

**DOCKET NO. 453-05-0943.M5
MDR NO. M5-04-1162-01**

NEUROMUSCULAR INSTITUTE OF TEXAS, P.A., Petitioner	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	OF
	§	
ACE USA, Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Neuromuscular Institute of Texas (Provider) challenges an Independent Review Organization (IRO) decision denying reimbursement for physical therapy services provided following trigger point injections (TPIs). ACE USA (Carrier) denied reimbursement for the services as not medically necessary. The Administrative Law Judge (ALJ) concludes that some of the disputed services were shown to be medically necessary for the treatment of Claimant's injury. Provider is entitled to reimbursement for those services.

I. STATEMENT OF THE CASE

Administrative Law Judge (ALJ) Gary Elkins convened and closed the hearing on April 26, 2005. Attorney Allen Craddock appeared on behalf of Provider. Javier Gonzalez appeared on behalf of Carrier.

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 in early ____ when he developed left shoulder and neck pain from job responsibilities requiring repetitive motion. After undergoing an MRI and being treated with medication, he was released to return to work with various lifting, reaching, and motion restrictions. During a followup examination on May 29, 2002, Claimant reported feeling much better and was released to return to work without restrictions.

Based on a July 15, 2002, evaluation of Claimant, Ralph Curtis, M.D., concluded he might be suffering from a cervical disc problem. Cervical x-rays revealed adequate decompression without recurrent spurs, and a cervical MRI revealed no disc herniation or compromise to his spinal cord. A left-shoulder MRI revealed no evidence of rotator cuff pathology.¹

Based on his August 1, 2002, examination of Claimant, Daniel Kellums, D.O., recommended a left-shoulder CT scan, which produced negative results. Dr. Kellums concluded Claimant's shoulder pain was radiating from his neck and recommended physical therapy, which was provided in late 2002.

Ultimately, Claimant received three TPIs to his shoulder, each of which was followed by several sessions of post-injection physical therapy that included myofascial release, ultrasound, electrical stimulation, and hot packs. The TPIs were reimbursed by Carrier, but it denied reimbursement for the physical therapy.

The Independent Review Organization concluded that physical therapy was not medically necessary. Provider challenged the decision, which resulted in this proceeding before the State

¹ Claimant had two prior decompression surgeries on his left shoulder, in 1991 and 1995.

Office of Administrative Hearings.

B. Summary of Evidence and Argument

In support of its contention that the post-injection physical therapy was medically necessary, Provider makes the following assertions:

- Because the physical therapy was provided as an integral part of the TPIs, it should not be evaluated in isolation but, instead, as an essential part of the injection treatment.
- Physical therapy following TPIs complements the injections by reducing spasms and increasing circulation. By increasing circulation, the dispersal of the injected medication is enhanced.
- Medical literature supports the use physical therapy in conjunction with TPIs, as administered by Provider.
- As a result of the physical therapy, Claimant's pain levels were reduced from 6 to 3 on 10-point scale.

Carrier challenges the disputed services for the following reasons:

- TPIs can stand on their own as a treatment tool; Claimant would have benefited just as much from the injections without the physical therapy.
- Stretching exercises can also be an effective approach to accomplishing the same benefits as the disputed physical therapy.
- Claimant could have performed many of the physical therapy treatments on his own.
- Claimant was released to return to work in late ____, and ultimately was producing at 160-170 percent of his required production capacity output prior to the disputed services.
- Several doctors have agreed that the physical therapy services were not medically necessary.

C. Analysis and Conclusion

By themselves, the disputed physical therapy services would not have been medically necessary based on the history of Claimant's medical treatment and ongoing evaluations of his condition. However, this case presents a different issue: Whether the physical therapy services administered as a catalyst for enhancing the effectiveness of the TPIs, which were reimbursed by Carrier as medically necessary, were themselves medically necessary.

The preponderant evidence indicates that although it is difficult to separate the physical therapy modalities from the RPIs to evaluate their effectiveness in treating Claimant, at least some of them appeared medically necessary. The testimony of Provider witness Brad Burdin, D.C., that the physical therapy is efficacious of such therapy when administered in conjunction with TPIs, citing medical publications to back him up,² was persuasive. Carrier's expert witness, Timothy Fahey, D.C., challenged the administration of the therapy as unnecessary. His reasoning was that Claimant would be able to administer most of the modalities to himself without supervision and because stretching exercises, which he also could do himself, provide an effective means to accomplishing the same goal of reduced muscle spasm and enhanced circulation.³

The ALJ agrees that some of the services, such as the use of hot packs and electrical stimulation, could have been administered by Claimant without medical supervision. The myofascial release and ultrasound treatments, however, were properly administered by a health care professional. As for the use of stretching as an alternative to physical therapy, the evidence is less clear. What Provider did demonstrate by a preponderance of the evidence, however, was that (1) the use of physical therapy in association with TPIs is a recognized and recommended treatment; (2)

² Ex. 2.

³ Carrier noted that one of the medical articles on which Provider relies suggests stretching as an alternative to physical therapy rather than as an adjunct to it. (Ex. 2 at PG-19)

Claimant's reported pain levels were substantially reduced as a result of the treatments; and (3) Claimant had little if any need for continued medical care following the treatment. Consequently, Provider should be reimbursed for the myofascial release and ultrasound treatments.

III. FINDINGS OF FACT

1. An injured worker (Claimant) suffered a compensable neck and left shoulder injury in ____.
2. At the time of Claimant's injury, his employer held workers' compensation insurance coverage with ACE USA (Carrier).
3. Neuromuscular Institute of Texas (Provider) administered physical therapy treatments to Claimant's shoulder from January through April 2003, in conjunction with trigger point injections (TPIs).
4. The physical therapy services included myofascial release, ultrasound, electrical stimulation, and hot packs.
5. Carrier denied reimbursement for the physical therapy services as not medically necessary.
6. In response to Carrier's denial of reimbursement for the physical therapy, Provider filed a request for medical dispute resolution.
7. An Independent Review Organization assigned to review Provider's claim concluded the services were not medically necessary. In response, Provider timely requested a hearing before the State Office of Administrative Hearings.
8. Notice of the hearing was sent to the parties on October 25, 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.
9. The hearing convened and closed on April 26, 2005.
10. Physical therapy administered in conjunction with TPIs complements the injections by reducing spasms and increasing circulation. By increasing circulation, the dispersal of the injected medication is enhanced.
11. As a result of the physical therapy, Claimant's pain levels were reduced from 6 to 3 on a scale of 1-to-10.

12. Claimant had little if any need for continued medical care following the physical therapy treatments.
13. Claimant could have administered the hot packs and electrical stimulation without medical supervision.
14. The myofascial release and ultrasound treatments were properly administered by a health care professional.

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, Texas Mutual Insurance Company (Carrier) bears the burden of proof in this proceeding. 28 TEX. ADMIN. CODE (TAC) '148.21(h).
4. The myofascial release and ultrasound treatments were medically necessary.
5. The hot packs and electrical stimulation were not medically necessary.

ORDER

IT IS ORDERED that ACE USA shall reimburse Neuromuscular Institute of Texas for the myofascial release and ultrasound treatments administered to Claimant from January 6, 2003 to April 30, 2003. Neuromuscular Institute of Texas is not entitled to reimbursement for hot packs and electrical stimulation administered during the same period.

Signed June 27, 2005.

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