SOAH DOCKET NO. 453-05-3675.M5
TWCC MR NO. M5-04-2791-01

NEUROMUSCULAR INSTITUTE OF TEXAS, **Petitioner**	§	**BEFORE THE STATE OFFICE**
	§	**OF**
V.	§	
	§	
LIBERTY MUTUAL INSURANCE COMPANY, **Respondent**	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Petitioner Neuromuscular Institute of Texas (Provider) disagrees with the decision of an independent review organization (IRO) issued on behalf of the Texas Workers' Compensation Commission (TWCC)/Medical Review Division (MRD) finding that the medical services provided Claimant by Provider between May 13 and July 31, 2003, were not medically necessary.[1] Liberty Mutual Fire Insurance (Carrier) denied payment of $3,810.00 for the disputed services that included the initial office visit, follow-up office visits, passive physical therapy, active physical therapy, testing, and required reports. The Carrier has since paid for the required reports as directed by MRD.

After considering the evidence and arguments presented, the Administrative Law Judge (ALJ) finds that the medical services provided to Claimant by Provider were medically necessary. Therefore, Provider is entitled to reimbursement from Carrier of $3,765.00 ($3,810.00 - $45.00 paid by Carrier) plus interest.

[1] Effective September 1, 2005, the functions of TWCC have been transferred to the newly created Division of Worker's Compensation at the Texas Department of Insurance.

I. BACKGROUND

Claimant, a forty-one-year-old male, suffered with several compensable injuries to his upper extremities due to the repetitive nature of his job duties as a directory assistance operator. The injuries include bilateral carpal tunnel syndrome, bilateral forearm and elbow ulnar nerve root injury, bilateral shoulder injury and cervical spine injury. Claimant reported the injury on_____, when he could no longer work without pain. Claimant initially went to his primary care physician, Brian Senger, M.D., for treatment.

The record is unclear as to how Dr. Senger treated Claimant's compensable injuries as these medical records were not offered into evidence. Claimant underwent an MRI of his cervical spine on January 8, 2003. The MRI showed bulging at the C4-5 and C5-6 discs and the narrowing of the left C4-5 neuroforamen.[2] Dr. Senger eventually referred Claimant to Peter A. Tarbox, M.D. for a neurological evaluation.

Claimant began seeing Dr. Tarbox on February 10, 2003. Dr. Tarbox ordered a number of tests and focused his treatment on Claimant's cervical injury. On February 26, 2003, Claimant participated in a nerve conduction study that showed:

1. Bilateral medial and ulnar SNAPs with mild prolonged latencies.
2. Bilateral ulnar CNAPs with mild prolonged latencies.
3. Bilateral medical CNAPs with minimal prolonged latencies.
4. Bilateral ulnar F responses, prolonged.[3]

Subsequently, Dr. Tarbox conducted an EMG needle examination that revealed "minimal polyphasic potentials with increased insertional activity bilateral C6 innervated muscles" consistent with chronic active radiculopathy.[4]

---

[2] Ex. 2 at A0001.
[3] Ex. 2 at A0009.

Dr. Tarbox diagnosed Claimant's wrist injuries as carpal tunnel syndrome on April 9, 2003. Claimant's carpal tunnel syndrome continued to aggravate Claimant. According to Brad Burdin, D.C., Claimant's treating doctor at Provider's facility, Dr. Tarbox does not treat carpal tunnel and referred Claimant to Provider for treatment. On May 13, 2003, Claimant received permission from TWCC to switch his treating physician from Dr. Tarbox to Dr. Burdin. The same day, Claimant went to Provider for evaluation and treatment.

Provider conducted an initial office visit and completed TWCC's form to secure Dr. Tarbox's medical records. During the initial examination, Claimant reported to Provider that he had received three weeks of passive therapy.[5] Neither Provider nor Carrier had any records related to this physical therapy and neither party could establish what therapy was provided, how often, what modalities, the area of the body treated, or the outcome. Provider believes the therapy was only to Claimant's cervical spine. Provider's clinical assessment included bilateral carpal tunnel syndrome, bilateral pronator syndrome, lateral epicondylitis, and cervical disc protrusions. While waiting for Claimant's prior test results, Provider treated Claimant with passive therapy for his wrist, forearm, elbow, and shoulder.

