

**DOCKET NO. 453-05-3674.M5
TWCC MRD NO. M5-05-0396-01**

NEUROMUSCULAR INSTITUTE OF TEXAS, PA, Petitioner	OF § § § § §	BEFORE THE STATE OFFICE
V.		OF
AMERICAN HOME ASSURANCE COMPANY, Respondent		ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Neuromuscular Institute of Texas, PA, (Provider) appealed the decision of the Texas Workers' Compensation Commission (Commission)¹ designee, an Independent Review Organization (IRO), which denied reimbursement for office visits, manual therapy techniques, electrical stimulation unattended, osteopathic manipulative treatment, therapeutic procedure, range of motion, massage therapy, myofascial release, and ultrasound (collectively, chiropractic care)² provided to Claimant ___(Claimant) from October 28, 2003, through January 21, 2004. The Administrative Law Judge (ALJ) finds that the chiropractic care was not medically necessary. Accordingly, American Home Assurance Company (Carrier) is not required to reimburse Provider for the chiropractic care provided from October 28, 2003, through January 21, 2004.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On January 9, 2006, ALJ Michael J. O'Malley convened the hearing on the merits at the William P. Clements Building, 300 West 15th Street, Austin, Texas. Provider appeared and was represented by attorney Allen T. Craddock. Carrier appeared and was represented by attorney Kevin J. Franta. On January 17, 2006, Carrier submitted relevant sections from Janet Travell's *Myofascial Pain and Dysfunction: Trigger Point Manual*, and the record closed that day. There were no contested issues regarding notice or jurisdiction; therefore, those issues are presented in the findings

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 The total amount in dispute is \$901.92.

of fact and conclusions of law.

II. BACKGROUND, EVIDENCE, AND DISCUSSION

1. Background

Claimant had been employed at ___for approximately 22 years when she began to complain of numbness and tingling in her hands. On___, Claimant sustained a compensable injury when she was diagnosed with myofascitis (inflamed muscle) in the cervical region, right rhomboids, trapezius, and forearms. Since her injury, she has received multiple trigger point injections followed by physical therapy, such as massage, myofascial release, and ultrasound. Claimant has remained symptomatic despite continued treatment. Claimant’s condition has become chronic, but she was able to return to work in October 2003.

B. Legal Standards

Provider has the burden of proof in this proceeding. 28 TEX. ADMIN CODE § 148.14(a). An employee who has sustained 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. TEX. LABOR CODE ANN. § 408.021(a).

C. Parties’ Positions and Evidence

1. Provider’s Position and Evidence

Provider generally argues that the post-injection therapy was medically necessary because it increased the effectiveness of the trigger point injections. Provider also argues that because the

trigger point injections were found to be medically necessary, the treatment following the injections should also be considered medically necessary. Brad Burdin, D.C., testified that the post-injection therapy increased Claimant's circulation and decreased her muscle spasms. Additionally, D. Burdin testified that the physical therapy modalities were performed according to the prescriptions of David M. Hirsch, D.O., the doctor who provided the trigger point injections.

2. Carrier's Position and Evidence

Neal Blauzvern, M.D., testified on behalf of Carrier. Dr. Blauzvern testified that it was not necessary to perform passive modalities on Claimant following the trigger point injections. He opined that home stretching and other active exercises would be appropriate but not passive modalities performed as part of a physical therapy program. Dr. Blauzvern also testified that Claimant's condition had become chronic and the continued post-injection physical therapy did not improve her condition. He noted that on January 27, 2004, after the repeated post-injection therapy, Claimant still had a 20 percent whole person impairment rating. Dr. Blauzvern also testified that the medical literature only recommends passive range of motion stretching and an active home-exercise program following trigger point injections.

D. ALJ's Analysis

Claimant has a chronic myofascitis (inflamed muscle) in the cervical region. Myofascitis causes muscle spasms and can be painful. Since Claimant's injury, she has received many trigger point injections to reduce her pain. The trigger point injections are not in dispute; this case only involves the post-injection therapy. The ALJ finds that the post-injection therapy was not medically necessary for the following reasons.

Claimant's injury occurred in ___ and had become chronic by late October 2003. Because Claimant's condition had become chronic, she should not have been treated with passive modalities. Passive modalities are typically used during the healing phase, which is typically six to eight weeks

after the injury. Long-term treatment with passive modalities has not been shown to be beneficial and could promote physician dependence.³

Although Provider argues that the passive modalities increased the effectiveness of the trigger point injections, the medical literature does not support this theory. At the hearing both parties relied on Janet Travell's *Myofascial Pain and Dysfunction: Trigger Point Manual* (the Manual).⁴ The Manual recommends passive range of motion stretching immediately following the trigger point injections. In addition, a hot pack applied to the muscle immediately following the injections may assist in range of motion and reduce soreness. This therapy would occur immediately following the injections and not as part of an extended passive modality/conservative care treatment plan. The Manual specifically encourages the patient to move the muscles through several cycles of range of motion following the injection. The Manual further recommends a stretching program for the patient to perform at home. Other than stretching, the Manual does not recommend other passive modalities. For example, the Manual does not recommend manual therapy techniques, electrical stimulation, osteopathic manipulative treatment, therapeutic procedure, massage therapy, myofascial release, or ultrasound following trigger point injections. Any passive treatment, namely range of motion stretching, would be performed immediately following the injections by the doctor who performed the injections.⁵ The Manual provides for other alternate treatment techniques if trigger point injections are not performed. The other treatments would include myofascial treatments, massage, ultrasound, and electrical stimulation. These treatments would replace the need for trigger point injections but would not be in addition to the injections.

Passive modalities (following trigger point injections) to treat Claimant's chronic myofascitis, almost three years post injury, would not be medically necessary. Claimant should have been moved to an active home therapy program following her trigger point injections. Accordingly,

³ Carrier Ex. 1 at A0205.

⁴ The ALJ takes official notice of the relevant sections of the Janet Travell Manual submitted by Carrier on January 17, 2006.

⁵ Dr. Blauzvern agrees with the conclusions reached by Janet Travell.

Carrier is not required to reimburse Provider for the disputed chiropractic care in this case.

III. FINDINGS OF FACT

1. On ____, ____ (Claimant) sustained a compensable injury while working as an operator at ____.
2. Neuromuscular Institute of Texas, PA (Provider) provided chiropractic care to Claimant for her compensable injury.
3. Claimant was diagnosed with myofascitis (inflamed muscle) in the cervical region, right rhomboids, trapezius, and forearms.
4. To treat Claimant's myofascitis, she received multiple trigger point injections.
5. Following the trigger point injections, Provider treated Claimant with manual therapy techniques, electrical stimulation unattended, osteopathic manipulative treatment, therapeutic procedure, range of motion, massage therapy, myofascial release, and ultrasound (collectively, chiropractic care).
6. By October 2003, Claimant's condition had become chronic.
7. Following Claimant's trigger point injections, passive range of motion stretching and a home-exercise program would have been appropriate.
8. Passive modalities are typically used during the healing phase, which is usually six to eight weeks after the injury.
9. On January 27, 2004, after repeated post-injection therapy, Claimant still had a 20 percent whole person impairment rating.
10. On November 17, 2004, an Independent Review Organization (IRO) denied reimbursement to Provider for chiropractic care provided to Claimant from October 28, 2003, through January 21, 2004.
11. On January 6, 2005, Provider appealed the decision of the IRO.
12. On February 7, 2005, the Texas Workers' Compensation Commission sent notice of the hearing to the parties. The hearing notice informed the parties of the matters to be determined, the right to appear and be represented, the time and place of the hearing, and the statutes and rules involved.

13. On January 9, 2006, Administrative Law Judge Michael J. O'Malley convened the hearing on the merits at the William P. Clements Building, 300 West 15th Street, Austin, Texas. Provider appeared and was represented by attorney Allen T. Craddock. Carrier appeared and was represented by attorney Kevin J. Franta.
14. The record closed on January 17, 2006, after Carrier filed Janet Travell's *Myofascial Pain and Dysfunction: Trigger Point Manual*.

CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003. Proper and timely notice of the hearing was provided to the parties in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
2. Provider timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE 148.3.
3. An employee who has sustained 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. TEX. LAB. CODE ANN. § 408.021(a).
4. Pursuant to 28 TEX. ADMIN. CODE § 148.14(a), Provider has the burden of proving by a preponderance of the evidence that the chiropractic care provided to Claimant was medically necessary.
5. Provider did not prove by a preponderance of the evidence that the chiropractic care provided from October 28, 2003, through January 21, 2004, following the trigger point injections, was medically necessary to treat Claimant.
6. Provider should not be reimbursed for the services provided from October 28, 2003, through January 21, 2004.

ORDER

IT IS HEREBY ORDERED that American Home Assurance Company is not required to reimburse Neuromuscular Institute of Texas, PA, for chiropractic care provided to Claimant___ from October 28, 2003, through January 21, 2004.

SIGNED March 10, 2006.

**MICHAEL J. O' MALLEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARING**