



## **I. JURISDICTION AND PROCEDURAL HISTORY**

The Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE § 413.031. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing in this proceeding pursuant to TEX. LAB. CODE § 413.031(k) and TEX. GOV'T CODE ch. 2003. No party challenged jurisdiction or notice.

Administrative Law Judge (ALJ) Ami L. Larson convened a hearing in this matter on February 22, 2006, at the SOAH hearing facilities in Austin, Texas. Cherilyn Johnston appeared by telephone and represented North Texas Therapy and Rehabilitation Center (Petitioner). Attorney J. Red Tripp appeared in person and represented the State Office of Risk Management (Respondent). Barbara Fraczek, physical therapist, also appeared by telephone and testified on behalf of Petitioner. The hearing concluded and the record closed the same day.

## **II. CLAIMANT'S TREATMENT HISTORY**

\_\_\_ (Claimant), who was approximately 51 years of age at the time of the disputed services, sustained a work-related injury to her left shoulder on \_\_\_. The evidence shows that, following her injury, Claimant received treatment including X-rays, orthopedic evaluation, prescription medication, MRI, physical therapy, and a subacromial bursa injection of the left shoulder. Claimant failed to respond to physical therapy and received only short-term relief from the injection. Ultimately, in November 2002, Claimant underwent arthroscopic decompression surgery on her left shoulder. There is conflicting evidence regarding the degree to which the surgery improved Claimant's condition. Following the surgery, she was prescribed additional physical therapy and medication. In March 2003, Claimant received trigger point injections in response to her continued complaints of pain. Following the injections, on May 15, 2003, Claimant was given a 7% impairment rating and was reported to have essentially fully recovered from her work-related injury with the exception of her inability to sleep on her left shoulder. Claimant continued to work without restrictions and neither her treating physician nor her orthopedic surgeon recommended any further treatment for Claimant at that time.

Almost one year later, on June 23, 2004, Claimant was seen by Mark Parker, M.D. due to her complaints of increased shoulder pain. The evidence as to what, if any, treatment Claimant received between May 2003, when she was reported to be almost completely recovered, and June 2004, when she went to see Dr. Parker, is vague at best.<sup>8</sup>

Following his evaluation of Claimant on June 23, 2004, Dr. Parker noted that, although Claimant experienced mild discomfort on physical exam, her range of motion was better than it had been in May 2003. Dr. Parker referred Claimant to an outpatient therapy program and indicated that he would consider trigger point injections if Claimant did not show improvement after approximately two weeks of therapy. On July 12, 2004, Dr. Parker again saw Claimant and noted that she had decreased tenderness and tightness. Dr. Parker recommended that she continue in therapy for two additional weeks and then return for another office visit.<sup>9</sup> Claimant was released from physical therapy on July 30, 2004, after 12 sessions. The Physical Therapy Status Report dated July 30, 2004, indicates that Claimant improved moderately and would continue her strengthening exercises on a home program following her discharge.<sup>10</sup>

### **III. ANALYSIS AND DECISION**

The ALJ finds that Petitioner has failed to meet its burden of proof to show, by a preponderance of the evidence, that the disputed services provided to Claimant between June 28 and July 30, 2004, were medically reasonable and necessary. While the ALJ understands that Petitioner was relying on a prescription from Dr. Parker as the basis for performing the disputed services, there is simply not enough evidence in the record to justify Dr. Parker's referral or the therapy ultimately conducted.

Petitioner appeared to hold a sincere belief in the benefits of the therapy provided and the record shows that Claimant did make some improvements during the period of disputed services.

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<sup>8</sup> The notes from Dr. Parker's June 23, 2004 evaluation of Claimant note merely that she continued on an exercise program with her shoulder, but had to discontinue it in the fall due to an unrelated abdominal surgery. Petitioner's Exhibit 1, page 9.

<sup>9</sup> Petitioner's Exhibit 1, page 11.

<sup>10</sup> Petitioner's Exhibit 1, page 28.

What is not clear, however, is the medical need for the level of treatment provided. Petitioner argued that Claimant's need for trigger point injections even after her surgery and Dr. Parker's subsequent consideration of additional trigger point injections demonstrates that this is an unusual case, which justifies treatment beyond the Official Disability Guidelines' recommendation for ten weeks of post-surgery therapy. The difficulty with this argument, however, is the dearth of evidence in the record to support the initial post-surgery injections<sup>11</sup> or any of Dr. Parker's more recent recommendations.

Following his initial evaluation of Claimant in June 2004, Dr. Parker notes that Claimant continued to experience subjective pain, but had improved objectively relative to her condition approximately one year prior. Dr. Parker then recommended therapy without articulating any basis for his recommendation. Even Dr. Parker's June 29, 2004 statement of medical necessity fails to mention physical therapy, much less explain the medical necessity therefor.<sup>12</sup> Even if Claimant did require therapy to treat her complaints of pain, there is no evidence to show that the passive modalities employed two years post-surgery were medically necessary. Similarly, there was no evidence to show why Claimant required one-on-one therapy as opposed to a home exercise program from the outset. The evidence shows that Claimant was previously involved in physical therapy for her shoulder both before and after her shoulder surgery. The notes from the disputed physical therapy sessions never indicate that Claimant had difficulty following instructions or performing the prescribed exercises.

Notwithstanding credible testimony on behalf of Petitioner regarding the belief that the disputed services were beneficial to Claimant, there is simply not enough evidence to show that such services were medically necessary and that she could not have made similar progress via less intensive forms of treatment or therapy. Accordingly, the ALJ finds that Petitioner did not satisfy its burden of proof to establish that the disputed services were medically reasonable or necessary. Therefore, Respondent is not required to reimburse Petitioner for these services.

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<sup>11</sup> Claimant received trigger point injections on March 25, 2003, notwithstanding the fact that she demonstrated full range of motion in her left shoulder and her surgeon reported that she had fully recovered from her surgery and did not require any further treatment. Respondent's Exhibit 1, page 69

<sup>12</sup> This letter appears to address the medical necessity of a prescription for Trazodone rather than explain the need for physical therapy. Petitioner's Exhibit 1, page 46.

#### **IV. FINDINGS OF FACT**

1. Claimant sustained a compensable injury to her left shoulder on\_\_\_\_\_.
2. The State Office of Risk Management (Respondent) is responsible for workers' compensation coverage for Claimant.
3. Following her injury, Claimant received treatment including X-rays, orthopedic evaluation, prescription medication, MRI, physical therapy, and a subacromial bursa injection of the left shoulder.
4. Claimant failed to respond to physical therapy and received only short-term relief from the injection.
5. In November 2002, Claimant underwent arthroscopic decompression surgery on her left shoulder.
6. Following her surgery, Claimant was prescribed physical therapy and medication.
7. As of March 25, 2003, Claimant was almost completely recovered from her surgery with the exception of some residual tenderness in her shoulder area. She demonstrated full range of motion of her left shoulder.
8. On May 15, 2003, Claimant was evaluated and given a 7% whole person impairment rating and was almost fully recovered from her work-related injury although she was still unable to sleep on her left shoulder.
9. After her injury, Claimant continued to work without restrictions other than two days following her surgery during which time she was off work.
10. On June 23, 2004, Claimant saw Mark Parker, M.D., due to her complaints of increased shoulder pain.
11. There is no evidence in the record as to any specific treatment received by Claimant between May 15, 2003, and June 23, 2004, other than a vague reference to Claimant's having engaged in a home exercise program and having undergone a stomach surgery not related to her compensable injury.
12. In June 2004, Claimant's range of motion was better than it had been in May 2003.
13. Dr. Parker referred Claimant to an outpatient therapy program and indicated that he would consider trigger point injections if she did not show improvement after two weeks.
14. Dr. Parker did not document the rationale or explain the medical necessity for his referral of Claimant to physical therapy.

15. On July 12, 2004, Dr. Parker again saw Claimant and recommended that she continue therapy for two additional weeks.
16. North Texas Physical Therapy and Rehabilitation Center (Petitioner) provided physical therapy evaluation and treatment to Claimant for her compensable injury between June 28 and July 30, 2004 (disputed services).
17. Claimant was released from therapy and referred to a home exercise strengthening program on July 30, 2004.
18. Petitioner sought reimbursement from Respondent for the disputed services.
19. Respondent denied payment for the disputed services based on a lack of medical necessity.
20. Petitioner made a timely request to the Texas Workers' Compensation Commission (Commission) for medical dispute resolution with respect to the requested reimbursement.
21. The Commission referred the dispute to an independent review organization (IRO). The IRO concluded that the disputed services were not medically reasonable and necessary.
22. The Commission's Medical Review Division (MRD) concurred with the IRO's finding in a decision dated August 24, 2005.
23. A contested case hearing was held at SOAH on February 22, 2006, and the record closed the same day.
24. All parties received not less than ten days notice of the time, place, and nature of the hearing; 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.
25. All parties were present at the hearing and were allowed to respond and present evidence and argument on each issue involved in the case.
26. Petitioner failed to meet its burden of proof to show that the disputed services were medically reasonable and necessary.
27. Respondent does not need to reimburse Petitioner for the disputed services.

## **V. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission has jurisdiction related to this matter pursuant to TEX. LAB. CODE ANN. § 413.031.

2. 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(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TEX. ADMIN. CODE (TAC) § 133.305(g) and §§ 148.001-148.028.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Petitioner, as the party seeking relief, bore the burden of proof in this case pursuant to 28 TAC § 148.21(h).

### **ORDER**

**IT IS THEREFORE, ORDERED** that the State Office of Risk Management is not required to reimburse North Texas Physical Therapy and Rehabilitation Center for physical therapy evaluation and services provided to Claimant between June 28 and July 30, 2004, as described in this decision.

**SIGNED April 18, 2006.**

**AMI L. LARSON  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**