SOAH DOCKET NO. 453-05-3772.M5
TWCC MDR NO. M5-04-3880-01

TEXAS MUTUAL INSURANCE COMPANY, Petitioner	§	**BEFORE THE STATE OFFICE**
v.	§	**OF**
COTTON D. MERRITT, D.C., Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

I. SUMMARY

Texas Mutual Insurance Company (Carrier) appealed the decision of Medical Review of Texas, an independent review organization (IRO), in Texas Workers' Compensation Commission (TWCC)[1] Medical Review Division (MRD) tracking number M5-04-3880-01, granting reimbursement for medical services provided to the Claimant. This decision orders that the Carrier is required to reimburse Cotton D. Merritt, D.C. (Provider) for the contested services billed under CPT Codes 99213, 97112, 97140, and 97250.

The Administrative Law Judge (ALJ) convened the hearing on August 31, 2005. The hearing was concluded and the record closed that day. The Carrier appeared through its representative Ryan T. Willett, attorney. The Provider appeared *pro se*.

II. EVIDENCE AND BASIS FOR DECISION

The issue presented in this proceeding is whether the Carrier should reimburse the Provider for medical services provided between July 14, 2003, and February 4, 2004, and billed under CPT Codes 99213 (office visit), 97112 (neuromuscular re-education), 97140 (manual therapy), 97110

[1] Effective September 1, 2005, the functions of TWCC were transferred to the newly created Division of Workers' Compensation of the Texas Department of Insurance.

(therapeutic exercises), 97250 (myofascial release), and 97530 (therapeutic activities). The Carrier argued that none of the medical services provided to the Claimant were medically necessary or reasonably required to treat the compensable injury. The parties asserted that approximately $5,400 is in dispute.

The documentary record consisted of two exhibits presented by the Carrier, Exh. 1 (183 pages) and Exh. 3 (26 pages), and one exhibit submitted by the Provider, Exh. 2 (127 pages). Additionally, Gary Pamplin, M.D., testified as an expert witness on behalf of the Carrier and the Provider appeared and testified telephonically.

The Claimant, a 50-year-old woman, suffered an injury to her left wrist on__while working as a ___ worker on a set of shutters. She was initially seen by a company physician, Dr. Witkowski, who prescribed steroid injections and a wrist splint, and then placed her on modified duty. The Claimant continued to suffer from her injury and she sought an orthopaedic consultation, received additional unsuccessful injections, and was diagnosed with evidence of carpal tunnel entrapment. The Provider was then consulted, and he diagnosed the claimant with *de Quervain's* disease.[2] The Provider started the Claimant on a rehabilitation program, ordered an MRI, which was negative, and referred the Claimant for another orthopaedic evaluation. The Claimant then had carpal tunnel release surgery in December 2003. The Provider furnished a variety of pre-operative and post-operative modalities, some of which are in dispute.[3]

Dr. Pamplin is board certified in both orthopaedic and hand surgery, and he reviewed the Claimant's medical records in preparation for his testimony. Dr. Pamplin testified that the treatment provided by the Provider to the Claimant was improper because *de Quervain's* disease results from an inflamation of the tendon in the first compartment of the wrist and the traditional therapy

[2] Inflammation of tendons and their sheaths at the styloid process of the radius that often causes pain in the thumb side of the wrist. Merriam-Webster Medical Dictionary (1995) at 169.

[3] Exh. 1, page 7.

provided by the Provider further inflamed the area. Dr. Pamplin explained that proper non-surgical treatment would include a splint, anti-inflammatory medications, and steroid injections. Additionally, he stated that the preferred treatment for *de Quervain's* disease is rest and *ontophoresis*, which is a procedure that introduces an ionized substance (such as a steroid) through intact skin to the inflamed area by application of a direct electric current.[4]

Dr. Pamplin further testified he was unable to determine from a review of the medical records that the therapeutic exercises and activities were performed on a one-on-one level of supervision as required. He stated that the Claimant performed the same simple exercises for months without any documented difficulty or safety concerns. In Dr. Pamplin's opinion, the one-on-one level of supervision was not medically necessary, and it would have been more appropriate for Claimant to participate in either a group or home exercise program.

The Provider testified that the Claimant did not respond to and could not tolerate anti-inflammatory medication, such as steroid injections. The Provider believed the Claimant was not a candidate for *iontophoresis* because she would not have been able to tolerate the medication. In his opinion, the Claimant's inability to tolerate prescription medication left him with few treatment options other than the extended use of passive modalities.

The ALJ concludes the Carrier established that the contested medical services billed under CPT Codes 97110 and 97530 delivered from July 14, 2003, through February 4, 2004, were not medically necessary and reasonably required to treat the Claimant's compensable injury. The testimony of Dr. Pamplin established that the one-on-one level of service was not necessary for safety or other reasons, and delivery of the service on a one-on-one basis was not documented in the medical records. However, due to the Claimant's inability to tolerate prescription medication, the extended delivery of passive modalities by the Provider was medically necessary. Therefore, the Carrier should reimburse the Provider for the contested services billed under CPT Codes 97250, 97140, 97112, and 99213, but not for the services billed under CPT Codes 97110 and 97530.

[4] Merriam-Webster's Medical Dictionary (1995) at 342.

III. FINDINGS OF FACT

1. On ___he Claimant suffered a compensable injury to her left wrist.

2. The Claimant's injury is covered by workers' compensation insurance written for the Claimant's employer by Texas Mutual Insurance Company (Carrier).

3. Cotton D. Merritt, D.C. (Provider) began treating the Claimant on June 25, 2003, for a diagnosis of *de Quervain's* disease .

4. The Carrier denied reimbursement to the Provider for medical services provided between July 14, 2003, and February 4, 2004, and billed under CPT Codes 99213 (office visit), 97112 (neuromuscular re-education), 97140 (manual therapy), 97110 (therapeutic exercises), 97250 (myofascial release), and 97530 (therapeutic activities) on the basis that the treatment was not medically necessary to treat the injury.

5. The Provider billed multiple 15-minute units for each day the Claimant performed therapeutic exercises and activities (CPT Codes 97110 and 97530).

6. The Claimant did not suffer a severe injury requiring one-on-one treatment.

7. The exercises were simple, without safety issues, and could have been performed without the one-on-one level of supervision.

8. The delivery of services at the one-on-one level of supervision was not documented in the medical records.

9. Direct one-on-one contact with the treating physician at each session of therapy was not cost effective and necessary to treat the Claimant's injury.

10. The Claimant could have done her exercises and activities in either a group or home-based setting instead of a one-on-one setting.

11. The preferred treatment for *de Quervain's* disease is rest and *iontophoresis*.

12. The Claimant did not respond to and could not tolerate anti-inflammatory medication, such as steroid injections.

13. The Claimant was not a candidate for *iontophoresis* because she could not tolerate the medication.

14. Passive modalities (CPT Codes 99213, 97112, 97140, and 97250) were appropriate treatment for the Claimant's injury because she could not tolerate the preferred treatment for her injury

15. Provider timely requested dispute resolution by the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC).

16. On December 21, 2004, in MRD Tracking No. M5-04-3880-01, the MRD issued its decision adopting the IRO decision concluding that the disputed expenses should be paid, and the Carrier timely appealed.

17. TWCC sent notice of hearing to the parties on February 9, 2005. The hearing notice informed the parties of the matter to be determined, the right to appear and be represented by counsel, the time and place of the hearing, and the statutes and rules involved.

18. The hearing on the merits convened August 31, 2005, before Michael J. Borkland, Administrative Law Judge. The Carrier appeared through Ryan T. Willett, attorney. The Provider appeared *pro se.*

IV. CONCLUSIONS OF LAW

1. 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 TEX. LAB. CODE ANN. §413.031 and TEX. GOV'T CODE ANN. ch. 2003.

2. Based on Finding of Fact No. 17, the Notice of Hearing issued by TWCC conformed to the requirements of TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.

3. The Carrier has the burden of proving by a preponderance of the evidence that it should prevail in this matter. TEX. LAB. CODE ANN. §413.031.

4. Based on Findings of Fact Nos. 6 - 10, the services referred to in Finding of Fact No. 5 were not medically necessary.

5. The services referred to in Finding of Fact No. 14 were medically necessary.

6. Based on Findings of Fact Nos. 11 - 14 and Conclusion of Law No. 6, the Carrier should reimburse the Provider for services billed under CPT Codes 99213, 97112, 97140, and 97250 beginning July 14, 2003, through February 4, 2004.

ORDER

IT IS, THEREFORE, ORDERED that Texas Mutual Insurance Company is required to reimburse Cotton D. Merritt, D.C. for medical services billed under CPT Codes 99213, 97112, 97140, and 97250 beginning July 14, 2003, through February 4, 2004 for treatment of the Claimant.

SIGNED October 14, 2005.

MICHAEL J. BORKLAND
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS