

SOAH DOCKET NO. 453-03-3876.M5

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

DECISION AND ORDER

This is a dispute over reimbursement for occupational therapy services performed for a repetitive stress disorder to Claimant's left arm and neck. The Administrative Law Judge (ALJ) concludes the services were not medically necessary and denies reimbursement.

I. FACTUAL AND PROCEDURAL HISTORY

Claimant reported a work-related repetitive stress injury to her left arm and neck on _____. She was initially treated conservatively with nonsteroidal anti-inflammatories, narcotic analgesics, activity modification, and physical therapy. When Claimant continued to experience significant pain, botox injections and a carpal tunnel release were tried in 2001. A second series of 10 injections was administered from January 14, 2002 to August 28, 2002, with physical medicine therapy throughout 2002. These were unsuccessful, leading to a left elbow arthroscopy on November 25, 2002. The treatments in question are occupational therapy modalities performed from September 18, 2002 through October 17, 2002.

Liberty Mutual Insurance Company (Carrier) declined to reimburse Neuromuscular Institute of Texas, PA (Provider) for the 10 disputed dates of service, considering those sessions not to have been medically necessary. Provider filed a timely Request for Medical Dispute Resolution. The Independent Review Organization (IRO) agreed with Carrier that the treatments were not medically necessary. On June 4, 2003, the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC) issued its Findings and Decision, which ruled that Provider

was not entitled to reimbursement of \$1,482.00 for the disputed services.

On June 18, 2003, Provider filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH). The hearing was held February 23, 2004, before ALJ Nancy Lynch. Provider and Carrier participated in the hearing, which was adjourned the same day. Due to workload consideration, this case was later transferred to ALJ Tommy Broyles who listened to the tape recording of the hearing, reviewed the documentary evidence, and issued this Decision an Order.

II. DISCUSSION

Brad Burdin, D.C., (Claimant's treating doctor) testified that an MRI on August 13, 2002, indicated Claimant suffered a tear in her left shoulder rotator cuff, among other potential injuries. Occupational therapy was prescribed in an effort to avoid surgical intervention by providing Claimant with increased range of motion and pain relief. Dr. Burdin explained that Claimant was previously treated for several other problems with her left extremities but that this was the first time treatment was prescribed for her shoulder. While stopping just short of stating that the therapy might completely heal Claimant's shoulder, he did contend that by improving the strength and range of motion of the muscles and tendons attached to her shoulder, Claimant could improve without surgical intervention.

Samuel Bierner, M.D., testified on behalf of Carrier that the therapy at issue was not medically necessary. While agreeing that therapy may be used to treat Claimant's condition, he asserted that its need depends, in part, on the extent of previous treatments. In this case, Dr. Bierner noted that Claimant had performed two years of physical therapy without significant relief. Moreover, he asserted that after this amount of therapy, Claimant certainly maintained the ability to perform these "very standard" exercises at home, adding that hot packs charged in a microwave may also be administered at home.

The ALJ is persuaded by Dr. Bierner's testimony that it was not medically necessary to have Claimant perform this therapy under the supervision of a doctor. Rather, given the extensive

physical therapy that Claimant had already undergone, she could have performed the exercises and administered the hot packs at home. Further, Claimant did not show significant improvement with the therapy, leading the ALJ to question whether it was medically useful at all, given the length of time that had passed since Claimant's injury.

Therefore, the preponderance of the evidence shows the disputed sessions were not reasonable or necessary medical services, and accordingly, the ALJ denies reimbursement for them.

III. FINDINGS OF FACT

1. Claimant reported a work-related repetitive stress injury to her left arm and neck on ____.
2. Claimant was treated with nonsteroidal anti-inflammatories, narcotic analgesics, activity modification, and physical therapy.
3. Claimant underwent carpal tunnel surgery on August 21, 2001, and received two series of botox injections.
4. After the second series of botox injections, occupational therapy modalities, including exercises and hot packs, were performed on 10 occasions from September 18, 2002 to October 17, 2002.
5. Carrier declined to reimburse Provider for the therapy sessions from September 18, 2002 to October 17, 2002, considering the sessions not to have been medically necessary.
6. Provider filed a timely Request for Medical Dispute Resolution.
7. The IRO agreed with Carrier, finding that the treatments were not medically necessary.
8. On June 4, 2003, the MRD issued its Findings and Decision, which ruled that Provider was not entitled to reimbursement for the disputed services.
9. On June 18, 2003, Provider filed a timely request for a hearing before SOAH.
10. Notice of the hearing was sent to all parties on July 22, 2003.
11. 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.
12. The hearing was held February 23, 2004. Provider and Carrier participated in the hearing,

which was adjourned the same day.

13. At-home exercises by Claimant could have accomplished the same purpose as the disputed physical therapy sessions.
14. Claimant showed little improvement after the disputed sessions.
15. The disputed sessions were neither medically reasonable nor necessary.

IV. CONCLUSIONS OF LAW

1. 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.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV ' T CODE ANN. §2001.052.
3. Under 28 TEX. ADMIN. CODE (TAC) §148.21(h), the petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. §413.031.
4. The disputed services were not reasonable or necessary medical treatments under TEX. LAB. CODE ANN. §401.011(19).
5. Carrier should not be required to reimburse Provider for the physical therapy sessions in dispute.

ORDER

Liberty Mutual Insurance Company is not required to reimburse Neuromuscular Institute of Texas for the disputed physical therapy sessions provided Claimant from September 18, 2002 to October 17, 2002.

Issued April 7, 2004.

**TOMMY L. BROYLES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**