

**SOAH DOCKET NO. 453-05-2059.M5
TWCC MRD NO. M5-04-3724-01**

**NEUROMUSCULAR INSTITUTE
OF TEXAS, P.A.,
Petitioner**

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BEFORE THE STATE OFFICE

V.

OF

**SOUTHWESTERN BELL TELEPHONE,
Respondent**

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This is a dispute over reimbursement for medical services performed for a repetitive stress injury to Claimant's right shoulder. The amount in controversy is \$1,026.00. The Administrative Law Judge (ALJ) concludes the services were medically necessary and orders reimbursement.

I. FACTUAL AND PROCEDURAL HISTORY

Claimant reported a work-related injury to her right shoulder on _____. She was diagnosed with impingement syndrome of the right shoulder without a rotator cuff tear. After examining Claimant on May 20, 2003, Patrick H. Wilson, Orthopaedic Surgeon, recommended steroid injections accompanied by post-injection therapy. Southwestern Bell Telephone (Respondent) approved coverage for an injection, performed on June 24, 2003, along with five sessions of therapy that followed. Respondent objected to the sixth session of post-injection therapy and denied coverage. Respondent further denied payment for a second injection performed on July 22, 2003, and for two therapy sessions that followed.

Neuromuscular Institute of Texas, P.A., (Provider) timely filed a Request for Medical Dispute Resolution. The Independent Review Organization (IRO) agreed with Respondent that the treatments were not medically necessary. On October 21, 2004, the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC) issued its Findings and Decision, which ruled that Provider was not entitled to reimbursement for the disputed services.

On October 27, 2004, Provider timely filed a request for hearing before the State Office of Administrative Hearings (SOAH). The hearing was held September 27, 2005, before ALJ Tommy L. Broyles, and the record closed that same day. Provider and Respondent participated in the hearing.

II. DISCUSSION

Brad Burdin, D.C. and Claimant's treating doctor, testified that the disputed treatments were medically necessary and reasonable given Claimant's symptoms and medical history. He stated that both injections, as well as the post-injection therapy sessions, were prescribed by medical doctors. Dr. Burdin explained that post-injection therapy is generally prescribed after trigger point injections, like those provided in this case, to help distribute the medication. He added that post-injection therapy is oftentimes more successful than other therapy because the injection results in decreased pain and swelling, allowing the patient to more readily participate in therapy.

Referring to the medical records, Provider pointed out that the surgeon who ultimately performed surgery recommended steroid injection with extensive therapy as an initial, more conservative treatment. Provider noted that the surgeon making this recommendation was not a part of its practice.

Respondent did not call any witness but relied on the record evidence for support of its position that the disputed treatments were not medically necessary. Respondent agrees with the decision and rationale offered by the IRO. In particular, the IRO found that the patient had been treated conservatively for over three months at the time this dispute period began. Given this amount of treatment, the IRO determined that the services rendered should have demonstrated a significant improvement in the Claimant's condition, if they were successful. Instead, the IRO and Respondent argue they demonstrated little or no improvement and thus were not medically reasonable or necessary. According to the IRO, there was no indication the patient was getting any better after either injection and the therapy that followed. Physical therapist notes indicate a steady pain level of 4 or 5 out of 10. Finally, Claimant had to have surgical repair of her shoulder in order to gain relief. Respondent argues this proves the injections and therapy were not efficacious.

The ALJ is persuaded by the testimony of Dr. Burdin and the medical opinions provided in the written evidence suggesting the treatments in question were medically necessary. Contrary to the arguments made by Respondent, the medical records indicate the first injection and therapy did provide some relief. Claimant indicated to her Physician that the first injection and therapy were “helpful and lessened her pain to some degree.” Claimant suggested she was pleased with the outcome and indicated her ability to perform certain activities had improved. As a result, Dr. Burdin lessened work-status restrictions for Claimant after the first injection. Given these positive findings, the ALJ concludes it was reasonable to perform a second injection and the related therapy.

The ALJ disagrees with Respondent’s focuses on the ultimate lack of success of the injections as a primary reason for denial. In making a determination on whether a particular course of actions is reasonable, the ALJ primarily evaluates the information available at the time the decision was made. While the success, or lack thereof, is of some value, it is not persuasive in this instance. Claimants’ treating physicians were attempting to avoid surgery and correct her injury with more conservative treatment. These attempts were reasonable and medically necessary, regardless of whether she ultimately had surgery.

The preponderance of the evidence shows the disputed services were reasonable or necessary medical services, and accordingly, the ALJ orders reimbursement for them.

III. FINDINGS OF FACT

1. Claimant reported a work-related injury to her right shoulder on ____.
2. Claimant was diagnosed with impingement syndrome of the right shoulder without a rotator cuff tear.
3. Provider initially treated Claimant with medication, physical therapy, and chiropractic treatments.
4. After examining Claimant on May 20, 2003, Patrick H. Wilson, Orthopaedic Surgeon, prescribed steroid injections accompanied by more therapy.

5. Respondent reimbursed Provider for the initial steroid injection on June 24, 2003, and for five therapy sessions.
6. Respondent denied coverage for the sixth post-injection therapy treatment.
7. Claimant showed improvement after the first injection and post-injection therapy.
8. Respondent denied payment for a second injection performed on July 22, 2003, and for two therapy sessions that followed.
9. Respondent declined to reimburse Provider \$1,026.00 for the disputed treatment, because it considered the treatment not to have been medically necessary pursuant to a peer review.
10. Provider filed a timely Request for Medical Dispute Resolution.
11. The IRO agreed with Respondent, finding that the treatments were not medically necessary.
12. On October 21, 2004, the MRD issued its Findings and Decision, which ruled that Provider was not entitled to reimbursement for the disputed services.
13. On October 27, 2004, Provider filed a timely request for a hearing before SOAH.
14. Notice of the hearing was sent to all parties on December 6, 2004.
15. 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.
16. The hearing was held September 27, 2005. Provider and Respondent participated in the hearing, which adjourned the same day.
17. The disputed services were medically reasonable and necessary.

IV. 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. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
3. Under 28 TEX. ADMIN. CODE §148.14(a), Provider has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. §413.031.

4. The disputed services were reasonable and necessary medical treatments under TEX. LAB. CODE ANN. §401.011(19).
5. Respondent should be required to reimburse Provider for the disputed treatment.

ORDER

Southwestern Bell Telephone is required to reimburse Neuromuscular Institute of Texas, P.A., \$1,026 for the disputed services provided to Claimant.

SIGNED November 22, 2005.

**TOMMY L. BROYLES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**