

**DOCKET NO. 453-04-3675.M5
MDR NO. M5-03-1854-01**

EL PASO PHYSICAL THERAPY SERVICES, Petitioner	§	BEFORE THE STATE OFFICE
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	§	
	§	
	§	
VS.	§	OF
	§	
	§	
	§	
TEXAS MUTUAL INSURANCE COMPANY, Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

El Paso Physical Therapy Services (Provider) challenges an Independent Review Organization (IRO) decision denying it reimbursement for physical therapy services provided to an injured worker (Claimant). The Administrative Law Judge (ALJ) concludes the disputed services were not shown to be medically necessary for the treatment of Claimant's injury. Consequently, reimbursement should be denied.

I. STATEMENT OF THE CASE

Administrative Law Judge (ALJ) Gary Elkins convened the hearing on August 24, 2004. Provider's office manager, Adrian Perez, appeared at the hearing on behalf of Provider. The insurance carrier, Texas Mutual Insurance Company (Carrier), appeared and was represented by Attorney Katie Kidd. The hearing closed on September 15, 2004.

Notice and jurisdiction, which were not disputed, are addressed in the Findings of Fact and Conclusions of Law.

II. DISCUSSION

A. Background.

Claimant suffered a compensable injury on ___, when she slipped and sustained a twisting injury to her left knee, hip, and lower back. On October 12, 2001, she was diagnosed by Randy Pollet, M.D., with a sprain/strain to the left knee, which is the subject of this proceeding. Dr. Pollet also found Claimant to be overweight and de-conditioned. Based on his evaluation of Claimant, Dr. Pollet recommended conservative, non-operative management of the injury. The recommended treatment included medication, an exercise program, knee and back support, weight loss, a left-knee injection, and outpatient therapy, with no work for at least one week and a follow-up evaluation. Claimant was also encouraged to take an active role in the conservative approach to the treatment and healing process. She was seen by Dr. Pollet on approximately ten followup evaluations over the ensuing six months, culminating in an April 19, 2002, evaluation producing the following findings:

- ! Claimant remained overweight, de-conditioned, and un-rehabilitated;
- ! The range of motion in the left knee was improved at 0-130 degrees;
- ! Negative McMurray's signs;
- ! No joint effusion within the left knee;
- ! Painful and limited low back motion with mild spasm rigidity;
- ! Intact reflexes, sensation, and motor power in both lower extremities;
- ! Negative straight-leg raise tests in both knees; and
- ! Negative hamstring spasm tests in the sitting position for both legs.

At each of his followup evaluations, Dr. Pollet's findings were consistent with his findings from all prior evaluations. His notes reflect repeated recommendations of the same conservative treatment regimen for Claimant: medication, an exercise program, knee and back support, weight loss, a left-knee injection, and outpatient therapy. In addition, Dr. Pollet's notes indicate that on each office visit with Claimant he continued to encourage her to be involved in the treatment process.

On April 29, 2002, Claimant visited Avaro Hernandez, M.D., who, somewhat inconsistent with Dr. Pollet, found pain in Claimant's left hip; a lower range of motion in Claimant's left knee, at 90 degrees; marked tenderness over the lateral joint line; and a positive McMurray's exam. He also found internal derangement to Claimant's left hip and knee. An MRI of Claimant's left hip and knee three days later revealed the hip was normal, but it also uncovered the following problems with the knee:

- ! Prominent patellar bursitis;
- ! Patella alta with lateral tilt without significant chondromalacia;

- ! Small joint effusion; and
- ! Focal cartilaginous ulcer within the weight-bearing surface of the medial femoral condyle.

On May 20, 2002, Dr. Hernandez described Claimant as doing “quite a bit better,” but he recommended she participate in physical therapy and referred her to Provider.

Claimant was initially evaluated by Provider on May 22, 2002, and began physical therapy treatments at that time. Beginning June 27, 2002, however, Carrier refused to pay for additional physical therapy services continuing until August 7, 2002. In response, Provider requested medical dispute resolution before the Texas Workers’ Compensation Commission.

The Independent Review Organization that reviewed Provider’s reimbursement claim concluded that the physical therapy services were not medically necessary. Provider challenged the IRO decision with a request for hearing before SOAH, which culminated in the proceeding before SOAH and this Decision and Order.

