

DOCKET NO. 453-04-0079.M5

DENTON SPORTS & PHYSICAL THERAPY, Petitioner	§ § § §	BEFORE THE STATE OFFICE
VS.	§ §	OF
TASB RISK MANAGEMENT FUND, Respondent	§ §	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

TASB Risk Management Fund (TASB) denied payment for hot/cold packs, myofascial release/soft tissue mobilization, therapeutic procedure/exercise, joint mobilization, ultrasound, and massage provided to a worker with injuries to her shoulder and cervical and lumbar spinal areas. The provider, Denton Sports & Physical Therapy (Denton), requested medical dispute resolution. An independent review organization (IRO) concluded that the services were not medically necessary. Denton requested a hearing. The amount in dispute is \$1,951.00. This Decision and Order requires TASB to pay for most of the disputed services.

I. DISCUSSION

A. Background Facts

The claimant, ____, was injured on ____, when she fell at work. She was first seen at Denton on April 18, 2002, reporting upper trunk, neck, and low back pain. She had been referred by Linda Yeatts, M.D. ____ began physical therapy consisting of passive modalities and supervised exercises, as well as instruction in home exercises, and she was provided with a TENS unit. She continued to work as a _____, standing and _____ much of the day. During the first weeks of therapy she had some improvement in her condition, but continued to experience bothersome levels of pain. An MRI performed June 18 showed no nerve compression. Her condition continued to improve, and she was discharged from physical therapy on July 19, 2002, with encouragement to continue with her home exercises.

2. Procedural History

The IRO issued its decision July 28, 2003. The Medical Review Division of the Texas Workers' Compensation Commission (Commission) adopted the IRO's decision on August 6, 2003. On August 13, 2003, Denton requested a hearing. The Commission issued a notice of hearing September 12, 2003. The hearing was convened on January 27, 2004, before State Office of Administrative Hearings (SOAH) Judge Shannon Kilgore. Denton was represented by its owner, Dan Proctor, a physical therapist, who appeared by telephone. Jane Lipscomb Stone, attorney, appeared for TASB. The hearing adjourned, and the record closed, the same day.

C. Applicable Law

The Texas Labor Code contains the Texas Workers' Compensation Act (Act) and provides the relevant statutory requirements regarding compensable treatment for workers' compensation claims.¹ In particular, the Act provides in pertinent part that:

(a) 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. The employee is specifically entitled to health care that:

- (1) cures or relieves the effects naturally resulting from the compensable injury;
- (2) promotes recovery; or
- (3) enhances the ability of the employee to return to or retain employment.

* * *

Health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.²

¹ TEX. LAB. CODE § 408.021.

² TEX. LAB. CODE § 401.011(19).

D. Burden of Proof

Under the Commission’s rules, an IRO decision is deemed a Commission decision and order.³ The burden of proof in this case is on Denton to prove by a preponderance of the evidence that the disputed services were not reasonable and necessary medical treatments.⁴

E. The Disputed Services

The disputed services were billed under the following codes:

97010	hot/cold packs
97250	myofascial release/soft tissue mobilization
97110	therapeutic procedure/exercise
97265	joint mobilization
97035	ultrasound
97124	massage.

The disputed dates of service are 17 days from June 3 through July 17, 2002.

F. IRO Decision

In its report, the IRO stated:

The specific reason for the denial of this continuing therapy regimen is the clear lack of progress made in the patient’s clinical level of pain. There is no specific etiology for this patient’s pain, aside from possible nervous system “wind-up” from ongoing pain complaints.

The twenty (20) physical therapy visits of largely passive therapeutic modalities for a patient that is displaying characteristics of a chronic pain syndrome are largely futile. A more concerted, focused multi-disciplinary program is clearly more effective and has been supported in numerous articles in the literature by Dr. Moldofsky in his research concerning fibromyalgia and myalgia syndromes.

³ 28 TEX. ADMIN. CODE § 133.308(p) (5).

⁴ 28 TEX. ADMIN. CODE §§ 133.308(p) (5) and (w), 148.21(h)-(i).

It should be noted that at the outset of the physical therapy session on 6/03/02, the patient had made some progress, but still required therapy three times a week. As of 6/03/02, she was complaining of increased pain and soreness along her bilateral upper trapezius muscles. Soft tissue mobilization was effective for decreasing her trigger points in her upper trapezius and along her cervical paraspinal muscles.⁵

G. General Description of the Evidence

The evidence in this case consists of medical records, as well as the testimony of the following witnesses:

- Dan Proctor, a physical therapist and Denton's owner; and
- N.F. Tsourmas, M.D., an orthopaedic surgeon and TASB's medical director.

H. Analysis and Recommendation

___ underwent about six weeks of physical therapy prior to the disputed dates of service, which constituted an additional seven weeks of therapy. The three entities involved in this case B the two parties and the IRO B have three different views about the medical necessity of the therapy at issue.

While the rationale for its decision is not totally clear, the IRO seems to have concluded that ___'s slow progress indicated a pain syndrome requiring more than just a continuation of the physical therapy.

Dr. Tsourmas, testifying for TASB, agreed with the IRO's conclusion that the additional physical therapy beyond the first six weeks or so was not warranted, but disagreed with the IRO's rationale. He stated that he agreed with the physical therapy provided up until May 31, 2002.⁶ However, he testified that passive therapies, including hot/cold packs, massage, electrical

⁵ Pet. Ex. 1 at 7.

⁶ Carrier Ex. 2 at 43.

stimulation, and ultrasound, are not effective beyond the acute phase, or first few weeks, of a strain/sprain injury. As to therapeutic exercise, Dr. Tsourmas testified that during her first weeks of therapy ___ had been instructed how to do beneficial exercises, and she therefore could have done them at home for the rest of the time her injury continued to bother her. Dr. Tsourmas also stated that there is no documentation in the record of any joint involvement in ___'s condition, and therefore no need for joint mobilization.⁷ He concluded that the normal healing process was probably responsible for most of ___'s recovery.⁸

Mr. Proctor asserted that ___'s continuing to work as a _____, which involved standing and _____ much of the day, aggravated her injury and slowed her progress, and it was only after the end of the school year (which coincided approximately with the beginning of the period of disputed services in this case) that her physical therapy began to result in considerable improvement. He noted that the physical therapy was prescribed by ___'s treating doctor, a physician. Mr. Proctor emphasized that ___'s decreasing use of pain medications⁹ and a TENS unit, as well as the reduction in her reported pain levels, allowed her to be released from physical therapy in July 2002. According to Mr. Proctor, this course of therapy was a success and should be reimbursed.

The IRO's reasoning that passive modalities were "futile" in this case because ___ had chronic pain syndrome and required an interdisciplinary program was clearly wrong; ___'s reported pain levels were significantly reduced by the time she completed her therapy at Denton.¹⁰

⁷ Dr. Tsourmas further testified that it is not appropriate to bill for both myofascial release and massage on the same day, since they are much the same kind of therapy. However, the ALJ has been unable to identify any day among the disputed dates of service when Denton billed for both myofascial release (CPT code 97250) and massage (CPT code 97124).

⁸ TASB also asserts that because, on occasion, ___. Requested a particular therapy that had helped her pain on previous visits, her therapy was inappropriately "patient-directed." The ALJ is persuaded by Mr. Proctor's testimony that on occasion it is acceptable for a physical therapist to provide a service that the patient has identified as helpful.

⁹ See Pet. Ex. 1 at 28.

¹⁰ When she started, her highest pain level was eight of ten and her lowest level was one of ten. Pet. Ex. 1 at 16. At the end of the therapy, her highest level was two of ten and her lowest level was zero. Pet. Ex. 1 at 30.

Mr. Proctor's view that ____'s injury was continually aggravated by her work during the first six weeks of therapy is supported by the record; there are notations in the chart that her work seemed to be complicating her recovery,¹¹ and the progress notes reflect an increased rate of improvement following the end of the academic year.¹² This evidence indicates that a somewhat prolonged course of physical therapy was reasonable under the circumstances, especially in light of the fact that ____ was nearly pain-free at the conclusion of the treatment. The ALJ therefore concludes that the IRO decision was not supported by the evidence, and that there is sufficient basis in the record to require reimbursement for most of the disputed services. However, the ALJ agrees with the carrier that there is not adequate documentation to demonstrate the need for the joint mobilization.

Accordingly, the ALJ determines that TASB must reimburse Denton for the disputed services provided to ____ from June 3 through July 17, 2002, except for the joint mobilization (CPT code 97265) provided on June 10, 2002.

II. FINDINGS OF FACT

1. The claimant ____ suffered compensable back and neck injuries on ____, when she fell at work.
2. TASB Risk Management Fund (TASB) is the workers' compensation insurer with respect to the claims at issue in this case.
3. Denton Sports & Physical Therapy (Denton) provided physical therapy to ____ consisting of: hot/cold packs, myofascial release/soft tissue mobilization, therapeutic procedure/exercise, joint mobilization, ultrasound, and massage. The disputed dates of service were June 3 through July 17, 2002.
4. Denton billed for these services with the following CPT Codes:

97010	hot/cold packs
97250	myofascial release/soft tissue mobilization
97110	therapeutic procedure/exercise
97265	joint mobilization
97035	ultrasound
97124	massage.

¹¹ Pet. Ex. 1 at 20-21.

¹² Pet. Ex. 1 at 26-31.

5. TASB declined to pay for these services. TASB asserts that they were medically unnecessary.
6. The amount in dispute is \$1,951.00.
7. Denton requested medical dispute resolution.
8. On July 28, 2003, an independent review organization (IRO) issued a decision finding that the disputed services were not medically necessary.
9. Not later than the twentieth day after receiving notice of the IRO's decision, Denton requested a hearing.
10. Notice of the hearing was issued September 12, 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 convened on January 27, 2004, before State Office of Administrative Hearings (SOAH) Judge Shannon Kilgore. TASB was represented by Jane Lipscomb Stone. Dan Proctor, Denton's owner, appeared by telephone. The hearing adjourned, and the record closed, the same day.
13. Rebecca Yeatts, M.D., referred ___ to physical therapy.
14. ___ was first seen at Denton on April 18, 2002, reporting upper trunk, neck, and low back pain.
15. At the start of physical therapy, ___'s highest pain level was eight of ten and her lowest level was one of ten.
16. ___ began physical therapy consisting of passive modalities and supervised exercises, as well as instruction in home exercises, and she was provided with a TENS unit.
17. ___ continued to work as a _____, standing and _____ much of the day.
18. ___'s work aggravated her injury and slowed her recovery, and for these reasons justified a somewhat prolonged course of therapy.
19. During the first weeks of therapy ___ had some improvement in her condition, but continued to experience bothersome levels of pain.

20. An MRI performed June 18 showed no nerve compression.
21. ___'s rate of improvement increased in June 2002, following the end of the academic year and her stopping work for the summer.
22. ___ was discharged from physical therapy on July 19, 2002, with encouragement to continue with her home exercises.
23. At the time of her discharge from physical therapy ___'s reported pain levels ranged from zero to two on a scale of ten.
24. The joint mobilization (CPT code 97265) provided on June 10, 2002, was not medically necessary, as no joint problem has been shown to be related to ___'s injury.
25. The other therapies provided by Denton to ___ from June 3 through July 17, 2002, were reasonable and necessary.

III. 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 ch. 401 *et seq.*
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE § 413.031; TEX. GOV'T CODE ch. 2003.
3. 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. TEX. LAB. CODE § 408.021.
4. Denton timely filed a notice of appeal as specified in 28 Texas Administrative Code § 148.3.
5. Adequate and timely notice of the hearing was provided in accordance with the Administrative Procedure Act. TEX. GOV'T CODE § 2001.052.
6. Denton has the burden of proof in this matter. 28 TEX. ADMIN. CODE §§ 133.308(p)(5) and (w), 148.21(h)-(i).
7. Based on the Findings of Fact, and pursuant to § 408.021 of the Texas Labor Code, TASB must reimburse Denton for the disputed treatments, except for the joint mobilization (CPT code 97265) provided on June 10, 2002.

ORDER

IT IS THEREFORE ORDERED that TASB Risk Management Fund reimburse Denton Sports & Physical Therapy for hot/cold packs, myofascial release/soft tissue mobilization, therapeutic procedure/exercise, ultrasound, and massage provided to claimant ___ from June 3 through July 17, 2002, but need not pay for joint mobilization provided on June 10, 2002.

ISSUED this March 25, 2004.

SHANNON KILGORE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW JUDGE