III. DISCUSSION

Provider had the burden of proof. Dr. Burdin testified that because so many different areas of Claimant's upper body were involved in the compensable injury, he referred Claimant to a neurologist, Morris Lambert, M.D.; a hand surgeon, Terry Westfield, M.D.; and to a pain management specialist, David Hirsch, D.O. Dr. Burdin explained that he also treated Claimant with passive therapy because it was unclear what passive therapy Claimant had previously received or what the results were.

When Claimant's carpal tunnel did not respond to passive therapy, Michael Freiberg, M.D. injected Claimant's right wrist with steroids on June 24, 2003, and Claimant's left wrist on

---

[4] Ex. 2 at A0010.
[5] Ex. 1 at 132.

July 8, 2003. Following both procedures, Dr. Freiberg prescribed passive and active therapy as part of Claimant's rehabilitation. In compliance with Dr. Freiberg's instructions, Provider had Claimant participate in both passive and active therapy.

After the initial office visit, Dr. Burdin conducted follow-up office visits. These office visits were conducted to refer Claimant to the specialists, to file the required TWCC work status reports for Claimant, and to examine and treat Claimant's compensable injuries. Dr. Burdin testified that all of the office visits were medically reasonable and necessary to treat Claimant. In addition, Dr. Burdin explained, although Carrier paid for the work status reports dated May 13, 2003, July 15, 2003, and July 31, 2003, as directed by MRD, Carrier did not for pay for the office visits conducted to generate the work status reports.

Dr. Burdin further testified that Claimant was treated with passive modalities between May 14 and June 12, 2003, which included ultrasound for the forearm and wrist; interferential electrical stimulation to treat pain; hot and cold packs to relax the muscles; and soft treatment manipulation to increase circulation to the muscles. These modalities were usually done in conjunction with chiropractic manipulation, to make the manipulation more effective.

Carrier argued that because Dr. Burdin had ordered an inter-muscular stimulator for Claimant to use at home to help with pain and rehabilitation of the muscles, it was unnecessary for Dr. Burdin to do interferential electrical stimulation. Carrier denied payment for the interferential electrical stimulation done to Claimant at Provider's office. Dr. Burdin clarified that the interferential (not inter-muscular) electrical stimulation done in Provider's office was done at a higher frequency than the home inter-muscular electrical stimulation and was done to treat Claimant's pain.

Claimant underwent 11 sessions of passive modalities after coming to Provider's facility for treatment. According to Dr. Burdin, these modalities were medically reasonable and necessary to treat all of Claimant's injuries. Some of Claimant's injuries improved with passive modalities; however, the carpal tunnel syndrome required steroid injections in both the left and

right wrists followed with passive and active therapy. Steroid injections decrease inflammation around the compressed median nerve within the carpal tunnel, a confined area. Decreasing the inflammation removes the pressure on the nerve and reduces the pain. Following each injection, Dr. Freiberg directed that Claimant receive six sessions of passive modalities and active therapy.[6] According to Dr. Burdin, Claimant improved and Claimant was able to return to work on full duty in October 2003.

At Carrier's request, on April 21, 2003, Patrick Mulroy, M.D., conducted a required medical examination on Claimant. Dr. Mulroy reported that Claimant continued to experience complaints of bilateral numbness and tingling in his upper extremities.[7] Carrier asked Dr. Mulroy to address the causal relationship between Claimant's neck, sleep issues, and mental issues. According to Dr. Mulroy, "[i]t is entirely reasonable that a patient suffering from cumulative trauma disorder involving the bilateral upper extremities may suffer some pain complaints involving the cervical spine."[8]

On May 6, 2003, Carrier filed a notice of refused or disputed claim. Carrier acknowledged that the compensable injury included the bilateral wrists, elbows, forearms, shoulder, and neck, but disputed mental/psychiatric issues or the need for Provider's services. Carrier did not pay for the services provided to Claimant from May 13, 2003, through July 31, 2003, including Claimant's initial office visit to Provider on May 13, 2003. Carrier called Benzel MacMaster, M.D., an orthopedic surgeon, to testify. Dr. MacMaster opined that Provider's services were not medically necessary. However, Dr. MacMaster agreed Provider had to conduct an initial office visit when Claimant became Provider's patient. Dr. MacMaster also agreed that Provider had to conduct an office visit each time Dr. Burdin filed a work status report for Claimant.

---

[6] Ex. 1 at 187-189.
[7] Ex. 2 at A0021.
[8] Ex. 2 at A0022.

Dr. MacMaster testified that Claimant already had extensive physical therapy before Provider began treating him. Dr. MacMaster concedes that he did not review any records or bills from a physical therapist to verify what therapy, if any, was provided to Claimant. Dr. MacMaster also maintains that chiropractic care is not appropriate to treat carpal tunnel syndrome. But that opinion is contrary to the opinions of Dr. Tarbox and Dr. Freiberg. Dr. Tarbox referred Claimant to Provider for treatment of the carpal tunnel syndrome as well as his other compensable injuries. Dr. Freiberg prescribed physical therapy for Claimant from Provider following the steroid injections.

It is telling that Carrier denied the medical necessity of Claimant's first office visit with Provider. Dr. Tarbox recommended that Claimant go to Provider for treatment of his carpal tunnel syndrome. Claimant requested and received permission to change doctors before going to Provider. Provider evaluated and treated Claimant. Carrier offered no reasonable explanation for why all the office visits were denied, particularly given that Carrier's expert, Dr. MacMaster, agreed that the first office visit and at least two more follow-up office visits were appropriate. Dr. MacMaster also agreed that each time Provider submitted a work status report to TWCC, Provider had to see Claimant to be in compliance with TWCC's rules. Despite the opinions of Carrier's expert, Carrier did not pay for these office visits.

From the record, it appears that Carrier and its medical experts, and Provider and Claimant's doctors, disagree about the way to treat Claimant's compensable injury. Medical doctors may disagree as to the treatment regime to follow. Dr. MacMaster does not believe it is appropriate to treat carpal tunnel syndrome with chiropractic care. Drs. Tarbox and Freiburg do. Differing medical opinions do not render the care provided medically unnecessary or unreasonable.

Carrier relies heavily on the IRO/MRD decision finding that these medical services were not medically necessary to treat Claimant's compensable injury. However, the IRO reviewer based his decision on an unsubstantiated belief that Claimant had undergone two months of physical therapy. Assuming that Claimant accurately reported that he had three weeks of

physical therapy at some time in the past, nothing in the record suggests what type of therapy was provided, what area of the compensable injury was treated, the number of sessions, or the result. Carrier acknowledged that it had no records regarding this previous physical therapy, including any payment to a provider.

In addition, the IRO reviewer was not sure of the extent of the compensable injury, stating "After reviewing the documentation presented for review it is unclear whether the patient had a cervical radiculopathy alone, or carpal tunnel syndrome, or a combination of both. This was definitely a complicated case."[9] The ALJ finds the IRO accepted as fact information that was not in the record regarding the amount and extent of physical therapy, and further, arrived at a decision without knowing the full extent of Claimant's compensable injuries.

Claimant suffered with a complex set of compensable injuries to his upper extremities. Provider had to treat not just the carpal tunnel syndrome, but Claimant's elbows, shoulders, and neck. For a short time, a month, Provider tried conservative care. During this time Provider referred Claimant to the appropriate specialists for further evaluation. When the conservative care did not resolve Claimant's carpal tunnel, Dr. Freiberg injected both wrists with steroids and prescribed both passive and active therapy. Provider treated Claimant with physical therapy as Dr. Freiberg prescribed. Ultimately, Claimant was able to return to work without surgery. The ALJ finds that the disputed medical services were medically necessary and that Carrier should pay for these services with accrued interest.

IV. FINDINGS OF FACT

1. On____, Claimant sustained a work-related injury to his upper extremities, including the left and right wrists, forearms, elbows, and shoulders, and his cervical spine as a result of his work activities (compensable injuries).

2. At the time of Claimant's compensable injuries, Claimant's employer's workers' compensation insurance carrier was Liberty Mutual Insurance Company (Carrier).

[9] Ex. 3 at B0005.

3. As a result of the compensable injury, the Claimant suffered bilateral carpal tunnel syndrome, bilateral pronator syndrome lateral epicondylitis, and cervical disc protrusions.

4. Claimant initially went to his primary care physician, Brian Senger, M.D., for treatment.

5. Subsequently, Dr. Senger referred Claimant to Peter A. Tarbox, M.D., a neurologist, for evaluation.

6. On January 8, 2003, Claimant had an MRI taken of his cervical spine that revealed bulging of the C4-5 and C5-6 discs and the narrowing of the left C4-5 neuroforamen.

7. On February 10, 2003, Claimant began seeing Dr. Tarbox for treatment of his compensable injuries.

8. On February 26, 2003, Claimant participated in a nerve conduction study that showed:

   Bilateral medial and ulnar SNAPs with mild prolonged latencies.
   Bilateral ulnar CNAPs with mild prolonged latencies.
   Bilateral medical CNAPs with minimal prolonged latencies.
   Bilateral ulnar F responses, prolonged.

9. Claimant also underwent an EMG needle examination that indicated he suffered with chronic active radiculopathy.

10. Dr. Tarbox focused his treatment on Claimant's cervical spine.

11. On April 9, 2003, Dr. Tarbox diagnosed the injury to Claimant's wrists as carpal tunnel syndrome.

12. Claimant's carpal tunnel syndrome continued to aggravate Claimant.

13. Dr. Tarbox referred Claimant to Brad Burdin, D.C., at Neuromuscular Institute of Texas (Provider) for treatment of his compensable injuries.

14. On May 13, 2003, Claimant received permission from the Texas Workers' Compensation Commission (TWCC) to switch his treating physician from Dr. Tarbox to Dr. Burdin.

15. On May 13, 2003, Provider evaluated Claimant and began a conservative course of treatment for Claimant's bilateral carpal tunnel syndrome, bilateral pronator syndrome, lateral epicondylitis, and his cervical disc protrusions.

16. The conservative treatment included office visits, myofacial release, interferential electrical stimulation, hot/cold pack therapy, ultrasound, and manipulations.

17. During this same time, Provider referred Claimant to the following specialists for further evaluation: Morris Lambert, M.D., a neurologist; Terry Westfield, M.D., a hand surgeon; and David Hirsch, D.O., a pain management specialist.

18. When Claimant's carpal tunnel syndrome did not respond to conservative treatment, Michael Freiberg, M.D., treated Claimant with steroid injections to his right wrist on June 24, 2003, and to his left wrist on July 8, 2003.

19. Following both steroid procedures, Dr. Freiberg prescribed passive and active therapy as part of Claimant's rehabilitation.

20. Provider provided both passive and active therapy to Claimant following the steroid injections in compliance with Dr. Freiberg's orders.

21. Carrier denied coverage for these medical services asserting that these medical services were not medically necessary to treat Claimant's compensable injuries.

22. Provider filed a request for medical dispute resolution with TWCC.

23. On July 14, 2004, an independent review organization (IRO) reviewed the medical dispute and found that the disputed services were not medically necessary.

24. Based on the IRO's findings, TWCC's Medical Review Division (MRD) declined to order reimbursement to Provider for the disputed services provided to Claimant from May 13 to July 31, 2003.

25. After the MRD order was issued, the Provider asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).

26. Required notice of a contested-case hearing concerning the dispute was mailed to the parties.

27. On January 3, 2006, SOAH ALJ Catherine C. Egan held a contested-case hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Attorney Kevin Franta represented Carrier. Attorney Alan Craddock represented Provider. The hearing concluded and the record closed on that same day.

28. The office visits and medical services provided by Provider to Claimant from May 13, 2003, to July 31, 2003, were medically necessary.

V. 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. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003.

2. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.

3. Based on the above Findings of Fact and Gov't Code § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) § 155.41(b) (2004), and 28 TAC §§ 133.308(v) and 148.21(h) (2004), Provider has the burden of proof in this case.

4. 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. Labor Code § 408.021 (a).

5. Based on the above Findings of Fact and Conclusions of Law, the disputed services provided by Provider to Claimant between May 15, 2003, to July 31, 2003, were medically necessary to treat Claimant's compensable injuries.

ORDER

IT IS ORDERED THAT Neuromuscular Institute of Texas is entitled to reimbursement from Liberty Mutual Insurance Company for the medical services provided Claimant from May 13, 2003, to July 31, 2003, plus interest.

SIGNED March 3, 2006.

CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS