

SOAH DOCKET NO. 453-04-1365.M5
TWCC NO. M5-03-3298-01

TEXAS MUTUAL INSURANCE COMPANY, Petitioner	‘	BEFORE THE STATE OFFICE
	‘	
	‘	
V.	‘	OF
	‘	
GALAXY HEALTHCARE CENTERS, Respondent	‘	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Texas Mutual Insurance Company (Carrier) appealed the decision of an Independent Review Organization (IRO) upholding the reimbursement for myofascial release, electric stimulation, therapeutic exercises, and office visits administered to Claimant between March 5, 2003, and May 16, 2003. In this decision, the Administrative Law Judge (ALJ) finds that Carrier met its burden of showing that the treatment rendered was not reasonable and medically necessary for Claimant’s compensable injury. Therefore, Carrier is not ordered to reimburse Galaxy Healthcare Centers (Provider) for the treatment rendered.

The hearing convened and closed on August 2, 2004, before Steven M. Rivas, ALJ. Carrier appeared and was represented by Katie Kidd, attorney. Provider appeared and was represented by Kenneth E. Gilley, attorney.

I. DISCUSSION

1. Background Facts

Claimant sustained a compensable hand injury on _____. Shortly after the injury, Claimant was referred to Provider for treatment. Claimant underwent several sessions of physical therapy, including the disputed services. Provider billed Carrier for the treatment rendered, which Carrier denied as not medically necessary. Provider filed a request for Medical Dispute Resolution with the Medical Review Division of the Texas Workers’ Compensation Commission. The dispute was sent

to an IRO, which held the treatment rendered on the disputed dates of service were medically necessary and ordered Carrier to reimburse Provider. Carrier filed a request for hearing before the State Office of Administrative Hearings.

2. Applicable Law

The Texas Labor Code contains the Texas Workers' Compensation Act (the Act) and provides the relevant statutory requirements regarding compensable treatment for workers' compensation claims. In particular, TEX. LAB. CODE ANN. ' 408.021(a) provides that 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 statute further states an employee is specifically entitled to health care that Acures 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.

Under TEX. LAB. CODE ANN. ' 401.011(19) health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.@

3. Evidence and Analysis

Provider started treating Claimant three weeks following his compensable injury, and was reimbursed for two months of treatment. On March 5, 2003, Provider began treating Claimant with one-on-one therapeutic exercises (CPT code 97110), electric stimulation (CPT code 97032) and office visits (CPT code 99212). On March 26, 2003, Provider began treating Claimant with myofacial release procedures (CPT code 97250). Carrier asserted Claimant was entitled to undergo some treatment for his compensable injury following the first two months, however, the treatment rendered over the disputed dates of service was excessive based on his compensable injury.

In support of its position, Carrier offered testimony from Nicholas Tsourmas, M.D. by deposition.¹ Based on his experience in treating patients similar to Claimant, Dr. Tsourmas testified that Claimant sustained a very typical injury. Dr. Tsourmas did not rule out the possibility that Claimant could have benefitted from a therapeutic exercise program, but asserted Claimant could have learned to perform the exercises on his own without the need for one-on-one supervision required under code 97110. Dr. Tsourmas noted that the record did not reflect Claimant was incompetent physically or mentally to participate in an exercise program. Additionally, Dr. Tsourmas testified a home exercise program would have been much more cost-effective, and that the amount, duration, and intensity of one-on-one therapy over the disputed dates of service was unnecessary.

Dr. Tsourmas also testified it was not medically necessary to administer electrical stimulation (code 97032) to Claimant because, based on his review of the record, Claimant did not suffer from Aneuropathic-type pain, meaning an injury of nerve origin. Dr. Tsourmas asserted electrical stimulation is used in cases where the source of pain is an injured nerve, and that based on his review of the record, Claimant did not suffer from this condition. Additionally, Dr. Tsourmas noted that because electrical stimulation has shown to be moderately effective only during an acute phase of injury, there was no medical necessity to use electrical stimulation in this case because it was administered outside the acute phase three months following Claimant's injury.

Dr. Tsourmas testified the myofacial release procedures, billed under code 97250, were not medically necessary to treat Claimant's injury. According to Dr. Tsourmas, a myofacial release or joint manipulation is used to treat soft tissue structures which limit the joint motion. Dr. Tsourmas testified this type of procedure would not benefit Claimant due to the location of Claimant's injury. Additionally, Dr. Tsourmas asserted that myofacial release procedures administered to patients with wrist injuries sometimes worsen the situation. Dr. Tsourmas noted that Claimant would have benefitted more by wearing a splint because a splint would slowly stretch out the soft tissues of his wrist.

¹ Carrier first called David Alvarado, D.C. However, Dr. Alvarado admitted he was not trained in treating patients with hand injuries, nor had he ever treated anyone with an injury similar to Claimant. Therefore, most of his testimony was not persuasive to the ALJ.

The office visits billed under 99212 were also not medically necessary, in Dr. Tsourmas' opinion, because this type of visit requires too much interaction. According to Dr. Tsourmas, this type of office visit is somewhat complex and takes a significant amount of time because it requires a moderate amount of history-taking, physical examination, and decision making. Dr. Tsourmas believed an office visit like this would have been appropriate once or twice a month. However, Dr. Tsourmas asserted, it was not medically necessary for Provider to conduct 20 office visits of this type over a ten-week period, beginning three months after the compensable injury.

Provider's counsel offered records of the disputed medical treatment, but did not present any other evidence to support their medical necessity. In addition to disputing the medical necessity of the treatment rendered, Carrier's witnesses addressed the sufficiency of the records. However, the ALJ did not need to consider the sufficiency of the documents because the overwhelming evidence pointed to the treatment being not medically necessary.

Provider asserted that the disputed treatment was medically necessary because Claimant was being treated for reflex sympathetic dystrophy (RSD). In support of this position, Provider relied on the IRO decision, which held in favor of Provider because it determined that Claimant had developed RSD. This position was not persuasive, however, because, as Dr. Tsourmas testified, the record reflects only scant mention of RSD from one of Claimant's treating doctors, J. S. Lee, M.D., who recommended Claimant undergo a bone scan to rule out possible development of RSD. Based on this, Dr. Tsourmas asserted persuasively that Provider had not discussed, implied, or diagnosed Claimant with RSD, but instead entertained the idea that Claimant had developed RSD. Furthermore, based on his review of the bone scan, Dr. Tsourmas testified Claimant had in fact *not* developed RSD. To the contrary, Dr. Tsourmas asserted the result of the bone scan reinforced his position that Claimant had not developed RSD, but instead only suffered from a few tissue edema.

Based on the foregoing, the ALJ believes the treatment rendered to Claimant from March 5, 2003, through May 16, 2003, was not medically necessary and should not be reimbursed.

II. FINDINGS OF FACTS

1. Claimant sustained a compensable injury on ____.
2. Claimant was referred to Galaxy Healthcare Centers (Provider), for treatment of his injury.
3. Claimant underwent months of physical therapy including one-on-one therapeutic exercises, electrical stimulation, myofacial release, and office visits with Provider following his injury.
4. Provider billed Texas Mutual Insurance Company (Carrier) for the services rendered to Claimant from March 5, 2003, through May 16, 2003, which Carrier denied as not medically necessary.
5. Provider requested medical dispute resolution through the Texas Workers' Compensation Commission's (the Commission) Medical Review Division. The dispute was referred to an Independent Review Organization (IRO), which held the services rendered were medically necessary.
6. Carrier timely appealed the IRO decision to the State Office of Administrative Hearings (SOAH).
7. Notice of the hearing in this case was mailed to the parties on December 4, 2003. 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. In the notice, the Commission's staff indicated that it would not participate in the hearing.
8. The hearing convened and closed on August 2, 2004, with Administrative Law Judge (ALJ) Steven M. Rivas presiding. Carrier appeared and was represented by Katie Kidd, attorney. Provider appeared and was represented by Kenneth E. Gilley, attorney.
9. On 19 occasions, Provider administered one-on-one therapeutic exercises on Claimant beginning three months following his compensable injury.
10. On 12 occasions, Provider administered electrical stimulation to Claimant's injured wrist beginning three months after his compensable injury.
11. On 14 occasions, Provider administered myofacial release on Claimant's injured wrist beginning three months after his compensable injury.
12. On 19 occasions, Provider conducted office visits with Claimant beginning three months after his compensable injury.

13. None of Claimant's treating doctors ever diagnosed Claimant with reflex sympathetic dystrophy (RSD).
14. Claimant did not suffer from a nerve injury.
15. Due to the location of Claimant's injury, he would have benefitted more by a wearing a splint.
16. It was not necessary to conduct history-taking, physical examination, and decision making on each visit.
17. Claimant was not diagnosed with reflex sympathetic dystrophy (RSD).

III. 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(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. Carrier timely filed its notice of appeal, as specified in 28 TEX. ADMIN. CODE ' 148.3.
3. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE ANN. ' ' 2001.051, 2001.052 and 28 TEX. ADMIN. CODE ' 148.4.
4. Carrier had the burden of proof on its appeal by a preponderance of the evidence, pursuant to TEX. LAB. CODE ANN. ' 413.031 and 28 TEX. ADMIN. CODE ' 148.21(h).
5. Under TEX. LAB. CODE ANN. ' 408.021(a)(3), an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury.
6. The therapeutic exercises, electrical stimulation, myofacial release, and office visits were not medically necessary to treat Claimant's compensable injury.
7. The treatment rendered was not medically necessary because Claimant was not diagnosed with RSD.
8. Based on the Findings of Fact and Conclusions of Law, Carrier should not be required to pay for the services.

ORDER

IT IS ORDERED THAT the Carrier is not required to pay for the treatment rendered to Claimant from March 5, 2003, through May 16, 2003.

SIGNED September 30, 2004.

**STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**