

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

DECISION AND ORDER

Neuromuscular Institute of Texas (Provider) challenges the decision of the Independent Review Organization (IRO)¹ denying reimbursement for physical therapy, office visits, and related treatment provided to injured worker ____(Claimant). After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that Provider has not shown that the disputed services were medically necessary. Accordingly, Liberty Mutual Insurance Company, as the insurance carrier for Southwestern Bell Telephone Company (Carrier), is not required to reimburse Provider for the services.

I. Background

In____, Claimant suffered a compensable, work-related injury to (in relevant part) her arms, hands, and wrists. Her injury was caused by repetitive motion and she was diagnosed with carpal tunnel syndrome. Claimant received extensive physical therapy and other conservative treatment after her injury. She received numerous trigger point injections and had carpal tunnel release surgery on her left arm² on or about September 17, 2003, and received additional physical therapy and conservative treatment after that. When she failed to improve enough to return to work, Claimant underwent cubital tunnel release surgery on her left arm on February 24, 2004. After this surgery, Claimant received additional physical therapy from Provider.

In this case, there are numerous dates and types of service in dispute between

¹ The IRO is the statutory designee of the Medical Review Division of the Texas Workers' Compensation Commission for purposes of resolving this dispute. 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 ALJ uses the term "arm" to encompass Claimant's hand as well, to which many procedures were specific.

January 13, 2004, and May 21, 2004.³ Carrier declined to reimburse the disputed physical therapy treatments, contending they were not medically necessary. Carrier also declined to reimburse some other services, contending they were global to other procedures or were not properly documented. Provider sought medical dispute resolution through the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission). The matter was referred to an IRO designated by the Commission for the review process. The IRO determined that some of the services were medically necessary treatment for Claimant's compensable injury, but others were not. The MRD then ordered reimbursement for those procedures found necessary, along with reimbursement for some of the various treatments denied on other grounds.

In response to the MRD order, Provider requested a hearing before the State Office of Administrative Hearings. The hearing convened on May 11, 2006, with ALJ Craig R. Bennett presiding. Provider appeared through its attorney, Allen Craddock. Carrier appeared through its attorney, Carrie Helmcamp. The hearing concluded that day, but the record remained open until May 19, 2006, to allow for the filing of closing written arguments. No parties objected to notice or jurisdiction.

II. Discussion and Analysis

This case involves a dispute over the necessity of numerous different physical therapy treatments,⁴ office visits, and related treatments performed on Claimant. Although Carrier denied some services on grounds other than medical necessity, it does not appear those services are still in issue. Therefore, they are not addressed herein. Rather, the ALJ addresses only the physical therapy, office visits, and related treatments that were denied on the basis of medical necessity.

Carrier argues that most of the services provided to Claimant on or after January 13, 2004, were not medically necessary. Carrier presented the testimony of Neal Blauzvern, D.O., who testified regarding the post-surgical and post-trigger point injection treatments. Overall, Dr. Blauzvern noted that Claimant had 97 physical therapy sessions and numerous trigger point

³ There are other dates of service in issue in a related case, SOAH Docket No. 453-05-4327.M5, that was heard at the same time as this case and that involves the same parties, same compensable injury, and similar treatments. A separate decision is being issued in that case.

⁴ Among other things, the passive physical therapy treatments included paraffin baths, hot packs, stretching, massage, and electrical stimulation.

injections which seemed to provide no lasting benefit to Claimant, according to the medical records. In his testimony, Dr. Blauzvern discussed and detailed the medical records which generally showed that the various treatments were providing little benefit to Claimant. Dr. Blauzvern disputed that any physical therapy would be necessary after trigger point injections, which are relatively simple and non-invasive procedures. Dr. Blauzvern also noted that Claimant underwent continued physical therapy even though she was going to have surgery, which made little sense. Also, many of the treatment notes indicate that the physical therapy was provided to Claimant's right arm, even though the surgeries she received were on her left arm. Dr. Blauzvern concluded that no physical therapy treatments were justified for Claimant's right arm. Although Dr. Blauzvern agreed that some limited physical therapy would be necessary after the surgeries performed on Claimant, he opined that the treatment provided to Claimant was excessive and appropriate for the nature and scope of her injury.

In response, Provider argues that passive physical therapy is a recognized form of post-trigger point injection treatment. Further, Provider points out that the treating surgeon recommended post-surgery physical therapy after each surgery, and the treatment given by Provider was within the scope of that recommendation. Moreover, Provider's treatment notes reflect that Claimant continued to have complaints of pain and physical limitations during the disputed dates of service justifying additional treatment. Provider points out that Claimant's condition did improve over time, thus showing the efficacy of the treatment.

After considering the evidence and arguments presented, the ALJ concludes that the physical therapy and other post-surgical services in dispute were not medically reasonable and necessary for treatment of Claimant's compensable injury. First, the ALJ agrees with Carrier's contention that physical therapy was not necessary after the trigger point injections. As Dr. Blauzvern testified, trigger point injections are simple, non-invasive, and should not have required the physical therapy treatments provided. Moreover, Claimant was first treated for her compensable injury in April 2003. By January 13, 2004, nearly nine months later, additional passive physical therapy modalities would not have been appropriate for treatment of Claimant's injury, absent additional factors. Trigger point injections are not additional factors warranting such treatment. So, other than any necessary treatments after later surgical procedures, the ALJ agrees with Carrier that physical therapy treatments provided to Claimant on or after January 13, 2004, were not necessary.

Claimant's first surgery to her left hand was performed on or about September 17, 2003. Claimant received some physical therapy in the month after that, but it was to her *right* hand which had not been operated on. Given Claimant's condition and the findings reflected in the record, there was no justification for passive physical therapy to Claimant's right hand at that time. As for her left hand on which surgery had been performed physical therapy was not provided until November 10, 2003, over six weeks post-surgery. Even Provider's evidence indicates that post-operative therapy is normally started 2-3 weeks after surgery. There is no explanation for this unusual delay in providing physical therapy and, as Dr. Blauzvern testified, the need for it by that point had diminished. Provider offered no explanation that would justify such a lengthy delay in providing physical therapy post-surgery and it does not appear warranted at the time it was finally provided. Accordingly, any physical therapy provided on or after January 13, 2004, would clearly not be reasonable and necessary follow-up treatment for Claimant's first surgery. Nor would it be appropriate as post-injection therapy (as discussed above). Accordingly, no reimbursement is required.⁵

Claimant's next surgery was on February 24, 2004. Again, the surgery was for Claimant's left hand. After the surgery, Claimant continued to receive passive physical therapy treatments and additional trigger point injections. Some of the physical therapy was purportedly part of post-trigger point injection therapy while others were for post-surgical therapy, although the line is blurred even in Provider's evidence and arguments.⁶ Carrier reimbursed some of the physical therapy treatments, but denied others. In particular, Carrier denied reimbursement for all physical therapy treatments occurring on or after April 12, 2004, which is six weeks after Claimant's surgery. As discussed below, the ALJ finds that Carrier's denial of these services was proper.

As noted previously, it is not normally reasonable for passive physical therapy to continue for extended periods of time after this type of surgery, absent an appropriate justification. The ALJ finds no persuasive justification in this case. On March 22, 2004, the operating doctor saw Claimant

⁵ It is not clear from the record whether any of the physical therapy treatments in dispute in this case prior to Claimant's second surgery were specifically intended to be post-surgical therapy after Claimant's first surgery, rather than post-trigger point injection therapy. So, the ALJ includes the discussion about Claimant's first surgery out of an abundance of caution.

⁶ Provider's evidence and arguments indicate that some physical therapy sessions were for both. For example, the same treatments on April 12, 2004, were identified as "Post Surgical Therapy 4 of 6" and also as "Post Injection Therapy 7 of 12."

for follow-up and noted that she was “doing quite well” and was able to “flex and extend the left arm and hand without problem.”⁷ Although Carrier’s expert witness did testify that up to 12 post-operative physical therapy sessions might be appropriate, that testimony was not without limitation. In particular, the therapy would be expected to occur shortly after the surgery, provided the Claimant’s condition actually warranted it. Moreover, Carrier’s expert opined that Claimant had no specific needs in this case for continued passive therapy, based on the medical records. In fact, the totality of the evidence tends to indicate that the physical therapy and trigger point injections provided no lasting benefit to Claimant whatsoever. Throughout her therapy, her condition worsened and, at the completion of her treatment from Provider in June 2004, Claimant’s grip strength was at its lowest level for any point in her treatment.⁸ From all of the evidence in the record, the ALJ concludes that the testimony of Dr. Blauzvern is persuasive and that the physical therapy and post-surgical treatments in dispute in this case were not medically necessary for treatment of Claimant’s compensable injury.

In summary, the ALJ finds that Provider is not entitled to reimbursement for the disputed dates of service in this case. In support of this determination, the ALJ makes the following findings of fact and conclusions of law.

III. Findings of Fact

1. In ____, Claimant suffered a compensable, work-related injury to her arms, hands, and wrists. Her injury was caused by repetitive motion and she was diagnosed with carpal tunnel syndrome.
2. Claimant received extensive physical therapy and other conservative treatment from Neuromuscular Institute of Texas (Provider) after her injury. She received numerous trigger point injections and had carpal tunnel release surgery on her left arm on or about September 17, 2003, and received additional physical therapy and conservative treatment after that.
3. When Claimant failed to improve enough to return to work, she underwent cubital tunnel release surgery on her left arm on February 24, 2004. After this surgery, Claimant received additional physical therapy from Provider.
4. Claimant’s September 2003 and February 2004 surgeries were relatively minor and the treatment records show that the surgeries went well and did not have complications.

⁷ Carrier Ex. A, at 181.

⁸ Carrier Ex. A, at 235.

5. In this case, there are numerous dates and types of service in dispute between January 13, 2004, and May 21, 2004. Carrier declined to reimburse the physical therapy and related treatments, contending they were not medically necessary.
6. Provider sought medical dispute resolution through the Texas Workers' Compensation Commission (Commission).
7. The matter was referred to an Independent Review Organization (IRO) designated by the Commission for the review process.
8. The IRO determined that some of the services were medically necessary treatment for Claimant's compensable injury, but that others were not.
9. The Commission's Medical Review Division ordered partial reimbursement on April 5, 2005, based on the IRO physician reviewer's determination that some of the services in issue were medically necessary. However, no reimbursement was ordered for the services deemed unnecessary.
10. On April 28, 2005, Provider requested a hearing on the services that were deemed unnecessary and the case was referred to the State Office of Administrative Hearings (SOAH).
11. Notice of the hearing was sent by the Commission to all parties on June 9, 2005. The hearing was subsequently continued at the parties' request.
12. The hearing convened on May 11, 2006, with ALJ Craig R. Bennett presiding. Provider appeared through its attorney, Allen Craddock. Carrier appeared through its attorney, Carrie Helmcamp. The hearing concluded that day, but the record remained open until May 19, 2006, to allow for the filing of closing written arguments.
13. No parties objected to notice or jurisdiction.
14. The trigger point injections provided to Claimant were simple, non-invasive, and did not require the post-injection physical therapy treatments provided by Provider.
15. By January 13, 2004, Claimant did not need additional physical therapy as follow-up treatment to either trigger point injections or the carpal tunnel release surgery performed on Claimant on or about September 17, 2003.
16. As of March 22, 2004, Claimant was doing quite well and was able to flex and extend her left arm and hand without problem.
17. By April 12, 2004, Claimant did not need additional physical therapy as follow-up treatment to either trigger point injections or the cubital tunnel release surgery performed on Claimant on February 24, 2004.

IV. Conclusions of Law

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act, specifically TEX. LABOR CODE ANN. §413.031 and TEX. GOV'T CODE ANN. ch. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.
3. The request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE § 148.3.
4. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Provider has the burden of proof. 28 TEX. ADMIN. CODE §§ 148.14(a) and 133.308(w).
6. Provider has not shown, by a preponderance of the evidence, that the disputed services provided between January 13, 2004, and May 21, 2004, were medically necessary for treatment of Claimant's compensable injury.
7. Carrier is not liable to reimburse Provider for the disputed treatments provided to Claimant between January 13, 2004, and May 21, 2004.

ORDER

IT IS, THEREFORE, ORDERED that Liberty Mutual Insurance Company is not liable to reimburse Neuromuscular Institute of Texas any amount for the disputed services in this case.

SIGNED July 6, 2006.

**CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**