

LIBERTY MUTUAL INSURANCE COMPANY	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	OF
	§	
NEUROMUSCULAR INSTITUTE OF TEXAS	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Liberty Mutual Insurance Company, as the insurance carrier for Southwestern Bell Telephone 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 Carrier has shown that most of the services in dispute were not medically necessary. However, Carrier has failed to show that certain services were properly denied, and those services should be reimbursed in accordance with the order of the Medical Review Division. Accordingly, in this decision, Carrier is ordered to reimburse Neuromuscular Institute of Texas (Provider) the amount of \$532.80 for those services.

I. Background

In____, Claimant suffered a compensable, work-related injury to her arms, 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 received numerous trigger point injections and had carpal tunnel release surgery on her left arm² on or about September 17, 2003, and received additional physical therapy and conservative treatment after that. When she failed to improve enough to return to work, Claimant underwent cubital tunnel release surgery on her left arm on February 24, 2004. After this surgery, Claimant received additional physical therapy from Provider.

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.

² The ALJ uses the term "arm" to encompass Claimant's hand as well, to which many procedures were specific.

In this case, there are numerous dates and types of service in dispute between July 9, 2003, and March 26, 2004.³ Carrier declined to reimburse the physical therapy and related treatments, contending they were not medically necessary. Carrier also declined to reimburse some office visits and other procedures, contending they were global to other procedures or were not properly documented. Provider sought medical dispute resolution through the Medical Review Division (MRD) of 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 services were medically necessary treatment for Claimant's compensable injury. The MRD then ordered reimbursement for those procedures, along with reimbursement for the various treatments denied on other grounds.

In response to the MRD order, Carrier requested a hearing before the State Office of Administrative Hearings. The hearing convened on May 11, 2006, with ALJ Craig R. Bennett presiding. Provider appeared through its attorney, Allen Craddock. Carrier appeared through its attorney, Carrie Helm camp. The hearing concluded that day, but the record remained open until May 19, 2006, to allow for the filing of closing written arguments. 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,⁴ office visits, and related treatments performed on Claimant. Because the services are broken down into a few major categories, the ALJ addresses each of those separately below.

A. Services Denied for Reasons Other than Medical Necessity

Carrier denied a number of services on grounds other than medical necessity. Specifically, Carrier denied billings under CPT Codes 99214 and 99212 on August 21, 2003; February 3, 2004; February 19, 2004; and March 18, 2004, on the basis that these services are properly included in the

³ There are other dates of service in issue in a related case, SOAH Docket No. 453-05-6540.M5, that was heard at the same time as this case and that involves the same parties, same compensable injury, and similar treatments. A separate decision is being issued in that case.

⁴ Among other things, the passive physical therapy treatments included paraffin baths, hot packs, stretching, massage, and electrical stimulation.

surgical services for the injections. Carrier denied billings under CPT Codes J2000 and J2001 for dates of service of February 3, 2004, and March 18, 2004, for the same reason. Carrier denied billings under CPT Code J3490 on August 21, 2003, and February 19, 2004, on the basis that the billings lacked sufficient information as required under the billing guidelines.

MRD found that Provider had adequately supported the billings, that there was insufficient evidence they were global to other services, and that reimbursement was proper for them. The ALJ reaches the same conclusion. At the hearing and in briefing, Carrier failed to adequately support its contentions that the billings were improper and therefore should not be reimbursed. Ultimately, in considering the evidentiary record before him, and the legal arguments presented, the ALJ is unable to find that the billings were either global to other services or that the billings were not adequately supported with documentation or a required explanation. Therefore, Carrier has not met its burden of proof in showing that the services were properly denied. Therefore, Carrier is ordered to reimburse for these services, in the total amount of \$275.04.

B. Follow-Up Office Visits

Carrier denied numerous follow-up office visits as being medically unnecessary. The office visits occurred on July 9, 2003; August 21, 2003; and December 29, 2003. Carrier's evidence and arguments focus on its assertion that follow-up treatment was not necessary for Claimant at this time. However, Claimant was still not released to return to work full duty and the office visits were provided by Claimant's treating doctor. Under the circumstances, the ALJ finds that it was appropriate for Claimant's treating doctor to see and evaluate her on a regular basis to determine her condition and ability to return to work. Accordingly, the office visits were properly provided and Carrier is ordered to reimburse for them, in the total amount of \$223.30.

C. Trigger Point Injections

It is unclear whether trigger point injections are still in dispute. In Provider's closing briefing, it indicated that trigger point injections for two dates of service (August 21, 2003, and September 2, 2003) were still in dispute. However, in Carrier's closing argument, it identified those trigger point injections as being paid. Based upon the evidence in the record, the ALJ concludes that there is an insufficient basis for finding trigger point injections unnecessary. Therefore, Carrier is

liable for reimbursing those. If it has not already done so, Carrier shall reimburse Provider for the trigger point injections on August 21, 2003, and September 2, 2003.

