

SOAH DOCKET NO. 453-05-7472.M2
MDR Tracking No. M2-05-1487-01

ARIE SALZMAN, M.D.,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
TEXAS MUTUAL INSURANCE	§	
COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. DISCUSSION

Arie Salzman, M.D., (Provider)¹ disputes a decision of an independent review organization (IRO) on behalf of the Texas Workers' Compensation Commission (TWCC) which agreed with Texas Mutual Insurance Company's (Carrier's) decision to deny preauthorization to perform manipulation under anesthesia (MUA) on Claimant's left fingers and thumb. The issue is whether Provider's request to perform the MUA on Claimant's left hand should be preauthorized as medically necessary.

On ____, Claimant injured her left wrist while at work and went to Provider for treatment. After examining Claimant's compensable injury, Provider diagnosed a left comminuted distal radius fracture and an ulna fracture and recommended surgery. Following the surgery and one month of physical therapy, Provider requested preauthorization to do the MUA procedure because Claimant's hand had stiffened. As set out below, the Administrative Law Judge (ALJ) finds that the MUA is not medically necessary at this time and should not be preauthorized.

Following surgery, Claimant developed Complex Regional Pain Syndrome (CRPS), a chronic pain condition. According to Carrier's expert, Gary N. Pamplin, M.D., a Board Certified

¹ Dr. Salzman is an orthopedic surgeon.

orthopedic surgeon with a specialty in hand surgery, 12 to 18 months of physical therapy is usually required to recover from the types of fractures Claimant experienced and the subsequent surgery. Dr. Pamplin testified that while it is doubtful Claimant will ever have a full range of motion in her left hand, with physical therapy her condition will improve. Claimant has experienced improvement with her range of motion and flexibility with physical therapy, albeit slowly. Dr. Pamplin adamantly disagreed with Provider's decision to do the MUA because Claimant has improved with physical therapy and suffers with CRPS.

In Dr. Pamplin's opinion, it is premature and potentially dangerous for Claimant to undergo MUA because of the CRPS. Dr. Pamplin explained that Claimant's CRPS may get worse if she undergoes the MUA, even gentle manipulation, because the MUA may tear the tissue around the joints in Claimant's hand and may increase the swelling, pain, and stiffness in the area. Aggressive physical therapy will not aggravate Claimant's CRPS. Instead, aggressive therapy will stretch the tissue in Claimant's left hand without exposing her to the potential negative reactions caused by the MUA procedure. Therefore, Dr. Pamplin recommends Claimant continue with physical therapy at this time.

Provider failed to carry the burden of proof. Provider failed to show that the MUA was medically necessary at the time the request was made, or at the time of the hearing, because Claimant continues to experience improvement in her range of motion and flexibility with physical therapy. Therefore, the ALJ finds that Provider did not prove by a preponderance of the evidence that the requested MUA procedure is reasonable and necessary medical healthcare at this time.

II. FINDINGS OF FACT

1. On ____, Claimant, a ____ female, sustained a work-related injury to her left wrist as a result of her work activities (compensable injury).
2. At the time of Claimant's compensable injury, her employer's workers' compensation insurance carrier was Texas Mutual Insurance Company (Carrier).
3. As a result of the compensable injury, Claimant went to Arie Salzman, M.D., (Provider) for treatment of her broken wrist.

4. After examining Claimant's wrist, Provider determined that Claimant sustained a comminuted fracture of the left distal radius and a fractured ulna that required surgery.
5. On January 26, 2005, Provider performed an open reduction and internal fixation of the left distal radius and ulna fractures with bone allografting and a plaster splint application to treat Claimant's left wrist.
6. On February 10, 2005, Provider directed Claimant to begin post-operative physical therapy.
7. Claimant began physical therapy on February 24, 2005.
8. Claimant's wrist and hand became stiff because of the delay in initiating physical therapy as directed by Provider.
9. Claimant has a low threshold for pain and has difficulty doing the physical therapy.
10. On February 28, 2005, Claimant returned to Provider for a follow-up visit and complained of extreme stiffness in her left fingers and wrist.
11. Following the surgery, Claimant began suffering with Complex Regional Pain Syndrome (CRPS).
12. On March 5, April 12, and July 21, 2005, Claimant underwent stellate ganglion blocks to reduce the sympathetic pain in her upper extremity caused by CRPS.
13. On June 10, 2005, Bernard Perron, M.D., P.A., an orthopedic surgeon, conducted a required medical examination of Claimant to assess whether Claimant had reached maximum medical improvement (MMI).
14. Dr. Perron determined that Claimant had not reached maximum medical improvement and concluded that rehabilitation would take longer because Claimant has CRPS.
15. In early March 2005, Provider requested preauthorization from Carrier to perform a manipulation under anesthesia (MUA) on Claimant's left fingers and thumb to stretch the tissue around the joints by bending her fingers and thumb to the palm of her hand.
16. The MUA may tear the tissue in Claimant's left hand and may increase the swelling, pain, and stiffness of her left hand. This, in turn, will expose Claimant to a greater risk of aggravating her CRPS.
17. Claimant continues to increase her range of motion and flexibility with physical therapy.

18. Physical therapy gradually stretches the tissue around the joints in Claimant's left hand without exposing her to the risks associated with the MUA referenced in Finding of Fact No. 16.
19. Carrier denied Provider's request for preauthorization as not medically necessary, asserting that Claimant's condition did not warrant the MUA procedure at this time.
20. Provider appealed Carrier's decision.
21. An independent review organization (IRO) reviewed Provider's request for preauthorization and Claimant's medical records; concluded that the MUA procedure was not medically necessary; and denied Provider's request for preauthorization.
22. After the IRO decision was issued, Provider asked for a contested case hearing by the State Office of Administrative Hearings (SOAH).
23. Required notice of a contested case hearing concerning the dispute was mailed to the parties.
24. On August 16, 2005, SOAH ALJ Catherine C. Egan held a hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Provider appeared by telephone and represented himself. Attorney Katie Kidd appeared on behalf of Carrier. The hearing concluded and the record closed on that same day.
25. Claimant's current condition does not support the medical necessity for an MUA procedure at this time.

III. 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. (Labor Code) §§ 402.073(b) and 413.031, 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), and 28 TAC § 148.14(a), 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. TWCC must specify by rule which health care treatments and services require express pre-authorization by a carrier. A carrier is not liable for those specified treatments and services unless preauthorization is sought by the claimant or a health care provider and either obtained from the carrier or ordered by TWCC. Labor Code § 413.014.
6. Preauthorization is required for an MUA. 28 TAC § 134.600.
7. The MUA procedure is not medically necessary at this time.
8. Based on the above Findings of Fact and Conclusions of Law, Provider's request for preauthorization of the MUA procedure is denied.

ORDER

IT IS ORDERED THAT Provider's request for preauthorization to perform the MUA procedure on Claimant's left hand is denied.

SIGNED August 31, 2005.

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