SOAH DOCKET NO. 453-05-4512.M5
MDR Tracking No. M5-05-0720-01

NEUROMUSCULAR INSTITUTE OF TEXAS,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
VS.	§	**OF**
	§	
LIBERTY MUTUAL INSURANCE COMPANY,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

The Neuromuscular Institute of Texas (NIT) appealed an Independent Review Organization's (IRO's) determination upholding a decision by Liberty Mutual Insurance Company (Carrier) denying NIT reimbursement, on the basis of medical necessity, for certain physical medicine treatments provided to Claimant __ (Claimant). The Administrative Law Judge (ALJ) finds that NIT failed to meet its burden of proving that the services at issue were medically necessary and, therefore, NIT is not entitled to reimbursement.

I. BACKGROUND, PROCEDURAL HISTORY, NOTICE AND JURISDICTION

On___, Claimant reported a repetitive stress disorder to her hands, arms, and neck, which apparently resulted from repetitive typing during her 20-year employment as a clerical worker. Claimant began treating at NIT on December 1, 1998.[1] Daniel Bradley Burdin, D.C., a chiropractor at NIT, had been Claimant's treating doctor for the six years preceding the services at issue here, and he continues to be her treating doctor.[2]

[1] NIT has a multi-disciplinary practice; it employs an osteopath, chiropractors, physical therapists, occupational therapists, psychological professionals, and medical doctors with specialties in neurology, plastic surgery, and internal medicine. (Carrier Ex. B at 6.)

[2] Dr. Burdin is a Diplomat of the American Board of Chiropractic Neurology.

The dates of service at issue span the time period November 18, 2003, to April 16, 2004, and total $1940.77.[3] They include an office visit, a carpal tunnel injection, ultrasound therapy, unattended electrical stimulation, hot and cold packs, wrist extension, and paraffin bath therapy. Claimant has been diagnosed with multiple conditions, including cervical strain, myofascial pain syndrome, depression, and right carpal tunnel syndrome. The IRO to which the Texas Workers' Compensation Commission[4] referred this dispute determined that the disputed services were not medically necessary because Claimant did not obtain relief or improved function.[5]

The hearing convened on October 10, 2005, at the hearing facilities of the State Office of Administrative Hearings, 300 W. 15th Street, Austin, Texas. ALJ Renee M. Rusch presided. NIT was represented by attorney Allen Craddock, and Carrier was represented by attorney Kevin Franta. Neither party challenged the adequacy of notice or jurisdiction. After the presentation of evidence and argument, the record closed the same day.

II. ANALYSIS

The disputed services fall into four categories: (1) an office visit with Dr. Burdin on November 18, 2003; (2) physical medicine therapy sessions that followed a series of three injections administered on January 15, 2004, February 17, 2004, and March 25, 2004, respectively; (3) an

[3] NIT claims $2079.87; however, the MARS Guidelines limit recovery to $1940.77.

[4] Effective September 1, 2005, the functions of the Commission have been transferred to the newly created Division of Workers' Compensation at the Texas Department of Insurance.

[5] An IRO chiropractor provided the following rationale:

> An initial trial of conservative treatment was appropriate, but it failed to be beneficial to the patient. The patient had extensive care from the treating D.C. on a regular [basis] for some six years without documented relief of symptoms or improved function. Failed conservative therapy does not establish a medical rationale for continued non-effective therapy, even post-injection.
>
> From the documentation provided for this review, it [appears] that the patient suffers from myofascial pain syndrome, which should respond well to appropriate conservative treatment and exercise. The D.C.'s treatment, however, was not effective and led to doctor-dependency and a failure to return to work. . . . The patient's treatment dates are sporadic, suggesting non-compliance with the treatment plan, which in itself would lead to chronicity. (Pet. Ex. 1 at 8.)

injection to Claimant's left wrist on March 25, 2004; and (4) $5.00 for services billed to HCPCS Code on March 25, 2004.