D. Physical Therapy and Other Post-Surgical Services

Carrier argues that many of the various post-surgical services provided to Claimant on or after September 2, 2003, were not medically necessary. Carrier presented the testimony of Neal Blauzvern, D.O., who testified to the necessity of post-surgical treatment. Overall, Dr. Blauzvern noted that Claimant had 97 physical therapy sessions and numerous trigger point injections which seemed to provide no lasting benefit to Claimant, according to the medical records. In his testimony, Dr. Blauzvern discussed and detailed the medical records which generally showed that the various treatments were providing little benefit to Claimant. Dr. Blauzvern also disputed that any physical therapy would be necessary after trigger point injections, which are relatively simple and non-invasive procedures. Dr. Blauzvern also noted that Claimant underwent continued physical therapy even though she was going to have surgery, which made little sense. Also, many of the treatment notes indicate that the physical therapy was provided to Claimant's right arm, even though the surgeries she received were on her left arm. Dr. Blauzvern concluded that no physical therapy treatments were justified for Claimant's right arm. Although Dr. Blauzvern agreed that some limited physical therapy would be necessary after the surgeries performed on Claimant, he opined that the treatment provided to Claimant was excessive and inappropriate for the nature and scope of her injury.

In response, Provider argues that the treating surgeon recommended post-surgery physical therapy after each surgery, and the treatment given by Provider was within the scope of that recommendation. Moreover, Provider's treatment notes reflect that Claimant continued to have complaints of pain and physical limitations during the disputed dates of service justifying additional treatment. Provider points out that Claimant's condition did improve over time, thus showing the efficacy of the treatment.

After considering the evidence and arguments presented, the ALJ agrees that Carrier has shown that the physical therapy and other post-surgical services in dispute were not medically reasonable and necessary for treatment of Claimant's compensable injury. First, the ALJ agrees with Carrier's contention that physical therapy was not necessary after the trigger point injections.

As Dr. Blauzvern testified, trigger point injections are simple, non-invasive, and should not have required the physical therapy treatments provided. Moreover, Claimant was first treated for her compensable injury in April 2003. By September 2003, over four months later, additional passive physical therapy modalities would not have been appropriate for treatment of Claimant's injury. So, other than any necessary treatments after later surgical procedures, the ALJ agrees with Carrier that physical therapy treatments provided to Claimant on or after September 2, 2003, were not necessary.

Claimant's first surgery to her left hand was performed on or about September 17, 2003. Claimant received some physical therapy in the month after that, but it was to her *right* hand which had not been operated on. Given Claimant's condition and the findings reflected in the record, there was no justification for passive physical therapy to Claimant's right hand at that time. As for her left hand on which surgery had been performed physical therapy was not provided until November 10, 2003, over six weeks post-surgery. Even Provider's evidence indicates that post-operative therapy is normally started 2-3 weeks after surgery. There is no explanation for this unusual delay in providing physical therapy and, as Dr. Blauzvern testified, the need for it by that point had diminished. Provider offered no explanation that would justify such a lengthy delay in providing physical therapy post-surgery and it does not appear warranted at the time it was finally provided. Accordingly, the ALJ finds that Carrier has shown that the physical therapy following Claimant's first surgery was not reasonable and necessary treatment for Claimant's compensable injury and no reimbursement will be required.

Claimant's next surgery was on February 24, 2004. Again, the surgery was for Claimant's left hand. After the surgery, Claimant continued to receive passive physical therapy treatments and additional trigger point injections. Some of the physical therapy was purportedly part of post-trigger point injection therapy while others were for post-surgical therapy, although the line is blurred even in Provider's evidence and arguments.⁵ Carrier reimbursed some of the physical therapy treatments, but denied others. In particular, Carrier denied reimbursement for all physical therapy treatments occurring on or after April 12, 2004, which is six weeks after Claimant's surgery. Because these dates of service are outside of the scope of this proceeding, but rather are addressed in

⁵ Provider's evidence and arguments indicate that some physical therapy sessions were for both. For example, the same treatments on April 12, 2004, were identified as "Post Surgical Therapy 4 of 6" and also as "Post Injection Therapy 7 of 12."

the related case, the ALJ does not address them at this time with one exception. Specifically, Carrier also denied payment for a therapy treatment billed on March 26, 2004. Because this therapy treatment was within the six week period after Claimant's surgery and Carrier own expert witness agreed that up to 12 therapy sessions post-surgery might be appropriate, the ALJ concludes that Carrier has not shown that this treatment was not necessary. Therefore, Carrier is liable to reimburse the sum of \$34.46 for this treatment.

In summary, the ALJ finds that, except as otherwise noted above, 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. In ____, Claimant suffered a compensable, work-related injury to her arms, hands, and wrists. Her injury was caused by repetitive motion and she was diagnosed with carpal tunnel syndrome.
2. Claimant received extensive physical therapy and other conservative treatment from Neuromuscular Institute of Texas (Provider) after her injury. She received numerous trigger point injections and had carpal tunnel release surgery on her left arm on or about September 17, 2003, and received additional physical therapy and conservative treatment after that.
3. When Claimant failed to improve enough to return to work, she underwent cubital tunnel release surgery on her left arm on February 24, 2004. After this surgery, Claimant received additional physical therapy from Provider.
4. Claimant's September 2003 and February 2004 surgeries were relatively minor and the treatment records show that the surgeries went well and did not have complications.
5. In this case, there are numerous dates and types of service in dispute between July 9, 2003, and March 26, 2004. Carrier declined to reimburse the physical therapy and related treatments, contending they were not medically necessary. Carrier also declined to reimburse some office visits and other procedures, contending they were global to other procedures or were not properly documented.
6. Provider sought medical dispute resolution through the Texas Workers' Compensation Commission (Commission).
7. The matter was referred to an Independent Review Organization (IRO) designated by the Commission for the review process.
8. The IRO determined that some of the services were medically necessary treatment for Claimant's compensable injury.

9. The Commission's Medical Review Division ordered reimbursement on January 27, 2005, based on the IRO physician reviewer's determination that some of the services in issue were medically necessary.
10. On February 7, 2005, Carrier requested a hearing and the case was referred to the State Office of Administrative Hearings (SOAH).
11. Notice of the hearing was sent by the Commission to all parties on March 1, 2005. The hearing was subsequently continued at the parties' request.
12. The hearing convened on May 11, 2006, with ALJ Craig R. Bennett presiding. Provider appeared through its attorney, Allen Craddock. Carrier appeared through its attorney, Carrie Helm camp. The hearing concluded that day, but the record remained open until May 19, 2006, to allow for the filing of closing written arguments.
13. No parties objected to notice or jurisdiction.
14. There was insufficient evidence sufficient to show that reimbursement for the following services was properly denied:
 - (a) billings under CPT Codes 99214 and 99212 on August 21, 2003; February 3, 2004; February 19, 2004; and March 18, 2004;
 - (b) billings under CPT Codes J2000 and J2001 for dates of service of February 3, 2004, and March 18, 2004; and,
 - (c) billings under CPT Code J3490 on August 21, 2003, and February 19, 2004.
15. It was appropriate for Claimant's treating doctor to see and evaluate her on a regular basis to determine her condition and ability to return to work. In particular, it was reasonable and necessary for Claimant's treating doctor to see Claimant for office visits on July 9, 2003; August 21, 2003; and December 29, 2003.
16. The trigger point injections provided to Claimant were simple, non-invasive, and did not require the post-injection physical therapy treatments provided by Provider.
17. By November 10, 2004, Claimant did not need additional physical therapy as follow-up treatment to either trigger point injections or the carpal tunnel release surgery performed on Claimant on or about September 17, 2003.
18. Carrier has not shown that the physical therapy provided to Claimant on March 26, 2004, was not necessary as follow-up treatment to Claimant's February 2004 surgery.

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. §413.031 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. §§12001.051 and 2001.052.
5. Carrier has the burden of proof. 28 TEX. ADMIN. CODE §§ 148.14(a) and 133.308(w).
6. Carrier has failed to show, by a preponderance of the evidence, that reimbursement for the following services was properly denied:
 - (a) billings under CPT Codes 99214 and 99212 on August 21, 2003; February 3, 2004; February 19, 2004; and March 18, 2004;
 - (b) billings under CPT Codes J2000 and J2001 for dates of service of February 3, 2004, and March 18, 2004;
 - (c) billings under CPT Code J3490 on August 21, 2003, and February 19, 2004;
 - (d) office visits on July 9, 2003; August 21, 2003; and December 29, 2003;
 - (e) trigger point injections on August 21, 2003, and September 2, 2003; and,
 - (f) physical therapy provided to Claimant on March 26, 2004.
7. Except as noted in the previous conclusion, Carrier has shown by a preponderance of the evidence that all other disputed services provided between July 9, 2003, and March 26, 2004, were not medically necessary for treatment of Claimant's compensable injury.
8. Carrier is liable to reimburse Provider the sum of \$532.80 (and the amount for trigger point injections on August 21, 2003, and September 2, 2003, if still unpaid) plus interest for services provided between July 9, 2003, and March 26, 2004.

ORDER

IT IS, THEREFORE, ORDERED that Liberty Mutual Insurance Company pay Neuromuscular Institute of Texas the amount of \$532.80, plus interest, for disputed services in this case. For all services found not to be medically reasonable and necessary, no payment is owed.

SIGNED July 6, 2006.

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