

**SOAH DOCKET NO. 453-05-3187.M5
MDR NO. M5-04-3173-01**

**NEUROMUSCULAR INSTITUTE OF
TEXAS, Petitioner**

VS.

**AMERICAN HOME ASSURANCE
COMPANY, Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

The Neuromuscular Institute of Texas (NIT) challenged the decision of the Texas Workers' Compensation Commission's (Commission's) Medical Review Division (MRD) denying reimbursement for physical medicine treatments provided to the Claimant _____. The Administrative Law Judge (ALJ) finds that the NIT failed to meet its burden of proof and is not entitled to reimbursement.

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

On _____, Claimant, a 54-year old bus driver, was in an accident that resulted in injury and pain to his cervical, thoracic, and lumbar spine. Claimant began receiving treatment at NIT on September 19, 2002.¹ Claimant was diagnosed with sprain/strain of the spine and disc bulges. American Home Assurance Company (AHAC) denied reimbursement for services that NIT provided Claimant from May 21 through September 22, 2003. The Independent Review Organization, to which the MRD referred the dispute, found that the office visits, office visits with manipulations,

¹ NIT Ex. 1 at 168.

therapeutic exercises, myofascial release, and manual therapy provided to Claimant between May 21 and September 22, 2003, were not medically necessary because Claimant obtained no relief from the ongoing treatments beyond May 14, 2003.

The hearing on the merits convened on June 8, 2005, at the facilities of the State Office of Administrative Hearings, 300 W. 15th St., Austin, Texas. Neither party challenged the adequacy of notice or jurisdiction. ALJ Katherine L. Smith presided. NIT was represented by Allen Craddock, an attorney. AHAC was represented by Steven Tipton, an attorney. The record closed on July 1, 2005, after the filing of briefs. The issue raised by NIT concerning whether extent of injury had been waived by AHAC by its failure to raise it in a TWCC-21 does not need to be addressed in light of the decision below.

II. ANALYSIS

NIT's expert witness, Brad Burdin, D.C., testified that the physical medicine treatments provided were necessary because they complemented trigger point injections that Claimant was receiving. He stated that aggressive physical therapy should be provided along with the trigger point injections to increase the distribution of the medication to the muscles to help prevent spasms. Dr. Burdin noted that up to six to seven sessions after an injection would accomplish that goal. The ALJ finds that testimony persuasive, but notes that the only trigger point injections reported in the medical record were provided on April 24 and May 1, 2003, and NIT apparently received reimbursement for the treatments provided Claimant on May 5, 7, 12, 14, and 19, 2003.²

Although Dr. Burdin suggested that continuing the same physical medicine treatments eight months after an injury was reasonable to decrease spasms, improve range of motion and strength,

² *Id.* at 91, 92, 93, 94, and 95.

and

to reduce pain, there is no indication that was being accomplished in this case after the injections ceased. At that point the treatments did not change, nor was there any explanation in the record why the same treatments were still being provided. As John Braswell, D.C., AHAC's expert witness noted, the medical notes do not indicate any objective improvement, such as increase in range of motion or function, nor even any change in subjective complaints. By May 21, 2003, Claimant had been treated with 68 visits and treatment sessions. And whereas his level of pain had been a six out of ten on September 19, 2002, it was a seven out of ten on May 14, 2003.³ Moreover, Claimant was still in considerable pain as late as September 22, 2003.⁴ According to Dr. Braswell, the absence of improvement made the ongoing treatment unreasonable.

Furthermore, when a healthcare provider bills for physical medicine treatment, the healthcare provider must submit progress or SOAP⁵ notes substantiating the care given and the need for further treatment and services, and indicating progress, improvement, the date of the next treatment and services, complications, and expected release date.⁶ The treatment notes concerning the dates in dispute contain little or no objective findings, no reassessment of the treatment being provided, and no change in plan in response to Claimant's lack of progress justifying continuing the same treatment from May to September, 2003.

Based on the above, the ALJ concludes that NIT failed to carry its burden of proof that it is due reimbursement for physical medicine treatment provided to Claimant from May 21 to September 22, 2003.

³ NIT Ex. 1 at 92, 168.

⁴ *Id.* at 60.

⁵ Subjective/Objective/Assessment/Plan.

⁶ 28 TEX. ADMIN. CODE § 133.1(a)(3)(E)(i).

III. FINDINGS OF FACT

1. On _____, Claimant _____ sustained a work-related injury to his cervical, thoracic, and lumbar spine when the bus he was driving was involved in a motor vehicle accident.
2. His employer was insured by American Home Assurance Company (AHAC).
3. Claimant began receiving treatment at the Neuromuscular Institute of Texas (NIT) on September 19, 2002.
4. NIT provided various physical medicine treatments, including office visits, office visits with manipulations, myofascial release, therapeutic exercises, and manual therapy to Claimant from May 21 to September 22, 2003, for which it sought reimbursement.
5. AHAC denied reimbursement.
6. NIT filed a request for medical dispute resolution with the Texas Workers' Compensation Commission's (Commission's) Medical Review Division (MRD).
7. An independent review organization to which the MRD referred the dispute and found that the treatments were not medically necessary.
8. NIT appealed the MRD decision and requested a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).
9. On January 19, 2005, the Commission issued the notice of the hearing, which stated the date, time, and location of the hearing and cited to the statutes and rules involved, and which provided a short, plain statement of the factual matters asserted.
10. The hearing was held on June 8, 2005, at 300 W. 15th St., Austin, Texas. The record close on July 1, 2005, with briefing.
11. The physical medicine treatments provided Claimant on May 5, 7, 12, 14, and 19, 2003, complemented trigger point injections that Claimant received on April 24 and May 1, 2003.
12. When the trigger point injections ceased, the treatments did not change.
13. There was no explanation in the medical record why the same treatments were still being provided.

14. By May 21, 2003, Claimant had been treated with 68 visits and treatment sessions.
15. Despite the amount of treatment, his range of motion and function did not increase and his level of pain had increased from six out of ten on September 19, 2002, to seven out of ten on May 14, 2003, and he was still in considerable pain on September 22, 2003.
16. The treatment notes from the dates in dispute contain few objective findings, no reassessment of the treatment being provided, and no change in the treatment plan in response to Claimant's lack of progress.

IV. CONCLUSIONS OF LAW

1. 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) and TEX. GOV'T CODE ANN. ch. 2003.
2. NIT filed a timely notice of appeal of the MRD decision pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 133.308(u) and 148.3(a).
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 and 28 TAC 148.5(a).
4. NIT had the burden of proof as the party seeking relief, pursuant to 28 TAC § 148.14(a).
5. 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, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LABOR CODE ANN. § 408.021.
6. The treatment notes do not document the need for continued physical medicine treatment beyond May 19, 2003, because they fail to substantiate the need for further treatment and services and do not show progress or improvement, complications, and the expected release date. 28 TAC §133.1(a)(3)(E)(I).
7. Based upon the foregoing findings of fact and conclusions of law, the treatment provided to Claimant that included office visits, office visits with manipulations, therapeutic exercises, myofascial release, and manual therapy provided from May 21 to September

22, 2003, was not medically necessary health care under TEX. LAB. CODE ANN. §§ 401.011 and 408.021(a).

8. Based upon the foregoing findings of fact and conclusions of law, NIT's request for reimbursement should be denied.

ORDER

IT IS ORDERED THAT Neuromuscular Institute of Texas is not due additional reimbursement from American Home Assurance Company for treatment provided to _____ from May 21 to September 22, 2003.

Signed August 30, 2005.

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