B. Summary of Evidence and Argument

In support of its position that the services provided to Claimant were necessary for the treatment of her injuries, Provider argued the following:

- Claimant showed progress as a result of the physical therapy, as reflected in the various progress reports.
- ! Established goals of the physical therapy program were met.

Consistent with Carrier’s position that the disputed services were not medically necessary to treat Claimant’s compensability injuries, its witnesses testified to the following:

- ! Claimant was diagnosed with a knee sprain/strain, which should have resolved itself in about a month.
- ! Provider failed to compare Claimant’s injured left knee with her right one.
- ! Claimant had pre-existing knee problems such as arthritis and bursitis.
- ! Passive modalities, which formed a part of Provider’s services, may be helpful at the acute stage of injury but are not beneficial at the chronic stage six months later, when they were administered to Claimant.

- ! No home therapy program was documented.
- ! Many of the services provided, including swimming, wall slides, and stair stepper and treadmill exercises, do not require one-on-one attention from a physical therapist except at the instruction phase and for periodic evaluations.
- ! Several of the physical therapy procedures were not reasonably calculated to cure Claimant's injury or relieve the symptoms.

C. Witness Testimony

1. Provider

a. Enrique Cenizeros, P.T.

Enrique Cenizeros is a licensed physical therapist employed by Provider. According to Mr. Cenizeros, Claimant showed significant improvement in both strength and flexibility while under Provider's care. From June 27, 2002, to August 7, 2002, for example, her left knee flexion increased from 102 degrees to 120 degrees, with a goal of 130-140 degrees. He testified that the strength in her left leg had also improved.

Despite Carrier's assertions that physical therapy regimen administered on the disputed dates of service was excessive, Mr. Cenizeros testified, it was well within the acceptable range of services as reflected in the Guide to Physical Therapist Practice, 2nd Edition (Guide). He added that although the Guide envisions 12 to 60 allowable physical therapy visits, Provider saw Claimant on only 27 visits. Furthermore, the program was calculated to improve the function of Claimant's left knee in terms of strength, mobility, and endurance, while decreasing her pain level. Mr. Cenizeros argued that the program was successful, as reflected in the August 7, 2002, progress report¹ reflecting decreased levels of pain, better ambulation with less gait deviations, and improvement in range of motion.

2. Carrier

a. John Pearce, M.D.

Carrier's general positions that the services were not appropriate when they were administered, did not result in significant improvement to Claimant's condition, and were not

¹ Exhibit 4.

provided in a cost-effective manner, were supported by the testimony of John Pearce, M.D., an orthopaedic surgeon. Dr. Pearce explained that a knee sprain/strain such as that suffered by Claimant should resolve itself in about a month.

Furthermore, Dr. Pearce noted, many of the disputed services, including myofascial release, hot and cold packs, ultrasound, joint mobilization, and electrical stimulation, were passive modalities. Dr. Pearce testified that such modalities may be reasonable at the acute phase of injury but certainly are not helpful at the chronic phase unless special circumstances such as a re-injury incident warrant them. In place of these modalities, Dr. Pearce testified, an effective treatment approach might have included medication combined with pool therapy, cycling, and other exercises. When Provider did administer exercise therapy, Dr. Pearce pointed out, it did so in a one-on-one approach that should be necessary only during the instructional phase of treatment or when special patient needs warrant it. Nothing suggests either circumstance existed here or, conversely, that Claimant would not benefit from a home treatment program.

b. Susan Dunlap, P.T.

Susan Dunlap, a licensed physical therapist, echoed Dr. Pearce's opinion regarding the passive physical therapy modalities administered to Claimant ten months or more after her injury. Ms. Dunlap specifically noted that despite Provider's decision to administer myofascial release to Claimant, nothing in her medical records indicated she was experiencing problems for which this treatment technique is prescribed—muscle tightness and tissue adhesions. Ms. Dunlap added that any range-of-motion deficit would not by itself be enough to justify the myofascial release.

Ms. Dunlap also testified that nothing in the medical documentation supported the electrical stimulation therapy² administered to Claimant. Once it was clear the therapy was not benefitting Claimant, Provider should have moved on to other treatment approaches. She held the same opinion regarding Provider's use of hot and cold packs on July 3, 2002, which, like the physical medicine procedures administered on June 27, 2002, were not indicated for the treatment of Claimant.

² Ms. Dunlap testified that electrical stimulation is used to stimulate muscles in an effort to control pain and edema.

Ms. Dunlap expressed particular concern that Provider had not attempted to establish the pre-injury status of Claimant's injured left knee by evaluating her right knee and comparing the two, thereby establishing a "base-line" from which to work in treating Claimant. Because no base-lines were established and pain scales were never consistently used, Provider was never able to determine whether and to what extent Claimant was improving. Furthermore, Ms. Dunlap noted, Claimant's medical documentation reflected neither anticipated goals to be attempted nor rationales for the specific treatments administered. Ms. Dunlap also concluded that while Provider's initial treatment regimen might have been helpful, it later became excessive.

D. Analysis and Conclusion

Claimant had already been under Dr. Pollet's care for six months and was at the chronic stage of injury prior to beginning physical therapy with Provider, and he both recommended and instructed Claimant in a number of conservative treatment approaches during the acute phase of her injury. In addition to an exercise program, knee and back support recommendations, weight loss, a left-knee injection, and medications, Dr. Pollet recommended "outpatient therapy." The record does not reflect whether and to what extent she actually engaged in the prescribed treatment regimen, however.

Notwithstanding the record's silence regarding the extent to which Claimant actually engaged in the recommended treatment regimen, she remained de-conditioned while under his care and despite his recommendations. At five feet tall and over 220 pounds, Claimant remained substantially overweight; her weight varied between 224 and 238 pounds from October 2001 to April 2002.

The apparent failure of Provider to attempt a base-line estimate of Claimant's left-knee strength and flexibility via comparison to the right knee was significant in light of the emphasis Provider placed on claimed improvements to the injured knee. Without such an assessment, Provider could not know whether and to what extent its treatments were successfully addressing the injury or whether, for example, it might be treating pre-existing conditions.

Also persuasive was Dr. Pearce's and Ms. Dunlap's testimony that many of the passive physical therapy modalities administered to Claimant were not reasonable at her chronic stage of injury. Even if Dr. Pearce understated his one month recovery time estimate—which was not challenged at hearing—Claimant began participating in Provider's physical therapy program approximately ten months after her injury. This was well after the time she should have been expected to recover from a knee sprain-strain.

Furthermore, assuming the passive modalities had been medically necessary, they were not administered in a cost-effective setting. Instead, they were provided via one-on-one sessions with a physical therapist, at Provider's facility, when there was no indication Claimant's injury warranted such an approach. It is Provider's burden to prove that passive therapy was warranted both at the chronic stage of Claimant's injury and in an "in-house" setting at its facilities. It proved neither.

Provider also failed to show that the disputed services produced significant, measurable results. Although the record hints that Claimant may have enjoyed some enhanced function as a result of the disputed services, any such improvement was not clearly identified, objectively measured, or shown to directly result from the disputed treatments. For example, Provider referred to an August 8, 2004, knee measurement summary indicating Claimant's left knee flexion had improved to 120 degrees from 102 degrees on June 27, 2002. Measurements performed months earlier by Dr. Pollet, however, revealed flexibility ranging as high as 145 degrees with minimal pain.

Based on the evidence, the ALJ concludes Provider failed to prove by a preponderance of the evidence that the physical therapy services were medically necessary. It did not prove they were proper at the chronic stage of injury, reasonably calculated to cure or relieve the effects naturally resulting from Claimant's injury, or provided in a cost effective setting. Provider also failed to maintain a system to effectively measure the extent of any improvements in Claimant's condition. Such system would have better enabled it to determine the effectiveness of the services in order to assess it against other possible treatment alternatives. Consequently, Provider's claim should be denied.

III. FINDINGS OF FACT

1. An injured worker (Claimant) suffered a compensable injury on ___, when she slipped and sustained a twisting injury to her left knee, hip, and lower back.
2. At the time of Claimant's injury, her employer held workers' compensation insurance coverage with Texas Mutual Insurance Company (Carrier).
3. On October 12, 2001, Claimant was diagnosed by Randy Pollet, M.D., with a sprain/strain to the left knee. She was also overweight and de-conditioned.
4. Dr. Pollet's recommended treatment for the compensable injury included medication, an exercise program, knee and back support, weight loss, a left-knee injection, and outpatient therapy, with no work for at least one week and a follow-up evaluation.
5. Claimant, who was five feet tall and weighed approximately 220 pounds following her injury, failed to lose weight.
6. On April 19, 2002, Claimant exhibited the following:
 1. She remained overweight, de-conditioned, and un-rehabilitated.
 2. The range of motion in her left knee was improved at 0-130 degrees.
 3. She exhibited a negative McMurray's sign.
 4. Her left knee exhibited no joint effusion.
 5. She had intact reflexes, sensation, and motor power in both lower extremities.
 6. Straight-leg-raise tests in both knees of her knees were negative.
 7. Hamstring spasm tests in the sitting position for both legs were negative.
7. After being under the care of Dr. Pollet for approximately six months, Claimant began physical therapy treatments at Provider's facility on May 22, 2002. The services included hot-pack or cold-pack treatments, ultrasound, manual therapy, myofascial release, joint mobilization, stretching, and therapeutic exercises such as swimming, wall slides, and use of a stair-stepper and treadmill.
8. Beginning June 27, 2002, Carrier refused to pay for additional physical therapy services that continued at Provider's facility until August 7, 2002.
9. In response to Carrier's denial of reimbursement, Provider requested medical dispute resolution.
10. An Independent Review Organization (IRO) concluded Provider was not entitled to reimbursement for the disputed services.
11. Upon receiving the IRO decision, Provider timely requested a hearing before the State Office of Administrative Hearings (SOAH).
12. Notice of the hearing was sent to the parties on March 9, 2004. The notice informed the parties of the date, time, and location of the hearing, a statement of the matters to be

considered, the legal authority under which the hearing would be held, and the statutory provisions applicable to the matters to be considered.

13. The hearing convened on August 24, 2004, and closed on September 14, 2004.
14. Provider did not compare Claimant's injured left knee with her right one in order to determine a base-line level of injury.
15. Claimant was well past the acute phase of injury and, instead, at the chronic stage of injury when the disputed services were provided.
16. Passive modalities, which formed a part of Provider's services, may have been helpful to Claimant at her acute stage of injury but were not beneficial at the chronic stage.
17. Most of the physical therapy exercises provided to Claimant could have been performed as effectively and much more cost efficiently by Claimant at her home instead of at Provider's facility.
18. On June 27, 2002, and on July 24, 2002, Provider estimated Claimant's quadricep muscle strength and hamstring muscle strength at "4" out of "5."
19. The range of motion in Claimant's left knee was painful but adequate at 0-125 degrees on October 12, 2001; improved and minimally painful at 0-145 degrees on October 26, 2001; minimally painful at 0-145 degrees on November 1, 2001; and minimally painful at 0-142 degrees on November 1, 2001.
20. The range of motion in Claimant's left knee ranged from 0-110 to 0-130 from November 2001 to April 2002.
21. Claimant is five feet tall, and her weight varied between 224 and 238 pounds from October 2001 to April 2002.
22. Claimant remained deconditioned and overweight from October 2001 to April 2002.
23. Provider did not document a home therapy program.
24. The disputed services were not provided in a cost effective setting.
25. Claimant did not exhibit significant improvement to her injury status or physical fitness either as a result of the disputed physical therapy services or from the time of her injury until cessation of the disputed services in August 2002.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding pursuant to § 413.031(k) of the Act 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. §§2001.051 and 2001.052.
3. As Petitioner, El Paso Physical Therapy Services (Provider) bears the burden of proof in this matter. 28 TEX. ADMIN. CODE (TAC) §148.21(h).
4. Provider failed to prove the disputed physical therapy services were reasonably required by the nature of the claimant's injury, cured or relieved the effects naturally resulting from the compensable injury, promoted Claimant's recovery, or enhanced Claimant's ability return to or retain employment. TEX. LAB. CODE ANN. §408.021.
5. The disputed services were not medically necessary to treat Claimant's compensable injury.
6. Provider is not entitled to reimbursement for the disputed services.

ORDER

IT IS ORDERED that the reimbursement claim of El Paso Physical Therapy Services for physical therapy services provided to Claimant from June 27, 2002, through August 7, 2002, is denied.

Signed November 9, 2004.

**GARY W. ELKINS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**