round of treatments did not begin until almost three weeks after the injections. Moreover, the record shows that pain management therapy was recommended for the Claimant, partly because of her depression, before the resumption of her treatments with Galaxy. The Claimant declined to participate in such therapy at that time. In addition, S. Ali Mohamed, M.D., in an assessment conducted on September 11, 2003, observed that the Claimant's symptoms had persisted despite her conservative treatment.⁷

The exercise program after the ESI was essentially the same as that before the ESI. The evidence shows that program was not medically necessary, considering the Claimant's psychological issues and the fact that program had not been successful before.

B. Services from August 6, 2003, through September 26, 2003

It is more difficult to assess the necessity of the disputed services provided before the ESI. The IRO stated those services were not medically necessary because the Claimant's recovery had plateaued by August 6th. In a sense that is true-the Claimant's subjective pain level, which began at "9" on July 9, 2003, reached "5" on August 4, 2003, and did not show a significant improvement after that date. However, that level had shown consistent improvement until that date, so the "plateau" is obvious only in retrospect. The lack of improvement after August 6th does not itself support a finding that the services were unnecessary.

The disputed treatments consisted of both active and passive modalities. Both of TMIC's witnesses testified that passive modalities were inappropriate by August 6, 2003, more than four weeks after the date of injury. Dr. Riley did not refute that testimony. The ALJ finds Galaxy did not prove those disputed passive modalities were medically necessary.

⁷ Respondent's Ex. 1, pages 152, 160-64, 207.

Most of the disputed services, however, consisted of one-on-one supervised active exercises. Drs. Tsourmas and Defoyd testified that one-on-one supervision was unnecessary and that the Claimant should have been transitioned, after a period of instruction, to a home exercise program. Dr. Riley responded that the Claimant's depression had adversely affected her motivation and that one-on-one supervision was necessary to ensure she performed the exercises and continued her recovery.

Both parties made persuasive arguments regarding the need for supervision in this instance. The ALJ need not decide that issue, however, because Dr. Defoyd also discussed the individual exercises prescribed by Galaxy as part of the Claimant's therapy. In Dr. Defoyd's opinion, the particular exercises were contraindicated for the Claimant's condition and therefore were unlikely to lead to her recovery or improvement. Galaxy did not successfully refute that testimony. Regardless of the need for one-on-one supervision, the ALJ finds the particular exercises performed by the Claimant were not medically necessary.

C. Summary of Recommendation

Galaxy did not meet its burden of proving the disputed services were medically necessary. Therefore, TMIC should not be required to reimburse Galaxy for those services.

III. FINDINGS OF FACT

1. ____, the Claimant, sustained a compensable injury to her lower back on ____.
2. Very soon after her injury, the Claimant sought chiropractic treatment from Galaxy Health Care Centers, P.A. (Galaxy).
3. Galaxy provided the Claimant passive treatments from July 9, 2003, to July 23, 2003, when it began providing a combination of passive treatments and supervised active exercises. It continued that program, phasing out the passive therapies, until September 26, 2003.
4. The Claimant underwent an epidural steroid injection (ESI) on October 2, 2003.
5. The Claimant resumed her supervised active exercise program with Galaxy on October 24, 2003, continuing until January 6, 2004, when she began a work hardening program.

6. Texas Mutual Insurance Company (TMIC), the workers' compensation carrier, refused to pay for electrical stimulation, a passive therapy, provided on August 6, 2003. Although it paid for that same service for August 11, 2003, it refused to do so for any electrical stimulation therapy provided on or after August 13, 2003.
7. TMIC refused to pay for mechanical traction, another passive therapy, provided on August 11, 2003, but paid for it on August 13th. It refused to pay for mechanical traction therapy on August 15, 2003, and beyond.
8. TMIC refused to pay for office/outpatient visits on or after August 13, 2003, and for one-on-one supervised active therapeutic exercises on or after August 15, 2003.
9. After unsuccessfully seeking reconsideration, Galaxy filed a request for medical dispute resolution with the Medical Review Division of the Texas Workers' Compensation Commission, which referred it to an Independent Review Organization (IRO).
10. The IRO agreed with the Carrier, which led Galaxy to file a request for a hearing before the State Office of Administrative Hearings (SOAH).
11. Notice of the hearing was sent to the parties October 20, 2004.
12. 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.
13. The SOAH hearing was held August 17, 2005, with ALJ Henry D. Card presiding. Both Galaxy and TMIC participated and were represented by counsel. Alex Riley, D.C., testified for Galaxy. N. F. Tsourmas, M.D., and William Defoyd, D.C., testified for TMIC. The hearing was adjourned the same day; however, the record was left open for the parties to file an agreed revised table of disputed services.
14. The agreed revised table was not filed. The ALJ closed the record by written order on October 13, 2005.
15. Post-ESI therapy typically is useful during the days immediately after the injections.
16. Galaxy's second round of treatments did not begin until almost three weeks after the injections.
17. Pain management therapy was recommended for the Claimant, partly because of her depression, before the resumption of her treatments with Galaxy.
18. The Claimant declined to participate in pain management therapy before her second round of therapy at Galaxy.
19. After August 4, 2003, the Claimant's symptoms persisted despite her conservative treatment.

20. The exercise program after the ESI was essentially the same as that before the ESI.
21. The disputed services provided by Galaxy to the Claimant from October 24, 2003, through January 6, 2004, were not medically necessary, considering the Claimant's psychological issues and the fact that program had not been successful before.
22. The Claimant's subjective pain level, which began at "9" on July 9, 2003, reached "5" on August 4, 2003, and did not show a significant improvement after that date.
23. The subjective pain level had shown consistent improvement until August 4, 2003, so any "plateau" in that level is obvious only in retrospect.
24. Passive modalities were medically unnecessary by August 6, 2003, more than four weeks after the date of injury.
25. The particular active exercises prescribed by Galaxy as part of the Claimant's therapy were contraindicated for the Claimant's condition and therefore were unlikely to lead to her recovery or improvement.
26. Regardless of the need for one-on-one supervision, the particular exercises performed by the Claimant were not medically necessary.
27. The disputed services provided by Galaxy to the Claimant from August 6, 2003, through September 26, 2003, were not medically necessary.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, 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. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052.
3. Galaxy has the burden of proving it should be reimbursed for the disputed services. 28 TEX. ADMIN. CODE (TAC) § 148.21(h).
4. Galaxy did not prove the disputed services were medically necessary.
5. TMIC should not be required to reimburse Galaxy for the disputed services.

ORDER

IT IS, THEREFORE, ORDERED that Texas Mutual Insurance Company shall not be required to reimburse Galaxy Health Care Centers, P.A., for the disputed services provided the Claimant from August 6, 2003, through September 26, 2003, and from October 24, 2003, through January 6, 2004.

SIGNED December 7, 2005.

**HENRY D. CARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**