

<b>NEUROMUSCULAR INSTITUTE OF TEXAS,</b>	'	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	'	
<b>V.</b>	'	<b>OF</b>
<b>ST. PAUL FIRE AND MARINE INSURANCE COMPANY,</b>	'	
<b>Respondent</b>	'	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Petitioner Neuromuscular Institute of Texas (NMI) appealed the findings and decision of the Texas Workers' Compensation Commission's (Commission's) designee, an independent review organization (IRO), which found that 24 sessions of physical therapy provided to a workers' compensation claimant (Claimant) were not medically necessary health care. This decision agrees with the decision of the IRO and finds that the treatments provided Claimant were not medically necessary.

**I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY**

There were no contested issues of jurisdiction or notice. Those issues are set out in the Findings of Fact and Conclusions of Law.

The hearing in this matter convened on May 16, 2005, before State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Wendy K. L. Harvel. Attorney Kevin Franta represented the Carrier. Attorney Allen Craddock represented NMI. The record closed the same day.

## II. DISCUSSION

### A. Background

Claimant sustained a compensable injury to her knee on \_\_\_\_\_. After her injury, Claimant began physical therapy. On June 12, 2003, Claimant still exhibited some pain in her knee. She underwent an MRI that showed joint effusion and chondromalacia patella.<sup>1</sup> On July 7, 2003, an orthopedic surgeon recommended physical therapy for the Claimant. She underwent additional physical therapy prescribed by Brad Burdin, D.C., Claimant's treating physician, and participated in two twelve-week sessions of therapy. The dates in controversy in this case are from July 14, 2003, through October 21, 2003.

### B. Legal Standards

NMI has the burden of proof in this proceeding.<sup>2</sup> Pursuant to the Texas Workers' Compensation Act, 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 cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment.<sup>3</sup> Health care includes all reasonable and necessary medical, chiropractic, and physical therapy services.<sup>4</sup>

#### NMI's Position

Dr. Burdin testified that the Claimant had a moderate degree of pain, swelling and stiffness in her knee. He testified that she participated in therapy to strengthen her quadriceps muscles in an attempt to reduce the pain in her knee. He further testified that in June when her knee continued to hurt, she had an MRI to rule out a meniscus tear. The MRI showed joint effusion and

---

<sup>1</sup> Chondromalacia patella is a roughening of the kneecap.

<sup>2</sup> 28 TEX. ADMIN. CODE ' ' 148.21(h) and (i); 1 TEX. ADMIN. CODE ' 155.41.

<sup>3</sup> TEX. LAB. CODE ' 408.021(a).

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

chondromalacia. Dr. Burdin admitted that the chondromalacia was preexisting but could have been aggravated or accelerated by the injury. Following the MRI, the Claimant went to Dr. Wilson, an orthopedic surgeon, who recommended therapy and rehabilitation. Dr. Burdin testified that the Claimant had limitations in the strength of her right knee, and that as a result of the physical therapy, her pain levels improved, and her right knee flexion improved. Dr. Burdin admitted that the Claimant stayed at work during the course of her treatment.

### **Carrier's Position**

Carrier presented the testimony of Mr. Andy Pratt, a physical therapist licensed in 1983.<sup>5</sup> His primary objection to the treatments in question is that the Claimant's abilities were all within normal limits. He also noted that the Claimant's strength abilities already exceeded the requirements for performing her full job duties. He noted that the Claimant received the same treatment for months with no functional goal in mind, rather the only stated goal was to relieve pain. He stated that when

a patient shows normal strength, normal range of motion, and can perform her job duties, she should continue with a home exercise program if additional physical therapy is needed. He noted that the exercises prescribed for the Claimant were stretches that could be performed at home because no special medical equipment is needed.

Carrier argues that a health care provider has an obligation under 28 TEX. ADMIN. CODE § 180.22(c)(2) to efficiently manage the health care provided to an injured worker, which it alleges was not done in this case.

### **E. Analysis**

The ALJ found the testimony of Mr. Pratt challenging the necessity of the disputed treatments and the ability of the Claimant to perform the treatments at home to be highly credible. Looking through the medical record, the ALJ was struck by the lack of progress that Claimant made with all the treatment she received. On May 23, 2003, a physical therapist made objective findings that Claimant's range of motion as within functional limits, that her gait was within functional limits,

---

<sup>5</sup> NMI took Mr. Pratt on *voir dire* to demonstrate that as a physical therapist he does not diagnose or prescribe physical therapy to patients. Rather, his role is to make determinations about whether the physical therapy is effective and to talk to the prescribing doctor about what type of physical therapy should be performed. Mr. Pratt credibly testified that he does have the ability within the scope of his practice to discontinue therapy when it is no longer effective.

and that strength was 4/5 for the quadriceps.<sup>6</sup> During her initial examination at NMI, it was noted she was within normal limits except for a strength 4/5 for the right quadricep.<sup>7</sup> It was also noted that her strength exceeded her job requirements.<sup>8</sup> Mr. Pratt credibly testified that a strength rating of 4/5 for the quadricep is normal and did not warrant lengthy physical therapy. Rather, the strength could be improved with home exercises. A review of the physical therapy performed indicates that Claimant performed stretches and leg bends that could have been performed at home because no special equipment was needed.<sup>9</sup>

Because the medical record shows that Claimant did not need the physical therapy provided and because the Claimant could have performed the exercises at home, the ALJ finds that Carrier has met its burden of proof and denies reimbursement of the disputed claims.

### **III. FINDINGS OF FACT**

1. On \_\_\_\_, Claimant sustained an injury compensable under the Texas Workers' Compensation Act.
2. At the time of the compensable injury, Claimant's employer had workers' compensation insurance coverage with the St. Paul Fire and Marine Insurance Company (Carrier).
3. Claimant began treatment on May 23, 2003, at the Neuromuscular Institute of Texas (NMI). Brad Burdin, D.C., was Claimant's treating physician.
4. The disputed treatments were provided between July 14 and October 21, 2003.
5. After Carrier denied reimbursement for the treatments, Petitioner appealed to the Texas Workers' Compensation Commission (Commission), which referred the dispute to its designee, an independent review organization (IRO).
6. On September 16, 2004, the IRO upheld the Carrier's denial of reimbursement.
7. NMI timely appealed the IRO's decision on September 30, 2004.
8. On November 5, 2004, the Commission issued the notice of hearing, which stated the date, time, and location of the hearing and cited to the statutes and rules involved, along with a short, plain statement of the factual matters involved.

---

<sup>6</sup> Respondent Ex. 1, at A9.

<sup>7</sup> Respondent Ex. 1, at A11.

<sup>8</sup> Respondent Ex. 1, at A21.

<sup>9</sup> *E.g.*, Respondent Ex. 1, at A69-A72; A74-A80.

9. On May 16, 2005, a hearing was held at the State Office of Administrative Hearings. Both parties were represented by counsel and participated. The record closed the same day.
10. When Claimant began physical therapy, she had normal range of motion and strength.
11. Claimant performed exercises that did not involve special equipment and could have been performed at home.
12. The treatments provided between were not shown to be reasonably required by the nature of Claimant's injury.

#### **IV. CONCLUSIONS OF LAW**

1. The Texas Workers' Commission has jurisdiction over this matter pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ' 413.031.
2. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ' 413.031(k) and TEX. GOV'T CODE ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ' ' 2001.051 and 2001.052.
4. NMI had the burden of proof in this proceeding. 28 TEX. ADMIN. CODE ' ' 148.21(h) and (i); 1 TEX. ADMIN. CODE ' 155.41.
5. A health care provider is required to efficiently use and manage the health care provided to an injured worker. 28 TEX. ADMIN ' 133.202(c)(2).
6. Based on the Findings of Fact, NMI failed to show that the treatments provided to Claimant were an efficient use of health care.
7. Based on the Findings of Fact, Claimant's physical therapy was not medically necessary health care under TEX. LAB. CODE §§ 401.011 and 408.021(a).
8. Based upon the foregoing Findings of Fact and Conclusions of Law, the Institute's request for reimbursement should be denied.

#### **ORDER**

**IT IS THEREFORE, ORDERED** that the Neuromuscular Institute of Texas' appeal of the IRO's decision and request for reimbursement are denied

**SIGNED May 26, 2005.**

---

**WENDY K. L. HARVEL  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**