SOAH DOCKET NO. 453-04-6476.M5

NEUROMUSCULAR INSTITUTE OF TEXAS, P.A., PETITIONER	§	**BEFORE THE STATE OFFICE**
	§	
	§	**OF**
V.	§	
	§	**ADMINISTRATIVE HEARINGS**
SOUTHWESTERN BELL TELEPHONE COMPANY, RESPONDENT	§	
	§	

DECISION AND ORDER

Neuromuscular Institute of Texas, P.A. (Petitioner), appealed the decision of the Texas Workers' Compensation Commission's (Commission) Medical Review Division (MRD) to the findings of its designee, an independent review organization (IRO). The decision upheld Southwestern Bell Telephone Company's (SBC) denial of reimbursement for services provided a workers' compensation claimant (Claimant) on the basis that the services were not medically necessary healthcare. This decision finds that only some of the disputed services were medically necessary healthcare.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction or notice. Therefore, those issues are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing in this matter convened April 4, 2005, at the State Office of Administrative Hearings, 300 W. 15th Street, Austin, Texas, with Administrative Law Judge (ALJ) Ann Landeros presiding. Attorney Allan Craddock represented Petitioner. Attorney Kevin Franta represented SBC. Commission Staff did not participate in the hearing.

II. DISCUSSION

A. Background Facts

In ___, Claimant was diagnosed with a repetitive stress injury to her right upper back and extremities as a result of her work at SBC. SBC was self-insured for workers' compensation insurance at the time of Claimant's diagnosis. Claimant underwent several surgeries (carpal tunnel decompression and anterior cervical discectomy with fusion) but continued to have pain. In September 2002, Claimant underwent a functional capacity evaluation (FCE), which was discontinued due to inadequate patient effort.

Beginning October 5, 2002, Petitioner's employee, David Hirsch, D.O., administered three sets of eight trigger point injections (TPIs) to Claimant's upper right back. On October 29, 2002, Claimant reported the October 5th TPI reduced her pain 75%, but on November 19, 2002, she could not complete a FCE due to pain. (SBC Ex. 1 at 316, 343).

On January 11, 2003, Claimant received the second set of TPIs and supportive passive modalities.[1] As post-TPI therapy, Dr. Hirsch prescribed seven sessions of occupational therapy modalities.[2] Those services were administered from January 21-29, 2003. On May 23, 2003, Claimant received her third set of TPIs and passive modalities. From May 30 to June 16, 2003, she received another set of post-TPI therapies and modalities. (Pet. Ex. 1 at ACT-100).

From November 19, 2002, to June 16, 2003, Dr. Burdin saw Claimant for numerous office visits, all but one of which were billed under CPT 99213.[3] Petitioner also billed for special reports (CPT 99080-73). From November 2, 2002, to January 3, 2003, Claimant was in a work hardening program, which she was unable to complete due to recurring pain.

SBC refused to reimburse Petitioner on the grounds the TPIs, therapies, modalities, and

[1] Those supportive modalities were osteopathic manipulation (CPT 98925); myofascial release (CPT 97250); massage (CPT 97124); physical exercises (CPT 97110); unlisted therapeutic services (CPT 97139); and drugs-Vicodin, Valium, and Zanaflex (CPT J3490).

[2] Those post-TPI therapies were: hot packs (CPT 97010), stretching, and massage (CPT 97124) and electric stimulation (CPT 97014 and A4556).

[3] The dates were: November 20, 2002; January 11, 21, 22, 23, 27, 28, 29; March 31; May 27 and 30, June 4, 5, 6, 11, and 16, 2003. (Pet. Ex. 1 at ATC-99). The November 20 visit was billed under CPT 99211.

treatments were not medically necessary. The IRO upheld SBC's denial, finding that the services were not medically necessary because:

> . . . the claimant was unable to tolerate the 11/19/02 FCE. This should have indicated to the treating physicians that subsequent work hardening and other above
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> Requested Services[4] would not likely be restorative to the claimant with regard to the ___ work injury. During this time the claimant could continue with independent self-treatment and an independent home exercise program. Petitioner timely appealed the IRO decision upholding SBC's denial.

B. Legal Standards

Petitioner has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE (TAC) § 148.21(h) and (i); 1 TAC § 155.41. Pursuant to the Texas Workers' Compensation Act (Act), an employee who has sustained 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 cures 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. TEX. LAB. CODE ANN. § 408.021(a). Health care includes all reasonable and necessary medical services including a medical appliance or supply. TEX. LAB. CODE ANN. §401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. § 401.011(31).

Under TEX. LAB. CODE ANN. §§ 413.013 and 413.018, the Commission is charged with reviewing medical care and ensuring treatments and services are both appropriate and appropriately billed. The Act requires services be appropriately billed and provide the effective medical cost control required by TEX. LAB. CODE ANN. § 413.011(d).

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[4] The IRO listed the following under Requested Services: electrical stimulation (unattended), office visits, medical procedures, therapeutic procedures, physical therapy, myofascial release, ultrasound therapy, tendon injections, osteopathic manipulation, unclassified drugs, hot\cold pack therapy, and special reports denied by the carrier as V unnecessary treatment with peer review. (Pet. Ex. 1 at ATC-6).

C. Discussion

1. Petitioner's Evidence

The few relevant documents in Petitioner's documentary evidence[5] contained Dr. Hirsch's office notes for the TPIs. In those notes, Dr. Hirsch explained the purpose of the post-TPI modalities as follows:

> 1) massage and stretching exercises-to decrease pain, edema, and spasm and to help stretch the affected musculature;
>
> 2) muscle energy techniques-to fatigue the muscles to promote stretching;
>
> 3) manipulation-to correct the posteriorly rotated transverse processes on the right at C4;
>
> 4) myofascial release-to relax the tightened palpated ligamentous and myofascial tissue in the affected regions;
>
> 5) medications (Valium, Vicodin)-for pain management and sedation for three days post-TPIs. (Dr. Hirsch also prescribed Zanaflex, but the records did not state its specific purpose.)
>
> 6) occupational therapy (hot packs, electrical stimulation, massage, stretching)-to maximize the effectiveness of the TPIs. (Pet. Ex. 1 at ATC-582, 583, 592, 593).

Dr. Hirsch noted that on October 29, 2002, Claimant reported about 75% improvement in her symptoms after the October 5, 2002, TPIs. (SBC Ex. 1 at A-318). The record lacked specific reports about the efficacy of the January or May 2003 TPIs.

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[5] The ALJ notes that both parties submitted hundreds of pages of documents, of which only a few dozen, if that, were actually relevant to the disputed issues. In their closing arguments, the parties themselves only referred to a small portion of the evidentiary record to support their arguments. In the future, the parties are requested to cull their exhibits before presenting them at the hearing.

In addition to voluminous documents, Petitioner presented the testimony of its expert, Brad Burdin, D.C. Dr. Burdin testified he was Claimant's treating physician and referred her to Dr. Hirsch for trigger point injections and it was Dr. Hirsch who prescribed the post-TPI therapies and modalities.

According to Dr. Burdin, the injections, which introduced marcaine into the focal area of Claimant's muscle spasm, were intended to allow the muscle to relax and break a cycle in which lactic acid buildup in the muscle caused further spasms. The post TPI therapy included: ultrasound and heat to increase circulation and release endorphins to inhibit pain; electrical stimulation with an interferential machine to release endorphins to relax the muscles; and soft tissue stretching and massage to mechanically increase circulation, to remove toxins, and to break up myofascitis. According to Dr. Burdin, these post-TPI passive modalities help increase muscle tone, improve range of motion, and reduce pain in about 70% of patients.

In support of his opinion regarding the efficacy of post-TPI therapy, Dr. Burdin stated he relied on the available medical literature.[6]

2. **SBC's Evidence**

In addition to its voluminous documentary exhibit, SBC presented the testimony of its expert, Casey Cochran, M.D., who is a specialist in occupational and family medicine. Dr. Cochran noted Claimant had TPIs in September 2001 and October 2002 with post-TPI therapy with Claimant noting 75% improvement. However, Dr. Cochran stated there are no clinical studies to establish that post-TPI passive modalities performed in a clinic are more effective than home-based therapies and modalities. He disagreed with Dr. Burdin's theory that the modalities remove toxins, increase circulation, activate neurons, affect muscle spindles, or release endorphins because there is no objective peer review literature to support these theories.

[6] In particular, Dr. Burdin cited to: 1) a peer review letter dated April 22, 2004, from Thomas Saito, M.D., which approved stretching, heat, and electric muscle stimulation as being supported in the literature; an internet article entitled Clinical Application of Epidural Steroid Injection from the New York School of Medicine site on post injection therapy; and 3) the foreward by Rene Cailliet, M.D., to the Myofascial Pain and Dysfunction Trigger Point Manual by medical doctors J. Travell and D. Simmons. (Pet. Ex. 2 at PG-1 to 9). Petitioner's Exhibit 2 was only conditionally admitted and is cited here only as the basis for Dr. Burdin's opinion.

Dr. Cochran based his opinions of the American College of Occupational Medicine Guidelines, the Official Disability Guidelines, and the Philadelphia Physical Therapy Panel Study. The latter contains a survey of every published article on the issue of post-injection therapy. According to Dr. Cochran, the consensus of these authorities is that home-based therapies and modalities are just as effective.

Regarding the billing of office visits under CPT 99213, Dr. Cochran found the visits had been upcoded because they lacked the required expanded, problem-focused examination. He also thought not enough time elapsed between visits for sufficient change to occur in Claimant's condition that would justify the longer visit.[7]

With regard to electrical stimulation, Dr. Cochran noted Claimant could have done that therapy at home. He stated the ultrasound neither removes toxins itself nor affects blood flow sufficiently to cause increased circulation capable of removing toxins.

Dr. Cochran found Claimant's medical records lacked any indication the post-TPI modalities either reduced her pain or increase her ability to function and, therefore, were not medically necessary healthcare. He agreed with the IRO reviewer that Claimant's inability to complete the FCEs showed factors other than just organic pain existed, a situation which lessened the likelihood that the post-TPI therapy would be effective. He also agreed with a peer review doctor that Claimant's medications were not medically necessary, especially the short-acting opiates like Vicodin that are not effective for chronic pain management.

Dr. Cochran stated that Claimant's course of treatment, including the treatment in dispute here, was excessive, inappropriate, and unnecessary.

C. Analysis

The evidence established that Claimant was a problematic patient whose symptoms and efforts were reported to be inconsistent when she was examined by doctors not employed by Petitioner. The fact that Claimant could report 75% pain reduction on October 29, 2003, then be unable to type for even an hour and had to stop the November 29, 2003, FCE due to pain raised

[7] SBC originally denied office visits billed under CPT 99213 on January 23, 28, 29; March 31; and June 11, 2003, but the parties stipulated that only the last two dates were still disputed at the time of the hearing.

some valid concerns about the origin of her pain. These concerns are reflected in the numerous peer reviews in this matter. But while the origin of her pain may be questionable, the record in this case did not contain sufficient information to discredit the existence of Claimant's reported pain. Whatever the origin of Claimant's pain, treatment of that pain remained a valid, compensable goal under the Act.

The scope of the disputed services in this matter was not altogether clear. Although the IRO's findings and MRD decision found the TPIs were not medically necessary healthcare, there was some evidence that the TPIs were preauthorized and thus not subject to a post-administration medical necessity review.[8] Because Petitioner's claim was not completely corroborated for all dates of service, this decision will address the medical necessity of the TPIs in January and May 2003.

The evidence established that trigger point injections are a recognized treatment for the type of myofascial pain Claimant suffered and that Claimant received those injections. Although the evidence established Claimant reported significant pain relief after the October 2002 TPIs, what relief she obtained from the January or May 2003 TPIs is not clear. Although she continued to report significant pain throughout the period in dispute, it also not clear her pain complaints involved myofascial pain related to the areas where the injections were administered. Despite this uncertainty about their ultimate efficacy, the TPIs are a recognized treatment for myofascial pain and were intended to relieve Claimant's pain so those services, billed under CPT 20550, qualified as medically necessary healthcare.

With regard to the service adjunct to the TPIs, there are two groups of services to consider-those administered on the same date as the TPI and those administered subsequently as post-TPI occupational therapy. The medical necessity of the first group (manipulation, myofascial release, massage, stretching exercises, muscle energy techniques, pain-relieving drugs) was established by Dr. Hirsch's reports. Dr. Cochran criticized the use of Vicodin for chronic pain. However, Dr. Hirsch's report plainly stated that the Vicodin and Valium were for short-term use for post-injection pain, not for chronic pain.[9]

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[8] In argument, Petitioner claimed that in August 20, 2002, SBC preauthorized three TPIs sessions, which were administered October 5, 2002 and January 11 and May 23, 2003. However, the August 20, 2002, preauthorization letter does not specifically authorize three sessions and only lists one date of service. (Pet. Ex. 1 at ATC-358.)

[9] It was not clear whether Petitioner billed fro Zanaflex as well as Vicodin and Valium under CPT J3490. Because the records did not explain the purpose of the Zanaflex, that drug was not shown to be medically necessary.

The Act requires that treatment be both effective and efficient. This record lacks any reference to medical peer review literature that supports the conclusion that clinically based post-injection passive modalities such as hot packs, ultrasound, electric stimulation, or massage is more efficient or effective than similar home-based therapies. Petitioner failed to show that the passive modalities prescribed as post-TPI occupational therapy (hot packs, electrical stimulation, stretching, and massage) were medically necessary, primarily because the evidence did not establish those services were most efficiently administered in a clinical setting. Therefore, the TPIs, passive modalities, and medications (Vicodin and Valium) billed on the same date were shown to be medically necessary, but the therapies and modalities billed on subsequent dates were not.

For the office visits billed under CPT 99213, the evidence did not establish those visits met the requirement for billing under the higher code. As the Act requires accurate billing, and absent any request for compensation at the lower rate, reimbursement should be denied due to the improper coding. The November 20, 2002, office visit billed under CPT 99211 was justified as a follow-up to the FCE on the preceding day.

As noted above, Petitioner is entitled to reimbursement for the TPIs and services and medications administered on the same date as the TPIs. For services rendered on dates other than those when a TPI was given, the services are not reimbursable. For the office visits, the one visit billed under CPT 99211 is reimbursable but none of those billed under CPT 99213 are.

III. FINDINGS OF FACT

1. In___, Claimant was diagnosed with a repetitive strain injuries in her upper extremities from her job with Southwestern Bell Telephone Company (SBC), injuries compensable under the Texas Workers' Compensation Act (Act).

2. At the time of the compensable injuries, SBC was self-insured for workers' compensation insurance coverage.

3. Prior to November 20, 2002, Claimant underwent carpal tunnel and anterior cervical discectomy with fusion without significant improvement.

4. In September and November 2002, Claimant underwent functional capacity evaluations (FCEs), but neither were completed. The first was discontinued due to inadequate patient effort and the second due to pain.

5. In February 2003, after a month in a work hardening program, Claimant was discharged due to recurring pain symptoms.

6. On January 11 and May 27, 2003, Neuromuscular Institute of Texas, PA.'s (Petitioner) employee, David Hirsch, D.O., administered trigger point injections (TPIs) in Claimant's upper right back to reduce her muscle spasms and pain.

7. After the TPIs on January 11 and May 23, 2003, Dr. Hirsch also provided the following therapies: osteopathic manipulation (CPT 98925); myofascial release (CPT 97250); massage (CPT 97124); unlisted therapeutic exercise (CPT 97139); physical exercises (CPT 97110); and drugs-Vicodin and Valium (CPT J3490).

8. The supportive therapies listed in Finding of Fact No. 7 were provided to reduce pain, edema, edema, and spasm; to help stretch the affected musculature; to fatigue the muscles to promote stretching; to correct the posteriorly rotated transverse processes on the right at C4; to relax the tightened palpated ligamentous and myofascial tissue in the affected regions; and pain management and sedation for three days post-injection.

9. From January 21-29 and May 30-June 16, 2003, Petitioner provided the following post-TPI services to Claimant: hot packs (CPT 97010), stretching, and massage (CPT 97124) and electric stimulation (CPT 97014 and A4556)

10. Petitioner's employee and Claimant's treating doctor, Brad Burdin, D.C., had office visits with Claimant on: November 20, 2002; January 11, 21, 22, 23, 27, 28, 29; March 31; May 27 and 30, June 4, 5, 6, 11, and 16, 2003. The November 20 visit was billed under CPT 99211 and the remainder were billed under CPT 99213.

11. SBC refused to reimburse Petitioner for the services described in Finding of Facts No. 6-10 on the grounds the treatments were not medically necessary.

12. The Commission's designee, an Independent Review Organization (IRO), upheld SBC's denial.

13. The services described in Findings of Fact Nos. 7-10 were intended to increase the efficacy of the TPIs.

14. The services listed in Findings of Fact Nos. 7 and 8 were medically necessary healthcare.

15. The post-TPI therapies described in Finding of Fact No. 9 were not cost effective when provided to Claimant at Petitioner's clinic as opposed to a home-based setting.

16. Petitioner's records did not document that Claimant required office visits that involved evaluations requiring extended medical histories or physical examinations or moderately complex medical decision making, so Petitioner could not properly bill under CPT code 99213.

17. After SBC denied its request for reimbursement, Petitioner requested that the Texas Workers' Compensation Commission review the denial. That review produced the Medical Review Division's decision adopting the opinion of its Independent Review Organization

(IRO), which concurred with SBC's denial.

18. Petitioner timely appealed the IRO findings and the MRD decision.

19. Pursuant to notice of hearing sent by Commission Staff, all parties appeared or were represented at the hearing held April 4, 2005.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (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(d) 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. ADMIN. CODE (TAC) §§ 133.305 and 133.308.

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 had the burden of proof in this proceeding. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41.

6. The IRO had authority to review the parties' positions and issue a decision pursuant to the Commission's rule at 28 TAC §§ 133.305 and 133.308.

7. Pursuant to the Act, an employee who has sustained 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 cures 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. TEX. LAB. CODE ANN. § 408.021(a).

8. Health care includes all reasonable and necessary medical services, including a medical appliance or supply. TEX. LAB. CODE ANN. §401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. § 401.011(31).

9. Under TEX. LAB. CODE ANN. §§ 413.013 and 413.018, the Commission is charged with reviewing medical care and ensuring treatments and services are both appropriate and appropriately billed

10. Under TEX. LAB. CODE ANN. § 413.011(d), services must be cost effective.

11. Petitioner is entitled to reimbursement for the following medically necessary healthcare provided Claimant from November 19, 2002, to June 16, 2003: trigger point injections (TPIs) administered January 11 and May 27, 2003, and billed under CPT 20550; and (2) for services billed on those dates under the following CPT codes: 97124, 97110, 97124, 98725, J3490, 97250, and 97139.

12. Petitioner is entitled to reimbursement for the office visit billed under CPT 99211 on November 20, 2002, as the service rendered Claimant that date was medically necessary healthcare.

13. Except as found in Conclusions of Law Nos. 11 and 12 herein, Petitioner is not entitled to reimbursement from SBC for the disputed services rendered to Claimant from November 19, 2002, through June 16, 2003.

ORDER

It is ORDERED that, with regard to services rendered Claimant between November 19, 2002, and June 16, 2003, Southwestern Bell Telephone Company (SBC) shall reimburse Neuromuscular Institute of Texas, PA (NIT) for: (1) trigger point injections administered January 11 and May 27, 2003, and billed under CPT 20550; and (2) for services billed on those dates for under the following CPT codes: 97124, 97110, 97124, 98725, J3490, 97250, and 97139. It is further ORDERED that SBC reimburse NIT for the office visit billed under CPT 99211 on November 20, 2002. It is also ORDERED that reimbursement for all other services in dispute in this matter is denied.

SIGNED May 19, 2005.

ANN LANDEROS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS