

LIBERTY MUTUAL FIRE INSURANCE § BEFORE THE STATE OFFICE
COMPANY §
§
V. § OF
§
MARSHA MILLER, D.C. §
§ ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Liberty Mutual Fire Insurance Company (Carrier) challenges the decision of the Independent Review Organization (IRO)¹ granting reimbursement for physical therapy, office visits, and related treatment provided to injured worker ___(Claimant). After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that

I. Background

On___, Claimant suffered a compensable, work-related injury to her hands and wrists. Her injury was caused by repetitive motion and she was diagnosed with carpal tunnel syndrome. Claimant received extensive physical therapy and other conservative treatment after her injury. She had carpal tunnel release surgery on her right hand on ___, and received additional physical therapy and conservative treatment after that. When she failed to improve enough to return to work, Claimant underwent surgery on her left hand on April 16, 2003. After this surgery, Claimant received additional physical therapy from Provider. On July 17, 2003, Claimant had another surgery to her right hand and again continued to receive physical therapy from Provider.

In this case, the dates of service in dispute are for two discrete periods of time: (1) from June 4, 2003, through July 16, 2003, and (2) from August 22, 2003, through September 3, 2003. Carrier declined to reimburse the physical therapy and related treatments during these two time periods, contending they were not medically necessary. Provider sought medical dispute resolution through the Texas Workers' Compensation Commission (Commission). The matter was referred to an IRO designated by the Commission for the review process. The IRO determined that some of the

¹ The IRO is the statutory designee of the Medical Review Division of the Texas Workers' Compensation Commission for purposes of resolving this dispute. Effective September 1, 2005, the functions of the Commission were transferred to the newly created Division of Workers Compensation of the Texas Department of Insurance.

services were medically necessary treatment for Claimant's compensable injury. Carrier then requested a hearing before the State Office of Administrative Hearings. The hearing convened on February 7, 2006, with ALJ Craig R. Bennett presiding. Provider appeared through its designated representative, Sean Kilgore, D.C. Carrier appeared through its attorney, Kevin Franta. The hearing concluded and the record closed that same day. No parties objected to notice or jurisdiction.

II. Discussion and Analysis

This case involves a dispute over the necessity of numerous different physical therapy treatments, office visits, and testing performed on Claimant. Carrier argues that the services provided between June 4, 2003, and July 16, 2003, exceeded the scope of what would be proper treatment for Claimant after her surgery. Carrier presented the testimony of Dr. Bernie McCaskill, an orthopedic surgeon who testified that the surgery performed on Claimant on April 16, 2003, was a simple procedure taking no more than 15 minutes, which would require a maximum of only 12 follow-up physical therapy sessions. Between April 16, 2003, and June 3, 2003, Claimant had at least 12 sessions of treatment that Carrier reimbursed. Dr. McCaskill testified there was no objective documentation of complications requiring additional treatment after these initial sessions; therefore, the physical therapy and other related treatment between June 4, 2003, and July 16, 2003, were simply not appropriate.

After Claimant's surgery in July 2003, Carrier reimbursed some additional physical therapy treatments. Dr. McCaskill testified that the surgery in July 2003 was relatively simple, should have taken no more than five minutes, and also would not have required more than 12 sessions of physical therapy. Claimant was examined by a designated doctor on August 19, 2003, and found to have no range of motion limitations or other objective problems. The designated doctor found Claimant to be at maximum medical improvement (MMI) with a 0% impairment rating. Accordingly, Carrier argues that no additional physical therapy was needed after that time, and Carrier denied reimbursement for additional treatment provided between August 22, 2003, and September 3, 2003.

In response, Provider argues that the treating surgeon recommended eight weeks of post-surgery physical therapy after each surgery, and the treatment given by Provider was within and did not exceed that recommendation. Moreover, Provider's treatment notes reflect that Claimant continued to have complaints of pain and range of motion limitations during the disputed dates of service justifying additional treatment. Provider argues that Carrier's expert has only reviewed

documents related to Claimant and is not able to evaluate her treatment as well as the surgeon or Provider, each of whom believed that eight weeks of physical therapy would be clearly justified.

After considering the evidence and arguments presented, the ALJ agrees that Carrier has shown that the services in dispute were not medically reasonable and necessary for treatment of Claimant's compensable injury. From reviewing the records, 12 physical therapy sessions were provided to Claimant before June 4, 2003. Based on the persuasive testimony of Dr. McCaskill, this was a sufficient amount of physical therapy after Claimant's April 2003 surgery. This is particularly true when Claimant was receiving one-on-one physical therapy (billed under CPT Code 97110), and should have been able to continue with any rehabilitative tasks and exercises in a home setting after the first 12 sessions of treatment.

Next, the ALJ turns to the treatment after Claimant's July 2003 surgery. The ALJ is persuaded by the designated doctor's report of August 19, 2003, that showed Claimant to have a normal range of motion in both wrists, a normal grip strength, and no complaints except for occasional tingling and soreness in her wrists. Moreover, the designated doctor found Claimant to be at MMI. In light of this and Dr. McCaskill's testimony, the ALJ agrees that no additional treatment was warranted for Claimant after August 19, 2003.

In summary, then, the ALJ finds that Provider is not entitled to reimbursement for the disputed dates of service in this case. In support of this determination, the ALJ makes the following findings of fact and conclusions of law.

III. Findings of Fact

1. On____, Claimant suffered a compensable, work-related injury to her hands and wrists, caused by repetitive motion. Her injury was diagnosed as carpal tunnel syndrome.
2. Liberty Mutual Fire Insurance Company (Carrier) is the provider of workers' compensation insurance covering Claimant for her compensable injury.
3. Claimant received extensive physical therapy and other conservative treatment from Marsha Miller, D.C. (Provider) after her injury.
4. Claimant had carpal tunnel release surgery on her right hand on June 12, 2002, and received additional physical therapy and conservative treatment after that.
5. When Claimant failed to improve enough to return to work, she underwent surgery on her left hand on April 16, 2003.

6. After her April 2003 surgery, Claimant received 12 additional physical therapy treatment sessions from Provider through June 3, 2004.
7. Claimant's April 2003 surgery was relatively minor and the treatment records show that the surgery went well and did not have complications. The exercises and activities that Claimant was performing in Provider's office were relatively straightforward and uncomplicated, and Claimant could have performed them at home.
8. Claimant did not need additional physical therapy or related services from Provider between June 4, 2003, and July 16, 2003.
9. On July 17, 2003, Claimant had another surgery to her right hand and again continued to receive physical therapy from Provider.
10. Claimant's July 2003 surgery was relatively minor and the treatment records show that the surgery went well and did not have complications.
11. As of August 19, 2003, Claimant had a normal range of motion in both wrists, a normal grip strength, and no complaints except for occasional tingling and soreness in her wrists.
12. As of August 19, 2003, Claimant had achieved maximum medical improvement and no additional physical therapy treatment was warranted for Claimant after that date.
13. In this case, the dates of service in dispute are for two discrete periods of time: (1) from June 4, 2003, through July 16, 2003, and (2) from August 22, 2003, through September 3, 2003. Carrier declined to reimburse the physical therapy and related treatments during these two time periods, contending they were not medically necessary.
14. Provider sought medical dispute resolution through the Texas Workers' Compensation Commission (Commission).
15. The matter was referred to an Independent Review Organization (IRO) designated by the Commission for the review process.
16. The IRO determined that some of the services were medically necessary treatment for Claimant's compensable injury.
17. The Commission's Medical Review Division ordered reimbursement on January 31, 2005, based on the IRO physician reviewer's determination that some of the services in issue were medically necessary.
18. On February 3, 2005, Carrier requested a hearing and the case was referred to the State Office of Administrative Hearings (SOAH).
19. Notice of the hearing was sent by the Commission to all parties on February 24, 2005. The hearing was subsequently continued at the parties' request.

20. The hearing convened on February 7, 2006, with ALJ Craig R. Bennett presiding. Provider appeared through its designated representative, Sean Kilgore, D.C. Carrier appeared through its attorney, Kevin Franta. The hearing concluded and the record closed that same day.
21. No parties objected to notice or jurisdiction.

IV. Conclusions of Law

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act, specifically TEX. LABOR CODE ANN. §1413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.
3. The request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE § 148.3.
4. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
5. Carrier has the burden of proof. 28 TEX. ADMIN. CODE §§148.14(a) and 133.308(w).
6. Carrier has shown, by a preponderance of the evidence, that the disputed services provided between June 4, 2003, and July 16, 2003, were not medically necessary for treatment of Claimant's compensable injury.
7. Carrier has shown, by a preponderance of the evidence, that the disputed services provided between August 22, 2003, and September 3, 2003, were not medically necessary for treatment of Claimant's compensable injury.

ORDER

IT IS, THEREFORE, ORDERED that Liberty Mutual Fire Insurance Company is not liable to reimburse Marsha Miller, D.C., for any of the disputed services in issue in this case.

SIGNED February 10, 2006.

**CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**