SOAH DOCKET NO. 453-05-1229.M5
MR NO. M5-04-3438-01

DANNY BARTEL, M.D., Petitioner	§	**BEFORE THE STATE OFFICE**
	§	
V.	§	**OF**
	§	
LUMBERMENS UNDERWRITING ALLIANCE, Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Danny Bartel, M.D., challenges the decision of the Texas Workers' Compensation Commission (Commission),[1] acting through an independent review organization (IRO), in a dispute regarding the medical necessity of injections provided to Claimant__. This decision finds largely in favor of Dr. Bartel.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing on the merits was held on October 10, 2005, at the facilities of the State Office of Administrative Hearings, 300 W. 15th St., Austin, Texas. Dr. Bartel appeared *pro se.* Lumbermens Underwriting Alliance (Carrier) was represented by Steve Tipton, an attorney. Administrative Law Judge (ALJ) Katherine L. Smith presided. Neither party challenged notice or jurisdiction. The record closed on October 21, 2005, with additional written argument. The ALJ admits into evidence as Ex. 4, a letter written by Dr. Bartel on May 16, 2005, and filed at SOAH on May 18, 2005.[2]

[1] Effective September 1, 2005, the functions of the Commission were transferred to the newly created Division of Workers' Compensation of the Texas Department of Insurance.

[2] On October 11, 2005, the ALJ issued Order No. 4, in which she stated that she wanted to admit the letter, which had been overlooked at the hearing, into evidence. Carrier filed a response on October 17, 2005, stating that it did not object to the admission and raising additional closing argument. Dr. Bartel filed no additional argument in response.

II. DISCUSSION

A. Background

Claimant suffered a compensable injury to his cervical spine on___, when he was involved in a motor vehicle accident. He underwent a cervical fusion in 2001. Dr. Bartel provided Claimant with injections on August 22, September 5, and September 26, 2003. At issue is the medical necessity of epidural steroid injections (ESIs) and tendon sheath injections. The IRO found in a decision issued on September 3, 2004, that the services were not medically necessary.

B. Dr. Bartel's Evidence and Argument

Dr. Bartel is a diplomat of the American Board of Psychiatry and Neurology and a fellow in the Academy of Neurology. According to Dr. Bartel, Claimant has a cervical disc injury. Ex. 4. He testified that the surgery essentially failed, and Claimant had residual neurologic deficits and pain that required ongoing treatment. According to Dr. Bartel there are two sources of Claimant's pain. One is myofascial, that is, spastic muscles that are rigid due to the second source of pain, a nerve root injury. Dr. Bartel treats Claimant with medications, tendon sheath injections, and ESIs to reduce his pain, improve his mobility, and limit his use of medications. The ESIs treat the neuropathic pain, the source of which is chemical irritation of the nerve root. The tendon sheath injections treat the muscular, skeletal pain. Dr. Bartel testified that he provides the treatment only two or three times a year, which is usual and customary with a patient who has chronic neuropathic pain. The standard treatment is to provide a series of three injections over a three month period. In this case Dr. Bartel provided injections on three separate occasions within two months, which relieved Claimant's pain, improved his mobility, and reduced his use of medications. Dr. Bartel noted that Claimant has not returned for more treatment.

According to Dr. Bartel, tendon sheath injections have replaced trigger point injections because they are more effective, last longer, and are less harmful to the underlying muscle tissue than trigger point injections. Ex. 4. He testified that he is not aware of any Medicare policies limiting the use of injections. He testified that the academies recommend the treatment and that he follows a large body of literature that defends the treatment. He noted that if the injections do not work, Claimant will have to go back to surgery for another attempt at fusion or decompression.

In response to the IRO, Dr. Bartel testified that he did not do the injections in an ambulatory surgery center, but in his office. He admitted that using CPT code 62311, which is for a lumbar ESI, instead of CPT code 62310 to bill for the cervical ESI of September 26, 2003, was a billing error.

C. Carrier's Evidence and Argument

Carrier raised two objections regarding billing. According to the Carrier, the billing error made the billing for the cervical ESI of September 26, 2003, an incomplete billing that is not reimbursable. Carrier also noted that Dr. Bartel billed for eight tendon sheath injections on August 22 and September 26 and for four on September 5, using CPT Code 20550. According to the Carrier, CPT Code 20550, which applies to trigger point injections, was expanded to include tendon sheath injections. Carrier argues that Medicare allows for reimbursement for only one trigger point injection for each body area per date of service. Ex. 2 at 2. Carrier notes that Medicare polices are applicable pursuant to TEX. LABOR CODE ANN. § 413.011.

Carrier also argues against the efficacy of the treatments. Carrier argues that there is a dearth of evidence supporting the use of ESIs in chronic situations absent specific requirements, such as to avoid surgery. Ex. 2 at 20. Carrier argues more specifically that the theory that neuropathic pain comes from a chemical irritation is unproven. Ex. 2 at 23. Carrier also argues that ESIs are used mainly to treat lumbar pain, and not for the cervical spine. Ex. 29-30. Carrier asserts that there is little evidence that injections work, other than anecdotal. Carrier also argues that no guidelines suggest that ESIs and tendon sheath injections be done together, and that doing so precludes one from knowing which procedure would be sufficient to address Claimant's pain.

D. ALJ's Analysis

Contrary to the IRO's decision, the ALJ finds that the injections were medically necessary. As Dr. Bartel noted, the IRO found incorrectly that trigger point injections were performed and that they were performed in a special procedure room. Although the IRO found that there was no objective medical evidence of a disc lesion in the cervical spine to warrant the first cervical ESI and that there was no follow-up documentation to show improvement after the first and second injections, Dr. Bartel testified persuasively that the process involves three sessions. Moreover, Dr. Bartel indicated that he hoped the ESI injections would preclude Claimant from having to have further surgery. *See* Ex. 2 at 20. Although "no randomized controlled studies exist to establish the role of cervical ESIs," studies support their use in patients with neck pain. Ex. 2 at 29. As for Carrier's evidence that tendon sheath injections are not recommended for neck and upper back complaints, that evidence is equivocal. Ex. 2 at 17, 20. And contrary to Carrier's argument, the evidence does show that even that trigger point injections provide long term pain relief. Ex. 2 at 65. In Claimant's case both sets of injections appeared to have worked.

As for Carrier's argument that Dr. Bartel should not be reimbursed for the billing error, the ALJ disagrees. Dr. Bartel should not be penalized for one incorrect digit. It is clear from the other billings, as well as from the diagnosis code of 722.0 that appeared on the bills, that the cervical spine was being treated. The error was inadvertent and not an attempt to over-bill, for as Ex. 3 shows, a lumbar ESI is reimbursed at a lower rate than a cervical ESI.

More troubling to the ALJ is Carrier's argument that Dr. Bartel should be reimbursed for only one tendon sheath injection per session, per the February 28, 2003, *Medicare Part B Newsletter* issued by TrailBlazer Health Enterprises, LLC**,** a Centers for Medicare & Medicaid Services Contracted Intermediary. According to the newsletter, the Local Medical Review Policy (LMRP) on trigger point injections is that: "No more than one [trigger point] injection for each of five sites are allowed per date of service." The newsletter notes further that the various cites are the head, cervical spine, upper extremities, thoracic spine, lumbrosacral spine, and lower extremities. Ex. 2 at 2. The newsletter notes further, however, that the Virginia LMRP on trigger point injections was retired on

March 21, 2002, and codes 20552 and 20553 were added for trigger point and tendon injections respectively, and each new code allows for only one unit to be billed per muscle group. In this case Dr. Bartel administered injections in the left and right splenius capitis, left and right levator scapulae, left and right rhomboid, and left and right trapezius at each session. Ex. 3. On August 22 and September 26, he billed for eight injections, whereas on September 4, he billed for four. Because the only guideline for payment that directly addresses tendon sheath injections is the note regarding the Virginia LMRP, the ALJ finds that Dr. Bartel should be reimbursed for four tendon sheath injections per each treatment session, to which Dr. Bartel acquiesced in his closing argument.

Therefore, the ALJ finds that Dr. Bartel has met his burden of proof that the treatments provided to Claimant on August 22, September 5 and 26, 2003, were medically necessary and is due reimbursement from the Carrier.

IV. FINDINGS OF FACT

1. Claimant suffered a compensable injury on___, when he was involved in a motor vehicle accident.

2. At the time of the injury, Claimant's employer had workers' compensation insurance coverage with Lumbermens Underwriting Alliance (Carrier).

3. Claimant had surgery on his cervical spine in 2001.

4. Danny Bartel, M.D., has been treating Claimant. Carrier denied reimbursement for cervical epidural steroid injections (ESIs) and tendon sheath injections that Dr. Bartel provided Claimant on August 22, September 5 and 26, 2003, based on lack of medical necessity.

5. Dr. Bartel requested medical dispute resolution at the Texas Workers' Compensation Commission (Commission).

6. On September 3, 2004, the Commission's Medical Review Division issued a decision adopting the conclusion of an independent review organization (IRO) that the services in dispute were not medically necessary.

7. On September 24, 2004, Dr. Bartel filed a request for a hearing with the State Office of Administrative Hearings (SOAH), seeking review of the IRO's decision.

8. The Commission issued a notice of the hearing on November 8, 2004.

9. The hearing convened on October 10, 2005, at 300 W. 15th St., Austin, Texas. Both parties appeared.

10. Claimant has a cervical disc injury resulting in neurologic deficits and ongoing neuropathic pain that requires ongoing treatment.

11. Dr. Bartel treated Claimant with cervical ESIs so that Claimant would not have to undergo additional fusion or decompression surgery.

12. The ESIs treat the nerve root injury that causes the neuropathic pain.

13. Dr. Bartel administered injections tendon sheath injections in the left and right splenius capitis, left and right levator scapulae, left and right rhomboid, and left and right trapezius at each session.

14. The tendon sheath injections treat the muscular, skeletal pain.

15. The injections relieved Claimant's pain, improved his mobility, and reduced his use of medications.

V. CONCLUSIONS OF LAW

1. The Division of Workers' Compensation of the Texas Department of Insurance has jurisdiction related to this matter pursuant to Acts of May 30, 2005, 79th Leg., ch. 265, § 8.013, eff. Sept. 1, 2005, and TEX. LAB. CODE ANN. §413.031.

2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. §§ 402.073(b) and 413.031(k); TEX. GOV'T CODE ANN. ch. 2003.

3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'TCODE ANN. §§ 2001.051 and 2001.052.

4. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN CODE (TAC) §§ 148.1-148.28.

5. Dr. Bartel had the burden of proof in this proceeding. 28 TAC §§ 148.14(a); 1 TAC § 155.41.

6. Under TEX. LABOR CODE § 408.021(a)(1), 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 that cures or relieves the effects naturally resulting from the compensable injury.

7. The tendon sheath and ESI injections that Dr. Bartel provided to Claimant on August 22, September 5 and 26, 2003, were medically necessary health care.

8. TEX. LABOR CODE § 413.011 requires that "the most current reimbursement methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services" be adopted for reimbursement.

9. The Virginia Local Medical Review Policy allows for one tendon sheath injection to be billed per muscle group. *Medicare Part B Newsletter*, No. 03-032, February 28, 2003, p. 2.

10. Dr. Bartel should be reimbursed for four tendon sheath injections per each treatment session.

11. Dr. Bartel is due reimbursement based upon the foregoing Findings of Fact and Conclusions of Law.

ORDER

IT IS THEREFORE, ORDERED that Lumbermens Underwriting Alliance shall reimburse Dr. Bartel for the treatments he provided to Claimant on August 22, September 5 and 26, 2003.

SIGNED December 12, 2005.

_____

KATHERINE L. SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS