

LIBERTY MUTUAL FIRE	§	BEFORE THE STATE OFFICE
INSURANCE COMPANY,	§	
Petitioner	§	
	§	
V.	§	OF
	§	
TEXAS WORKERS' COMPENSATION	§	
COMMISSION AND METROPLEX	§	
DIAGNOSTICS,	§	
Respondents	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. INTRODUCTION

This case involves an appeal by Petitioner, Liberty Mutual Fire Insurance Company (Carrier), from findings and the decision of the Texas Workers' Compensation Commission (the Commission) Medical Review Division (MRD) ordering payment for somatosensory evoked potential (SSEP) testing, a type of electrodiagnostic nerve testing. The Carrier denied payment on the basis that the SSEP testing was not medically necessary, but an independent review organization (IRO) chiropractor disagreed with that determination. Based on the IRO's findings, the Commission's MRD ordered payment. The amount in dispute is \$175.00. In this Decision and Order, the Administrative Law Judge (ALJ) finds the Carrier met its burden of proof on appeal. Therefore, she orders that Respondent Provider, Metroplex Diagnostics (Provider), is not entitled to payment for the SSEP testing.

II. REASONS FOR DECISION

A. Summary of the Evidence

Claimant ___ suffered a compensable lower back injury on ___, while trying to lift a 40-pound trash bag. In the months following her injury, Claimant complained of low back pain, with pain radiating into the left posterior thigh. An MRI of the lumbar spine performed on February 27, 2001, revealed a 4 mm protrusion at L5-S1, which came in contact with the thecal sac and impinged on the right S1 nerve sheath, and a 1-2 mm bulge at L4-L5 that minimally effaced the thecal sac. Claimant's treating doctor, Larry Parent, D.C., ordered a battery of tests that included nerve conduction testing, H and F nerve reflex studies, and SSEP testing. Provider performed the tests on March 22, 2001. The test results were relatively unremarkable, except that there was evidence of left L5 nerve irritation "due to the decrease in frequency of incidence of the wave responses by more than 50% of the left peroneal F wave studies." (Ex. 3, pp. 14-15.) After receiving the test results, Dr. Parent placed Claimant in a work hardening program; however, the record does not reflect what role, if any, the SSEP test results played in that decision.

The records of the chiropractor who performed the tests, Dr. Natalie Kogan, indicate that Dr. Parent referred Claimant for testing in order to "rule out" evidence consistent with lumbar radiculopathy and entrapment neuropathy of the lower extremities. (Ex. 3, p. 14.) The IRO

chiropractor accepted that explanation as a valid reason for ordering the tests. The IRO chiropractor concluded, in very general language, that the SSEP testing was necessary “as it correlates with the patient’s clinical presentation, history and mechanism of injury. It adds additional helpful clinical information necessary for proper diagnosis and treatment.” (Ex. 2.) In the IRO chiropractor’s opinion, there was “a correlation” between the February 27, 2001, MRI and the SSEP testing that was “consistent with lumbar radiculopathy,” and that correlation provided “more evidence to support the diagnosis and therefore determine the type of treatment necessary to best help this patient.” (Ex. 2.) Though the IRO chiropractor apparently concluded that Claimant had radiculopathy, there was no evidence of how Dr. Parent interpreted the SSEP test results.

Dr. Parent’s supervisor, Dr. Rhudy, testified that Dr. Parent was correct in ordering the SSEP testing because, according to Dr. Rhudy, it is beneficial to look at the overall conduction of the nerves being evaluated, and the SSEP test allowed the doctors to do that. In order to determine the extent of damage and appropriate patient care, a doctor wants to evaluate the nerve as thoroughly as possible all the way back into the central nervous system. SSEP testing allows the doctor to look back into the central nervous system. Because the results of the SSEP testing on Claimant were unremarkable, Dr. Rhudy testified, those findings helped Dr. Parent know the extent of Claimant’s injury and decide on her course of treatment.¹

The Carrier’s expert witness, Nicholas Tsourmas, M.D., testified that SSEP tests are used to establish the integrity and continuity of nerve pathways. They are performed using patches rather than needles. Virtually the only context in which Dr. Tsourmas believes SSEPs to be medically necessary is during spine surgery, where neurosurgeons and orthopedic surgeons routinely use them. During surgery, electrical current is run from the patient’s foot to the top of his or her head to make sure the spinal column is functioning. SSEPs indicate whether or not there is a disruption between the point of stimulation and the point where the current is tested, but they do not indicate *where* in the system the problem is located. According to Dr. Tsourmas, SSEPs’ sensitivity is good, but their specificity is “awful.” In Dr. Tsourmas’ opinion, SSEP testing of Claimant did not add any information to what other tests conducted on Claimant, e.g., an MRI and nerve conduction testing, provided, and they did not affect Claimant’s treatment options. Moreover, he maintained, if Dr. Parent had relied on the SSEP test results, one would expect his notes to reflect that, but they do not; they indicate only that Claimant was referred to work hardening.

B. Analysis

Four chiropractors—Dr. Parent, Dr. Rhudy, the IRO chiropractor, and Dr. John DeRicco—utilization review doctor hired by the Carrier—were of the opinion that the SSEP testing administered

¹The doctors’ opinions differed as to whether Claimant had radiculopathy. As noted above, Dr. Parent’s purpose in ordering the SSEP testing, was to rule out radiculopathy, but the IRO chiropractor seems to have concluded that Claimant had radiculopathy; Dr. Rhudy interpreted the test results as unremarkable; the Carrier’s expert witness, Dr. Nicholas Tsourmas, did not believe she had radiculopathy; but a peer review chiropractor selected by the Carrier, Dr. John DeRicco, opined that Claimant had left-sided L5 radiculopathy and right-sided S1 radiculopathy. (Ex. 3, pp. 100-102.) As noted above, Dr. Parent’s interpretation of the SSEP results was absent from the record.

to Claimant was medically necessary.² However, none of the chiropractors explained *how* the SSEP test results helped Dr. Parent diagnose Claimant's condition and decide upon an appropriate treatment plan for her. They simply stated their opinions in conclusory language.

The ALJ was more persuaded by Dr. Tsourmas' testimony that the SSEP testing did not provide Dr. Parent with any meaningful information, in addition to the information provided by other tests, on which to base a diagnosis and treatment plan. Dr. Tsourmas' testimony might not have carried so much weight if the record had contained evidence of how Dr. Parent interpreted the SSEP test results and how he utilized them in his treatment of Claimant. However, in the absence of such evidence, Dr. Tsourmas' testimony tipped the balance of the evidence in the Carrier's favor. The ALJ concludes, therefore, that Provider is not entitled to payment for the SSEP testing performed on Claimant on March 22, 2001.

The parties appeared to view this case as having significance far beyond the issue of whether or not Carrier owes Provider \$175.00. Much of the testimony suggested that the parties perceived this proceeding to provide a forum in which to air a debate between chiropractors, on the one hand, and medical doctors and the Carrier, on the other hand, over whether SSEP testing can ever be medically necessary in a non-operative setting.³ This decision should not be interpreted as weighing in on that question. The ALJ's findings are limited to the evidence presented here.

III. FINDINGS OF FACT

1. On ____, Claimant sustained a lower back injury compensable under the Texas Workers' Compensation Act (the Act).
2. At the time Claimant sustained the compensable injury, Petitioner, Liberty Mutual Insurance Company (Carrier), was the carrier for Claimant's employer.
3. As a result of the injury, Claimant suffered low back pain, with pain radiating into the left posterior thigh.
4. An MRI of the lumbar spine performed on February 27, 2001, revealed a 4 mm protrusion at L5-S1, which came in contact with the thecal sac and impinged on the right S1 nerve sheath, and a 1-2 mm bulge at L4-L5 that minimally effaced the thecal sac.
5. Claimant's treating doctor, Dr. Larry Parent, D.C., ordered a battery of tests that included nerve conduction testing, H and F nerve reflex studies, and somatosensory evoked potential (SSEP) testing. Respondent Metroplex Diagnostics (Provider) performed the tests on Claimant on March 22, 2001.

²On July 20, 2001, Dr. DeRocco, who had been hired by the Carrier to review Claimant's medical records, included in his report a statement that he did not identify any unnecessary diagnostic tests performed on Claimant. (Ex. 3, pp. 100-102.)

³Indeed, the Carrier argued that SSEP testing is not sufficiently accurate to ever be medically necessary for diagnostic purposes in a clinical setting.

6. The Carrier declined to reimburse Provider \$175.00 for the SSEP testing, on the basis that the testing was not medically necessary.
7. The results of all the tests performed on March 22, 2001, were relatively unremarkable, except that there was evidence of left L5 nerve irritation.
8. SSEP testing indicates whether there is a disruption between the point of stimulation and the point where the electrical current is tested, but SSEP testing does not indicate where in the system the problem is located.
9. After receiving the test results, Dr. Parent placed Claimant in a work hardening program.
10. There was insufficient evidence indicating why SSEP testing was medically necessary in light of the other tests performed on Claimant.
11. There was no evidence as to how Dr. Parent interpreted the SSEP test results or what use he made of them in his treatment of Claimant.
12. Based on Findings of Fact Nos. 7-11, the SSEP testing at issue in this proceeding was not medically necessary.
13. Provider timely filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission).
14. An independent review organization (IRO) chiropractor reviewed the medical dispute and found the SSEP testing was medically necessary.
15. Based on the IRO's findings, the Commission's Medical Review Division (MRD) ordered the Carrier to pay Provider for the SSEP testing.
16. After the MRD issued its order, the Carrier filed a timely appeal.
17. Notice of the hearing was sent to the parties on August 22, 2002.
18. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
19. The hearing was held December 16, 2002, at the hearings facility of the State Office of Administrative Hearings (SOAH), with Administrative Law Judge (ALJ) Renee M. Rusch presiding and representatives of the Carrier and the Provider participating. The Commission did not participate in the hearing. The hearing was adjourned the same day.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. ch. 401 *et seq.*

2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
4. The Carrier had the burden of proof in this matter. 28 TEX. ADMIN. CODE (TAC) §148.21(h); 1 TAC § 155.41.
5. Based on Findings of Fact Nos. 7-11, the Carrier met its burden of proving that the SSEP testing performed on March 22, 2001, was not medically necessary. TEX. LABOR CODE ANN. § 408.021(a).
6. The MRD's order requiring the Carrier to reimburse Provider for the SSEP testing should be reversed.

ORDER

IT IS, THEREFORE, ORDERED that Respondent Metroplex Diagnostics is not entitled to reimbursement for the somatosensory evoked potential testing performed on Claimant ____ on March 22, 2001.

SIGNED this 14th day of February, 2003.

RENEE M. RUSCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS