SOAH DOCKET NO. 453-04-1321.M5
TWCC MRD TRACKING NO. M5-03-1320-01

NEUROMUSCULAR INSTITUTE	**§**	**BEFORE THE STATE OFFICE**
OF TEXAS, PA,	**§**	
Petitioner	**§**	
V.	**§**	**OF**
	§	
ACE/ESIS, INC.,	**§**	
Respondent	**§**	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

This case is an appeal by the Neuromuscular Institute of Texas, PA ("Petitioner"), from a decision of an independent review organization ("IRO") on behalf of the Texas Workers' Compensation Commission ("Commission") in a dispute regarding medical necessity for chiropractic treatment. The IRO found that the insurer, ACE/ESIS, Inc. ("Respondent"), properly denied reimbursement for physical therapy that Petitioner administered between January 25 and March 14, 2002, to a claimant suffering from a wrist injury.

Petitioner challenged the decision on the basis that the treatment at issue was, in fact, medically necessary, within the meaning of §§ 408.021 and 401.011(19) of the Texas Workers' Compensation Act ("the Act"), TEX. LABOR CODE ANN. ch. 401 *et seq.*

This decision disagrees with that of the IRO, finding that reimbursement of Petitioner for the disputed services is appropriate.

JURISDICTION AND VENUE

The Commission has jurisdiction over this matter pursuant to § 413.031 of the Act. The State Office of Administrative Hearings ("SOAH") has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003. No party challenged jurisdiction or venue.

STATEMENT OF THE CASE

The hearing in this docket was convened on March 22, 2004, at SOAH facilities in the William P. Clements Building, 300 W. 15th St., Austin, Texas. Administrative Law Judge ("ALJ") Mike Rogan presided. Petitioner was represented by Allen Craddock, attorney. Respondent was represented by Javier Gonzalez. Both parties presented evidence and argument. The record was left open to allow submission of additional documentation and closed on March 23, 2004.[1]

[1]The staff of the Commission formally elected not to participate in this proceeding, although it filed a general "Statement of Matters Asserted" with the notice of the hearing.

The record revealed that on _____, the claimant reported a compensable injury to her right wrist, resulting from repetitive motion on the job. (Claimant was employed sewing pockets on pants.) About two weeks after the injury, the claimant sought treatment from Dr. Daniel Bradley Burdin, a board-certified chiropractic neurologist who practices with Petitioner.[2]

Dr. Burdin made a diagnosis of DeQuervain's syndrome, an inflammation of tendons affecting the wrist. In an effort to avoid surgery, Dr. Burdin treated the claimant conservatively for about seven weeks, employing active and passive chiropractic modalities. Ultimately, however, the patient's condition necessitated surgery on April 23, 2002.

When Petitioner subsequently billed Respondent (the insurer for the claimant's employer) for chiropractic services in the case from January 25 through March 14, 2002, Respondent denied reimbursement on the grounds that the treatment had been medically unnecessary. Petitioner sought medical dispute resolution through the Commission. The IRO to which the Commission referred the dispute issued a decision on April 14, 2003, concluding that Petitioner had failed to document that the chiropractic treatment at issue had been reasonable and effective in relieving symptoms or improving function. The IRO declared that "it is possible that over utilization [of treatment] actually exacerbated the patient's symptoms."

The Commission's Medical Review Division ("MRD") reviewed the IRO's decision and, on November 3, 2003, issued its own decision confirming that the disputed services were not medically necessary and should not be reimbursed. Petitioner then made a timely request for review of the IRO and MRD decisions before SOAH.

THE PARTIES' EVIDENCE AND ARGUMENTS

A. PETITIONER

Petitioner argued that the IRO was simply wrong in an assessment of fact that appears to provide an underpinning for its decision B *i.e.*, the IRO's statement that the claimant "had a two-week trial of physical therapy with poor results from her employer's doctor prior to seeking treatment from the treating doctor whose services are in dispute." According to the testimony of Dr. Burdin (as well as notes from the claimant's office visits to Petitioner), the claimant's clinical history indicated that she had received only massages and ice packs for her injured wrist from her employer, with no mention of examination or treatment by a physician or licensed therapist. Dr. Burdin added that, based on his experience with that employer, no doctor or therapist is normally present at its facilities.

Dr. Burdin testified that the Petitioner duplicated none of the earlier care apparently provided at the claimant's workplace. Rather than continuing to apply ice packs, which Dr. Burdin noted are helpful for only the first few days after an injury, Petitioner applied interferential with heat. In place of massage, Petitioner provided soft tissue mobilization B a specialized form of tissue manipulation performed under a licensed practitioner. The claimant also received ultrasound treatment, neuromuscular stimulation, medications for inflammation and pain, a spica (*i.e.*, an immobilizing splint) for the right thumb, and supervision in various exercises

[2] Dr. Burdin is also the president of the Neuromuscular Institute of Texas, PA..

In Dr. Burdin's opinion, the modalities applied by Petitioner during the period in dispute were appropriate conservative treatment, designed to avoid a surgery if possible. Overall, such an approach is more therapeutic and more cost-effective than immediately resorting to surgery, since patients with DeQuervain's syndrome quite often respond very successfully to conservative care. Dr. Burdin stated that only about half of such patient's ultimately require surgery. Moreover, he noted, surgery does not always completely resolve DeQuervain's syndrome, often leaving patients with significant residual pain.

By agreement, Petitioner supplemented the record after the hearing adjourned with a "Table of Disputed Services" from the Commission's review process in this case, outlining the relevant services provided on each date of service from January 25 through March 14, 2002.[3] Petitioner billed $3,191.00 for these services, although the Commission's Medical Fee Guidelines in effect at that time would restrict Petitioner to a total maximum allowable reimbursement ("MAR") of $2,302.00. Some billed items relate to the simultaneous treatment of both the claimant's right wrist and other parts of the body, but Petitioner contended that the charge for any such treatment to multiple areas reflects only the amount properly attributable to any one affected area.

Dr. Burdin acknowledged that he referred the claimant to a surgeon early in the treatment process, in order to obtain the assistance of a hand specialist's impressions in the case. Thus, on January 31, 2002, the claimant first visited Terry Westfield, M.D., who ultimately performed the surgery on her wrist. At the initial visit, though, Dr. Westfield recommended further conservative care B in the form of trigger-point injections B with reassessment of the case after "about a month to two months." The claimant received such injections prior to Dr. Westfield's determination that surgery was necessary in the case. Dr. Burdin testified that such injections are typically followed by complementary therapy of the type that the Petitioner provided the claimant.

Petitioner noted that the claimant was also referred, at the Respondent's request, to Robert Whitsell, M.D., for an independent medical evaluation on March 15, 2002. In his report to the Respondent, Dr. Whitsell noted, "[The claimant's] current treatment consists of physical therapy and injections. She has been slightly improved by the current treatment." Dr. Whitsell then concluded, AI feel that her treatment up to this time has been appropriate. This condition often has a tendency to get better over time but if it is severe and hampering a person from work, surgery is well proven and has very good results for full recovery as well. If she does not respond to conservative management within a three month period of time, I would then consider the surgical option . . ."

B. RESPONDENT

Respondent relied upon the "presumptive weight" of the IRO's decision that the care in question was unnecessary, as well as upon the similar conclusions of reviewing physicians. The IRO stated, "It appears from the treatment notes presented that every imaginable form of treatment was used for this patient," then concluded that "The documentation of the patient's response to treatment is vague, but it evidently failed, as surgery had to be performed."

Respondent submitted a review of documentation in this case dated February 21, 2002, by Maury A. Guzick, D.C., which was initiated at Respondent's request. Dr. Guzick concluded that the

[3] The ALJ has designated the table as a supplement to Exhibit No. 1.

claimant was receiving from Respondent "the same or similar treatment as provided initially at her employer's facility. Repeating a trial of this type care would be of no additional benefit, if it has not improved the patient's condition."

Respondent also submitted the report of a later review of medical records (dated September 1, 2002) by Timothy J. Fahey, D.C. The report cites the prior conclusion of Dr. Guzick, then concludes "The treatment from [January 25 to March 14, 2002] does not appear to be medically necessary or demonstrating consistent and ongoing measurable progress in the recovery phase to substantiate the effectiveness of the treatment."

ANALYSIS

The ALJ has difficulty finding any meaningful evidentiary support or any substantive explanation for the IRO's decision in this case. With the unrebutted testimony of Dr. Burdin, the ALJ finds that Petitioner has discharged its burden of proof in demonstrating that the IRO's decision should be reversed.

In conformity with recent SOAH practice (as reflected in the notice of hearing issued by the Commission), the parties filed with SOAH copies of all documents that were previously submitted to the IRO or MRD in this case (a total of several hundred pages, although many documents appear more than once in the compilation). Almost all of this material was then placed into evidence at the hearing. The ALJ can find nothing in that evidence to support assertions in the reports of Dr. Guzick and Dr. Fahey that the Petitioner's treatment in this case duplicated care previously provided at the claimant's workplace. These questionable assertions, in turn, seem to be the only evidentiary basis for the IRO's suggestion that the treatment at issue was redundant of earlier care. Indeed, the IRO seems to have extrapolated even beyond these assertions, reciting that the workplace care was provided by the "employer's doctor" B although nothing in the record indicates the involvement of a physician in this initial care.

Similarly, no explicit statements or obvious patterns in the documentation support the IRO's seemingly speculative statement that "over utilization" of therapeutic modalities might have exacerbated the claimant's condition.

In assessing the medical necessity of the disputed treatment, the crux of the IRO's rationale for decision seems to be that the treatment "evidently failed, as surgery had to be performed." This surprisingly simplistic approach is not, in the ALJ's view, consistent with controlling law and precedent. Certainly, treatment does not have to succeed comprehensively in order to be judged necessary. (Indeed, it need not succeed at all if it really appeared reasonably required at the time provided.) Specifically, § 408.021 of the Act entitles workers to reasonable health care that "cures or relieves the effects naturally resulting from the compensable injury." Such relief need not be permanent or absolute. The record in this case indicates that the patient frequently "felt somewhat better" after therapy sessions with Petitioner. Even one of the Respondent's own reviewing physicians (Dr. Whitsell) concluded (in a report dated March 27, 2002) that the claimant "has been slightly improved by the current treatment."

Moreover, as Dr. Burdin explained, in most cases of injury, at least some period of conservative care is appropriate simply to assure that the patient is not rushed into more drastic, invasive treatment than is absolutely necessary. The seven weeks of such care provided in this case appears to be reasonable, as it was not an unusually extended period. Indeed, as Dr. Whitsell noted, could have continued for another month without exceeding proper standards of practice.

CONCLUSION

The ALJ finds that, under the record provided in this case, the medical services at issue have been shown to be medically necessary and reasonable. Reimbursement of $2,302.00 for these services is therefore appropriate, contrary to the prior determination of the IRO.

FINDINGS OF FACT

1. On _____, claimant reported a wrist injury that was a compensable injury under the Texas Worker's Compensation Act ("the Act"), TEX. LABOR CODE ANN. § 401.001 *et seq*.

2. For about two weeks after the reported injury, claimant received therapeutic care at her place of work, including ice packs and massage, with no examination or supervision by a physician or licensed therapist.

3. Dr. Daniel Bradley Burdin, a chiropractic neurologist practicing with the Neuromuscular Institute of Texas, PA ("Petitioner") began treatment of the claimant about two weeks after the report of injury, diagnosing the patient with DeQuervain's syndrome (an inflammation of tendons affecting the wrist) and providing about seven weeks of conservative treatment (from January 25 through March 14, 2002), including passive and active chiropractic modalities.

4. None of the treatment noted in Finding of Fact No. 3 duplicated the initial therapy noted in Finding of Fact No. 2.

5. Petitioner sought reimbursement of $3,191.00 for services noted in Finding of Fact No. 3 from ACE/ESIS ("Respondent"), the insurer for claimant's employer.

6. The Respondent denied the requested reimbursement.

5. Petitioner made a timely request to the Texas Workers' Compensation Commission ("Commission") for medical dispute resolution with respect to the requested reimbursement.

8. The independent review organization ("IRO") to which the Commission referred the dispute issued a decision on April 14, 2003, concluding that Petitioner had failed to document that the chiropractic treatment at issue had been reasonable and effective in relieving symptoms or improving function.

9. The Commission's Medical Review Division reviewed and concurred with the IRO's decision in a decision dated November 3, 2003, in dispute resolution docket No. M5-03-1320-01.

10. Petitioner requested in timely manner a hearing with the State Office of Administrative Hearings ("SOAH"), seeking review and reversal of the MRD decision regarding reimbursement.

11. The Commission mailed notice of the hearing's setting (originally for January 7, 2004) to the parties at their addresses on December 1, 2003. The hearing was subsequently continued to March 22, 2004, with proper notice to parties.

12. A hearing in this matter was convened on March 22, 2004, at the William P. Clements Building, 300 W. 15th St., Austin, Texas, before Mike Rogan, an Administrative Law Judge with SOAH. Petitioner and Respondent were represented.

13. About half of patients with DeQuervain's syndrome respond successfully to conservative care and avoid the need for surgery.

14. The claimant achieved slight improvement during the period of conservative care noted in Finding of Fact No. 3, as well as periodic relief of pain following therapeutic sessions with the Petitioner.

15. Although an objective of the care noted in Finding of Fact No. 3 was avoiding the need for surgery to address the claimant's DeQuervain's syndrome**,** such surgery was ultimately necessary and was performed on April 23, 2002.

16. The Commission's applicable Medical Fee Guidelines restrict Petitioner to a total maximum allowable reimbursement of $2,302.00 for the treatment noted in Finding of Fact No. 3.

CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act ("the Act"), TEX. LABOR CODE ANN. § 413.031.

2. 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 § 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003.

3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TEX. ADMINISTRATIVE CODE ("TAC" § 133.305(g) and §§148.001-148.028.

4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

5. Petitioner, the party seeking relief, bore the burden of proof in this case, pursuant to 28 TAC §148.21(h).

6. Based upon the foregoing Findings of Fact, the treatments for the claimant noted in Finding of Fact No. 3 represent elements of health care medically necessary under § 408.021of the Act.

7. Based upon the foregoing Findings of Fact and Conclusions of Law, the findings and decisions of the IRO issued on April 14, 2003, and of the MRD, issued in this matter on November 3, 2003, should be reversed; reimbursement of $2,302.00 for the services noted in Finding of Fact No. 3 is appropriate.

ORDER

IT IS THEREFORE, ORDERED that the appeal of the Neuromuscular Institute of Texas, PA, seeking reimbursement for medical services from January 25 through March 14, 2002, be granted; Respondent, ACE/ESIS, Inc., shall reimburse the Neuromuscular Institute of Texas, PA, $2,302.00 for such services.

SIGNED April 2, 2004.

MIKE ROGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS