

**SOAH DOCKET NO. 453-05-4300.M5
TWCC MR NO. M5-05-0397-01**

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

DECISION AND ORDER

I. PROCEDURAL HISTORY

Liberty Mutual Insurance Company (Petitioner) requested a hearing to contest the Findings and Decision of the Texas Workers' Compensation Commission¹ (Commission) acting through Envoy Medical Systems, LP, an Independent Review Organization (IRO). The Commission's decision ordered Petitioner to reimburse Neuromuscular Institute of Texas (Respondent) for office visits on October 30, 2003, and January 22, 2004, as well as for therapy, including manual therapy techniques, mobilization, therapeutic range of motion, ultrasound, neuromuscular re-education, paraffin bath, and chiropractic manipulative treatment for the period from December 16, 2003, through January 15, 2004.

The hearing convened on January 10, 2006, before Administrative Law Judge (ALJ) Ami L. Larson. Kevin J. Franta represented Petitioner. Allan T. Craddock represented Respondent. There were no contested issues of notice or jurisdiction. Bernie McCaskill, M.D. a board-certified orthopaedic surgeon, testified for Petitioner. Brad Burdin, D.C., Claimant's treating doctor, testified for Respondent. The record closed the same day following adjournment of the hearing, but was subsequently reopened by the ALJ until March 17, 2004, to allow for the submission of written clarification by the parties regarding the dates of disputed services.

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.

This decision orders Petitioner to reimburse Respondent for both disputed office visits but concludes that the remainder of disputed services were not shown to be medically necessary and, therefore, should not be reimbursed.

II. DISCUSSION

___ (Claimant) sustained a work-related injury on or about ____. She was first diagnosed with carpal tunnel syndrome in ___ and initially presented to Dr. Burdin in 2000.² She underwent carpal tunnel release surgery to her right hand in 2002. Then, in August 2003, Dr. Terry Westfield performed carpal tunnel release surgery to her left hand.

Claimant underwent an initial course of eight sessions of occupational and physical therapy from September 9 through October 7, 2003, following the surgery to her left hand. This initial course of therapy is not in dispute.

In mid-October, Drs. Burdin and Westfield noted that Claimant continued to have significant problems with her left hand including numbness, swelling, discoloration, continued pain, stiffness, Atrigger finger,³ scar hypersensitivity, and functional deficits. Dr. Burdin temporarily suspended Claimant's physical therapy to allow her pain to subside. Dr. Westfield evaluated Claimant and recommended trigger release surgery to alleviate Claimant's hand pain.

On October 30, 2003, during an office visit,⁴ Dr. Burdin recommended that Claimant resume physical and occupational therapy as well as desensitization activities to address her complaints of scar sensitivity.

Claimant underwent the first three of an additional twelve physical therapy sessions with Dr.

² Claimant was also diagnosed with myofascitis in the cervicothoracic region, pronator syndrome, possible cubital tunnel syndrome, and a cervical strain.

³ According to Dr. Burdin's testimony, this condition prevents a finger from functioning completely because the tendon becomes caught in the synovial sheath that surrounds it most likely due to scar tissue on the tendon or swelling in the carpal canal.

⁴ This is one of the two disputed office visits.

Burdin on December 1, 4, and 8, 2003.⁵ After completion of Claimant's session on December 8, 2003, Dr. Burdin again discontinued therapy and referred her to Dr. Westfield for re-evaluation because she was not tolerating therapy or healing as expected.

Dr. Westfield reported that Claimant expressed a desire to try injection therapy prior to undergoing trigger release surgery. Therefore, on December 11, 2003, Dr. Westfield referred her to Mark K. Dedmon, Physician's Assistant, for injections.⁶ Claimant had an additional therapy session on December 16, 2003, and underwent her first injection on December 18, 2003. Mark Dedmon, who administered the injection, recommended that Claimant continue hand therapy as directed by Dr. Westfield and follow up with Dr. Burdin as previously directed.⁷

Between December 22, 2003, and January 15, 2004, Claimant engaged in eight additional therapy sessions.⁸ On January 22, 2004, Claimant received another injection and also had a follow-up office visit with Dr. Westfield, who noted that Claimant requested twelve additional therapy sessions and he agreed.⁹

III. ANALYSIS

⁵ These sessions are not disputed in this case.

⁶ Petitioner's Exhibit 1, page 267. Dr. Westfield's referral does not address the need or lack thereof for continued therapy.

⁷ Petitioner's Exhibit 1, page 269. It should be noted that the evidence shows that Dr. Burdin, Dr. Westfield, and Mark Dedmon are all employees of Respondent.

⁸ December 22, 23, 29, and 30, 2004; January 5, 8, 13, and 15, 2004. The January 13, 2004, session was apparently reimbursed by Petitioner and is not disputed in this case, although it is unclear to the ALJ what distinguishes this session from the other disputed sessions.

⁹ This is the other disputed office visit. It should also be noted that an additional course of physical therapy was performed, but these sessions were deemed by the IRO and Commission to be medically unnecessary. Neither party appealed the portion of the Commission's decision pertaining to these additional sessions so they are not at issue in this case.

A. Disputed Office Visits

The first disputed office visit was with Dr. Burdin on October 30, 2003. Both the IRO doctor and Petitioner's expert, Dr. McCaskill, agreed that this office visit was reasonable and necessary to follow up with Claimant after her surgery.

Similarly, the IRO doctor and Dr. McCaskill agreed that the January 22, 2004 follow-up office visit with Claimant's hand surgeon, Dr. Westfield, was medically reasonable and necessary.

Petitioner failed to show, by a preponderance of the evidence, that the disputed office visits were not medically necessary.

B. Disputed Therapy

The disputed therapy consists of various active and passive procedures employed by Respondent to treat Claimant's left hand from December 16, 2003, through January 15, 2004, following surgery and an initial course of therapy.

Payment for additional dates of therapy, beyond those disputed in this case, were also denied by Petitioner as medically unnecessary.¹⁰ The IRO and Commission decisions affirmed Petitioner's denial of those dates of service based on the IRO doctor's¹¹ assertion that any post-injection therapy was not medically necessary since post-injection therapy is not an accepted form of treatment, particularly for a trigger finger.

Apparently, the IRO doctor believed that Claimant did not begin injection therapy until

¹⁰ The IRO and Commission agreed with Petitioner's denial of payment for post-injection therapy from February 27 through March 10, 2004. Neither party appealed those dates of service so they are not in dispute in this case. Those dates are referenced here, however, because the reasoning underlying the determination for those dates of service is relevant and applicable to the disputed services.

¹¹ The IRO doctor is a board-certified orthopaedic surgeon who is also fellowship-trained in hand surgery.

February 24, 2004, and denied all therapy that occurred after that date as medically unnecessary. The records, however, indicate that Claimant's initial trigger finger injection was administered on December 18, 2003.¹²

Dr. McCaskill also testified that therapy is not an effective or accepted form of treatment for trigger finger. According to Dr. McCaskill, the only effective treatments for Claimant's trigger finger condition were tendon sheath injections or trigger release surgery. Dr. McCaskill further testified that his review of Claimant's medical records did not consistently describe any condition that would justify the medical need for the disputed therapy.

The evidence persuasively shows that therapy provided after the commencement of trigger finger injections was not medically reasonable or necessary. Therefore, the eight disputed therapy sessions from December 22, 2003, through January 15, 2004, were not medically necessary since Claimant received her first trigger finger injection on December 18, 2003.

The remaining disputed therapy session took place on December 16, 2003, after the injection therapy was prescribed, but before the first injection was administered. The IRO determined that this therapy was reasonable, but the only rationale given as a basis for its determination was the brief and rather meaningless statement: "Because of [Claimant]'s documented post-operative complications of stiffness and triggering."¹³ As indicated above, Dr. McCaskill testified convincingly regarding his expert opinion that none of the disputed therapy was medically necessary to treat Claimant's documented conditions.

Additionally, although Dr. Burdin testified that the disputed therapy was medically necessary to reduce Claimant's pain and swelling and increase her functionality, the evidence does not show that Claimant required the disputed therapy, particularly since the record shows that the previous eleven approved sessions of such therapy failed to yield any significantly positive results.

¹² Respondent's Exhibit 1, pages 165 and 197.

¹³ Respondent's Exhibit 1, page 9.

The ALJ finds that Petitioner has sustained its burden of proof to show, by a preponderance of the evidence, that the disputed therapy was not medically reasonable or necessary.

IV. CONCLUSION

Petitioner should reimburse Respondent for the disputed office visits on October 30, 2003, and January 22, 2004. Petitioner is not, however, required to reimburse Respondent for any of the disputed therapy sessions from December 16, 2003, through January 15, 2004.

V. FINDINGS OF FACT

1. ____ (Claimant) sustained a work-related injury on or about ____.
2. Claimant was first diagnosed with carpal tunnel syndrome in 1995 and initially presented to Dr. Burdin, the treating D.C., in 2000.
3. Claimant underwent carpal tunnel release surgery to her right hand in 2002.
4. In August 2003, Dr. Westfield performed carpal tunnel release surgery to Claimant's left hand.
5. Claimant underwent an initial course of eight sessions of occupational and physical therapy from September 9 through October 7, 2003, following the surgery to her left hand.
6. In mid October, 2003, Claimant continued to have significant problems with her left hand, including numbness, swelling, discoloration, continued pain, stiffness, finger triggering, scar hypersensitivity, and functional deficits.
7. Dr. Burdin suspended Claimant's physical therapy after the initial eight sessions to allow her pain to subside.
8. Dr. Westfield recommended trigger release surgery to eliminate Claimant's hand pain.
9. On October 30, 2003, Claimant had an office visit with Dr. Burdin, her treating physician, for evaluation post-surgery. Dr. Burdin recommended Claimant resume therapy.
10. Claimant underwent an additional three sessions of physical therapy with Dr. Burdin on December 1, 4, and 8, 2003.
11. Following Claimant's therapy session on December 8, 2003, Dr. Burdin again discontinued

therapy and referred her to Dr. Westfield for re-evaluation because she was not tolerating therapy or healing as expected.

12. On December 11, 2003, Dr. Westfield referred Claimant to Mark Dedmon for injection therapy because Claimant wanted to try injections before undergoing trigger release surgery.
13. Dr. Westfield's December 11, 2003 referral order for injections does not mention or recommend that Claimant should continue therapy.
14. Claimant had an additional therapy session on December 16, 2003.
15. Claimant underwent her first trigger finger injection with Mark Dedmon on December 18, 2003.
16. Mark Dedmon, Dr. Burdin, and Dr. Westfield are all employed by Neuromuscular Institute of Texas (Respondent).
17. After her initial injection on December 18, 2003, Claimant received eight additional therapy sessions from Respondent consisting of active and passive therapies prescribed by Dr. Burdin including manual therapy, mobilization, therapeutic range of motion, ultrasound, neuromuscular re-education, paraffin bath, and chiropractic manipulation.
18. On January 22, 2004, Claimant had an office visit with Dr. Westfield to follow up after her surgery and injections.
19. Liberty Mutual Insurance Company (Petitioner) denied reimbursement for the disputed services as not medically necessary.
20. By letter dated January 4, 2005, Envoy Medical Systems, LP, an Independent Review Organization (IRO), concluded that both disputed office visits were medically necessary for treatment of Claimant's condition.
21. Petitioner's expert, Dr. McCaskill, is a board-certified orthopedic surgeon. The IRO doctor is a board-certified orthopedic surgeon and fellowship-trained hand surgeon.
22. Dr. McCaskill and the IRO doctor agreed that the disputed services administered in conjunction with the injection therapy were not medically reasonable or necessary treatment for Claimant's condition.
23. None of the disputed therapy was medically reasonable or necessary to treat any of Claimant's documented conditions.
24. The IRO decision is deemed a Decision and Order of the Texas Workers' Compensation Commission.

25. The Commission issued a Finding and Decision on February 3, 2005.
26. Petitioner timely requested a hearing to contest the Commission's decision.
27. A hearing was convened by Administrative Law Judge Ami L. Larson on January 10, 2006, in the hearing rooms of the State Office of Administrative Hearings. The hearing adjourned and the record closed that same day, but the record was reopened until March 17, 2006, to allow for the submission of written clarification by the parties regarding the dates of disputed services.
28. The disputed office visits in October 2003, and January 2004, were medically necessary in order to follow up with Claimant after her surgery and in light of her ongoing complications.
29. The disputed therapy from December 16, 2003, through January 15, 2004, was not medically reasonable or necessary to treat Claimant's work related injury.

VI. 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. §413.031(k) and TEX. GOV'T. CODE ANN. ch. 2003.
2. Petitioner timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 102.7 and 148.3.
3. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. ch. 2001.
4. 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).
5. Petitioner had the burden of proof in this matter, which was the preponderance of evidence standard. 28 TAC §§148.21(h) and (i); 1 TAC § 155.41(b).
6. Petitioner proved by a preponderance of the evidence that the disputed therapy from December 16, 2003, through January 15, 2004 was not medically necessary for treatment of Claimant's work related injury.
7. Petitioner failed to prove by a preponderance of the evidence that the disputed office visits on October 30, 2003, and January 22, 2004, were not medically reasonable or necessary.

ORDER

THEREFORE, IT IS ORDERED that Petitioner reimburse Respondent for both the October 30, 2003, and January 22, 2004, office visits.

IT IS FURTHER ORDERED that Petitioner is not required to reimburse Respondent for the therapy provided to Claimant from December 16, 2003, through January 15, 2004.

SIGNED May 10, 2006.

**AMI L. LARSON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**