A. The November 18, 2003, Office Visit with Dr. Burdin

1. The Evidence

Dr. Burdin testified that Claimant had only five office visits with him in 2003, and the November 18, 2003 office visit was medically necessary because Claimant was "scheduled" to have neck surgery in early 2004.[6] He testified that he clinically evaluated Claimant on this occasion, gathered information about her symptoms, and decided on her treatment. Dr. Burdin noted that a doctor cannot simply refuse to see a patient who makes an appointment.

The Carrier's expert witness, Dr. Blauzvern, acknowledged that pain is a condition that justifies treatment, but he was critical of NIT's ongoing treatment of Claimant, because the records to do not reflect that Claimant was making progress. Dr. Blauzvern argued that the record does not reflect who initiated the November 18, 2003 office visit and, moreover, Claimant had been seen by an NIT provider the week before. He characterized Dr. Burdin's notes documenting the November 18, 2003, office visit as simply chronicling Claimant's ongoing complaints.

2. ALJ's Analysis

In reviewing the medical records, the ALJ was struck by the number of NIT providers who treated Claimant, the number of treatments she received, and the apparent lack of progress she made in six years of treatment. As of June 3, 2003, NIT had provided Claimant with passive therapies, pain medications, anti-inflammatory medications, depression and anxiety mediations, counseling, a home exercise plan, rehabilitation, MRI, x-rays, injections, occupational therapy, and chronic pain management. (Pet. Ex. 1 at 199.) In 2003, she apparently was seeing Dr. Burdin approximately every two months. (Pet. Ex. 1 at 107-110.) At the same time, she was also seeing other NIT

[6] His office notes, however, reflect only that Claimant continued to report neck pain and he intended to request preauthorization for a repeat MRI. The notes do not mention a scheduled neck surgery, nor is there evidence in the record that Claimant actually had neck surgery. (Pet. Ex. 1 at 111.)

providers regularly. For example, Claimant saw Cherith Moore, a licensed professional counselor, on September 5, 11, and 18; October 7 and 21; and November 12, 2003. (Pet. Ex. 1 at 210-215.) She had an office visit with Michael Freiberg, M.D., on October 7, 2003 (the notes of which reflect that Dr. Freiberg made some adjustments in Claimant's medications and directed her to return in one month). (Pet. Ex. 1 at 133.) In this context, Dr. Burdin's notes of the November 18, 2003, office visit appear mainly to provide yet another chronicle of Claimant's continuing complaints, but little more.[7] (Pet. Ex. 1 at 111.)

Based on the record presented, the ALJ agrees with the IRO reviewer's conclusion that NIT's treatment of Claimant led to doctor-dependency instead of decreasing her symptoms and increasing her function. The ALJ agrees, therefore, with the IRO's determination that the November 18, 2003, office visit was not medically necessary.

B. Therapy Sessions that Followed a Series of Three Injections

1. The Evidence

On January 15, 2004, Claimant received an injection into the palmaris longus tendon of her right wrist. (Pet. Ex. 1 at 137.) She received post-injection therapy on six occasions: January 20, 22, 23, 28, and 29, and February 4, 2004.[8] On February 17, 2004, Claimant received an injection into the palmaris longus tendon of her left wrist. (Pet. Ex. 1 at 139.) Thereafter, she received

[7] As early as August 25, 2000, Dr. Burdin recognized that Claimant exhibited symptom magnification:

> I am not sure where to begin exactly, but the patient is seemingly very emotionally distraught regarding her condition and also her work circumstances with regards to her ability not to work and loss of benefits, etc. We had a rather lengthy conversation and she didn't make a whole lot of sense during most of the conversation. She was sure of one thing, and that was that she was in a lot of pain. She feels like no one is trying to help her. This is other than from a management standpoint, beginning to get out of my control. I think that she needs to be given preauthorization for some psychological testing and see Dr. Sutton for a psych eval. I think that she would be a fine candidate for a chronic pain management program because I do think that there is some magnification to a degree and a lot of factors that need to be addressed from a multi-discipline standpoint. (Carrier Ex. A at 90.)

[8] The therapies comprised ultrasound, E-stem (unattended electrical stimulation), hot and cold packs, and web ring exercise. (Pet. Ex. 1 at 219-224.)

therapy on five occasions: February 19, 23, and 25, March 1 and 4, 2004.[9] On March 25, 2004, Claimant received another injection into the palmaris longus tendon of her left wrist.[10] (Pet. Ex. 1 at 140.) She received post-injection therapy on March 26 and 31, and April 5, 7 and 16, 2004.[11]

Dr. Burdin testified that the post-injection physical medicine therapy complemented and increased the benefits of trigger point injections that Claimant received. He testified that trigger point injections contain non-cortical steroids; they are injected into the focal point of a patient's muscle spasm for the purpose of relaxing the muscle. In Dr. Burdin's view, post-injection therapy should be provided following trigger point injections so as to soften the muscle, increase distribution of the injected medication to the muscle to help prevent spasms, increase blood flow, and reduce toxins. He stated six therapy sessions following an injection would accomplish that goal. Dr. Burdin cited several pieces of medical literature that support his contention that post-injection therapy is appropriate in conjunction with trigger point injections.

The Carrier's expert witness, Dr. Blauzvern, who is board-certified in anesthesiology and pain medicine, disputed that the injections Claimant received were trigger point injections. According to Dr. Blauzvern, trigger point injections, by definition, are given into muscle, as a trigger point is a pathologic area within a muscle. There are no trigger points within the wrist, nor are there trigger points adjacent to the palmaris longus tendon, which was the anatomic marker Mr. Dedmon referred to in each of his progress notes. The documentation reflects that the injections Claimant received consisted of 40 mg Depo-Medrol with 2.5 cc of a local anesthetic, injectates appropriate for carpal tunnel injections but not for trigger point injections. In Dr. Blauzvern's opinion, the passive

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[9] The therapies comprised ultrasound, E-stem, hot and cold packs, and web ring exercise. (Pet. Ex. 1 at 225-229.)

[10] All three injections were administered by physician assistant Mark K. Dedmon. Mr. Dedmon's progress notes for the injections contain a signature line for Dr. Freiberg. The ALJ assumes, therefore, that the injections were given under Dr. Freiberg's direction; however, the progress notes are not signed by Dr. Freiberg.

The Carrier paid for the injections provided on January 15 and February 17, 2004; thus they are not at issue in this proceeding. The March 25, 2004, injection is a disputed service.

[11] On the Table of Disputed Services (Pet. Ex. 1 at 12-15), services performed on April 7, 2004, were included with the services provided on April 5, 2004. Petitioner's billing records, however, indicate that some of the disputed services were provided on April 7, 2004. *See* Pet. Ex. 1 at 96. The therapies comprised ultrasound, E-stem, hot and cold packs, web ring exercise, and paraffin bath therapy. (Pet. Ex. 1 at 232-235.)

modalities NIT provided after each injection, such as ultrasound, unattended electrical stimulation, and hot and cold packs, would not help distribute medication in the wrist joint, would not increase blood flow to the wrist joint, and would not remove toxins from the wrist joint (because the wrist joint does not contain toxins). Therefore, Dr. Blauzvern asserted, the post-injection therapy sessions were not medically necessary. Moreover, Dr. Blauzvern saw no need for five or six sessions. In his view, Claimant might have benefited from exercise that promoted active range of motion (ROM); however, a therapist could have demonstrated such exercises in one session, and Claimant should have been able to perform them on her own at home.

Notwithstanding his initial testimony about trigger point injections, Dr. Burdin agreed that Claimant received, and NIT billed for, carpal tunnel, not trigger point, injections. He did not, however, change his testimony regarding the reasons he contends the post-injection therapy was medically necessary.

2. ALJ's Analysis

Dr. Burdin's testimony supporting the need for post-injection therapy appeared to be based on the assumption that the injections were trigger point injections into Claimant's muscle. Presumably, the medical literature he cited also relates to therapy in conjunction with trigger point injections. For example, Dr. Burdin cited Dr. Janet Travell's "Myofascial Pain Dysfunction *Trigger Point* Manual." [Emphasis added.] On its Table of Disputed Services, NIT asserted that Claimant received trigger point injections, and NIT supported its contention that the post-injection therapy was appropriate with references to medical literature dealing with trigger point injections. As Dr. Blauzvern noted in his testimony, if Claimant in fact received carpal tunnel injections, Dr. Burdin's reliance on Dr. Travell's work was misplaced.

The ALJ was also persuaded by Dr. Blauzvern's testimony that, regardless of whether the post-injection therapy may be appropriate following trigger point injections, it was not medically necessary following carpal tunnel injections. Dr. Blauzvern testified that Claimant might have benefited from one instructional session in ROM exercises for the wrist. Logically, such instruction should have been given on the first day of post-injection therapy, January 20, 2004. However, NIT did not identify which, if any, of its charges for January 20, 2004 were for such instruction, and

NIT's billing descriptions were not informative enough to enable the ALJ to determine whether such a billing charge exists in the record.

On this evidentiary record, the ALJ concludes that NIT failed to carry its burden of proving that the post-injection therapy it provided to Claimant from January 20, 2004, to April 16, 2004, was medically necessary.

C. Carpal Tunnel Injection Administered March 25, 2004

1. The Evidence

Claimant received a second left carpal tunnel injection on March 25, 2004. Dr. Blauzvern believed the injection was not medically necessary, because he found no evidence in the record that Claimant has left carpal tunnel syndrome, although she appears to have right carpal tunnel syndrome.[12] Multiple medical records reflect that Claimant had a positive Tinel's test and Phalen's test on the right,[13] but the documentation relating to Claimant's left wrist is inconsistent. On December 18, 2003 and January 15, 2004, an NIT provider indicated Claimant had positive Tinel's and Phalen's tests bilaterally. However, on May 20, 2004, she had a mildly positive Tinel's test but a negative Phalen's test on the left. (Pet. Ex. 1 at 109-115.) Dr. Blauzvern based his opinion too on his observation that NIT administered multiple additional injections to Claimant after March 25, 2004, but they did not lead to any significant lessening of her pain or improvement in her function.

2. ALJ's Analysis

[12] According to Dr. Burdin, an EMG/NCV test indicated Claimant had carpal tunnel syndrome on the right. (Pet. Ex. 1 at 111.)

[13] The Tinel's test assesses nerve recovery and is used to diagnose carpal tunnel syndrome. If tapping over the carpel tunnel causes tingling in the thumb and radial 2 2 fingers, carpal tunnel syndrome is suspected. The Phalen's test is a wrist flexion test that is also used to diagnoses carpal tunnel syndrome.

The ALJ believes it significant that the voluminous medical records offered he continues to be her treating doctor.[14] The dates of service at issue span the time period November 18, 2003, to April 16, 2004, and total $1940.77.[15] They include an office visit, a carpal tunnel into evidence contain only vague indications that any of the three injections discussed in this Decision benefited Claimant. NIT practitioners obviously knew how to quantify pain levels. *See, e.g.*, Pet. Ex. 1 at 107 (as of December 20, 2002, Claimant reported pain levels of 4 to 7); Pet. Ex. 1 at 112 (as of December 18, 2003, Claimant reported a pain level of 8 to 9). The office notes following the carpal tunnel injections are vague and conclusory, however. On February 17, 2004 (before the first left carpal tunnel injection), Mr. Dedmon stated,

> The [Claimant] does report an overall improvement, with an overall decrease in the frequency and severity of pain and numbness. However, the [Claimant] does report a continuation of some pain and numbness. (Pet. Ex. 1 at 139.)

Before he administered the March 25, 2004, injection (the second left carpal tunnel injection), Mr. Dedmon made no mention of any improvement from the prior left carpal tunnel injection. (Pet. Ex. 1 at 140.) However, on April 13, 2004, Dr. Freiberg wrote that Claimant had "persisting improvement of the pain in those regions [her wrist joints] since the injections." (Pet. Ex. 1 at 143.) On May 20, 2004, Dr. Burdin wrote that the two injections to Claimant's left wrist "coupled with therapies seem to have been quite helpful to her. She is still concerned about the right hand." (Pet. Ex. 1 at 115.)

NIT had the burden of proof. Based on the record presented, the ALJ was unable to determine whether Claimant has left carpal tunnel syndrome and thus whether the left carpal tunnel injection administered March 25, 2004, was medically necessary. Accordingly, she concludes NIT is not entitled to reimbursement for it.

D. $5.00 for HCPSC Code A4209 March 25, 2004

[14] Dr. Burdin is a Diplomat of the American Board of Chiropractic Neurology.

[15] NIT claims $2079.87; however, the MARS Guidelines limit recovery to $1940.77.

1. The Evidence

The Commission's Medical Review Division (MRD) ordered reimbursement of $5.00 for services billed under HCPCS Code A4209 on March 25, 2004, which Carrier denied on the basis of Code G, global. Stating that Carrier did not indicate to which procedure Code A4209 was global, the MRD ordered payment of $5.00.

2. ALJ's Analysis

Carrier's Explanation of Benefits reflects that the $5.00 charge under Code A4209 was for a syringe with needle used in the carpal tunnel injection administered on March 25, 2004. (Pt. Ex. 1 at 50.) The ALJ does not, therefore, understand why the Commission's MRD asserted that Carrier did not indicate to which procedure Code A4209 was global. Because the ALJ finds that the March 25, 2004, carpal tunnel injection was not medically necessary, it follows that the syringe with needle used in that injection was also not medically necessary and NIT is not entitled to reimbursement for it.

E. Conclusion

For the reasons summarized above, the ALJ finds that NIT failed to carry its burden of proving the medical necessity of the disputed services.

III. FINDINGS OF FACT

1. As of__Claimant__ (Claimant) suffered repetitive stress injury to her hands, arms, and neck, which resulted from repetitive typing during her 20-year employment as a clerical worker.

2. At the time of her injury, Liberty Mutual Insurance Company (Carrier) was the workers' compensation insurer for her employer.

3. Claimant began receiving treatment from Petitioner Neuromuscular Institute of Texas (NIT) on December 1, 1998.

4. Daniel Bradley Burdin, D.C., a chiropractor at NIT, was Claimant's treating doctor for the six years preceding the services at issue here, and he continues to be her treating doctor.

5. NIT provided various physical medicine treatments, including office visits, a carpal tunnel injection, ultrasound therapy, unattended electrical stimulation, hot and cold packs, wrist extension exercises, and paraffin bath therapy to Claimant between November 18, 2003, and April 16, 2004, for which it sought reimbursement (the disputed services).

6. Carrier denied reimbursement.

7. NIT filed a request for medical dispute resolution with the Texas Workers' Compensation Commission's (Commission's) Medical Review Division (MRD).

8. An independent review organization to which the MRD referred the dispute found that the disputed services were not medically necessary.

9. NIT timely requested a hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).

10. On March 14, 2005, the Commission issued a notice of hearing, which stated the date, time, and location of the hearing; cited the statutes and rules involved; and provided a short, plain statement of the factual matters asserted.

11. The hearing was held on October 10, 2005, at the William P. Clements Building, 300 W. 15th Street, Austin, Texas, before ALJ Renee M. Rusch. NIT and Carrier appeared and presented evidence and argument. The record closed on the same date.

12. As of June 3, 2003, NIT had provided Claimant with passive therapies, pain medications, anti-inflammatory medications, depression and anxiety mediations, counseling, a home exercise plan, rehabilitation, MRI, x-rays, injections, occupational therapy, and chronic pain management.

13. NIT's treatment of Claimant did not cause her symptoms to decrease or her function to increase, but instead, led to doctor-dependency.

14. Claimant's office visit with Dr. Burdin on November 18, 2003, was not medically necessary.

15. On January 15, 2004, Claimant received an injection of Depo-Medrol and a local anesthetic into the palmaris longus tendon of her right wrist.

16. Following the January 15, 2004 injection, Claimant received post-injection therapy on six occasions: January 20, 22, 23, 28, and 29, and February 4, 2004. The therapies comprised ultrasound, E-stem (unattended electrical stimulation), hot and cold packs, and web ring exercise.

17. On February 17, 2004, Claimant received an injection of Depo-Medrol and a local anesthetic into the palmaris longus tendon of her left wrist.

18. Following the February 17, 2004 injection, Claimant received therapy on five occasions: February 19, 23, and 25, March 1 and 4, 2004. The therapies comprised ultrasound, E-stim, hot and cold packs, and web ring exercise.

19. On March 25, 2004, Claimant received another injection of Depo-Medrol and a local anesthetic into the palmaris longus tendon of her left wrist.

20. Following the March 25, 2004 injection, Claimant received post-injection therapy on March 26 and 31, and April 5, 7 and 16, 2004. The therapies comprised ultrasound, E-stim, hot and cold packs, web ring exercise, and paraffin bath therapy.

21. A trigger point is a pathologic area in a muscle.

22. Trigger point injections are given into muscle.

23. There are no trigger points within the wrist or adjacent to the palmaris longus tendon.

24. The injectates used in the injections Claimant received, Depo-Medrol and a local anesthetic, are appropriate for carpal tunnel injections but not for trigger point injections.

25. The injections Claimant received on January 15, February 17, and March 25, 2004, were carpal tunnel injections.

26. The preponderance of the evidence does not show that the post-injection therapy NIT provided Claimant was medically appropriate following carpal tunnel injections.

27. The wrist joint does not contain toxins.

28. The preponderance of the evidence does not show that the post-injection therapy NIT provided Claimant helped distribute medication in the wrist joint, increased blood flow to the wrist joint, or removed toxins from the wrist joint.

29. Claimant might have benefited from exercise that promoted active range of motion (ROM) in her wrists. A therapist could have demonstrated such exercises in one session, and Claimant should have been able to perform them on her own at home.

30. NIT's treatment notes relating to the carpal tunnel injections and the post-injection therapy Claimant received contain few objective findings and only vague and conclusory comments suggesting Claimant was making progress.

31. The preponderance of the evidence does not show that the post-injection therapy NIT provided Claimant increased the benefits of the carpal tunnel injections she received.

32. Based on the foregoing Findings of Fact, the post-injection therapy NIT provided between January 20 and April 16, 2004, was not medically necessary.

33. The preponderance of the evidence does not establish that Claimant has carpal tunnel syndrome in her left wrist.

34. NIT administered a second carpal tunnel injection to Claimant's left palmaris longus tendon on March 25, 2004.

35. The preponderance of the evidence does not establish that the March 25, 2004 carpal tunnel injection was medically necessary.

36. The Commission's Medical Review Division (MRD) ordered reimbursement of $5.00 for services billed under HCPCS Code A4209 on March 25, 2004, which Carrier denied on the basis of Code G, global.

37. The $5.00 NIT charged under Code A4209 was for a syringe with needle used in the carpal tunnel injection Claimant received on March 25, 2004.

38. Because the March 25, 2004 carpal tunnel injection was not medically necessary, the syringe with needle used in the injection was not medically necessary.

IV. CONCLUSIONS OF LAW

1. H has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. §§402.073(b) and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.

2. NIT filed a timely notice of appeal of the MRD decision pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 133.308(u) and 148.3(a).

3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052 and 28 TAC 148.5(a).

4. NIT had the burden of proof by a preponderance of the evidence. 28 TAC ' 148.14.

5. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LABOR CODE ANN. § 408.021.

6. Based upon the foregoing Findings of Fact and Conclusions of Law, the disputed services NIT provided to Claimant between November 18, 2003, and April 16, 2004, were not medically necessary health care under TEX. LAB. CODE ANN. §§ 401.011(19) and 408.021(a).

7. Based upon the foregoing Findings of Fact and Conclusions of Law, NIT's request for reimbursement should be denied.

ORDER

IT IS ORDERED THAT Liberty Mutual Insurance Company is not required to reimburse Neuromuscular Institute of Texas for the disputed services provided to Claimant__ from November 18, 2003, to April 16, 2004.

SIGNED November 16, 2005.

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RENEE M. RUSCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS