SOAH DOCKET NO. 453-05-9073.M5
TWCC MR NO. M5-05-1629-01

TEXAS MUTUAL INSURANCE COMPANY,	§	**BEFORE THE STATE OFFICE**
PETITIONER	§	
	§	**OF**
V.	§	
	§	**ADMINISTRATIVE HEARINGS**
PAIN AND RECOVERY CLINIC OF NORTH HOUSTON,	§	
RESPONDENT	§	

DECISION AND ORDER

Texas Mutual Insurance Company (Carrier) appealed the decision of the Texas Workers' Compensation Commission's (Commission) Medical Review Division (MRD)[1] to adopt the decision of its designee, an Independent Review Organization (IRO), which granted reimbursement for services provided a workers' compensation claimant (Claimant) by the Pain and Recovery Clinic of North Houston[2] (Provider). Carrier claimed that the services were not medically necessary health care. This decision finds that the services billed under CPT code 97110 were billed under the wrong code and are thus not reimbursable. It further finds that, of the remaining services in dispute, only those administered from February 16 through March 22, 2004, were medically necessary and reimbursable.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction, notice, or venue. Therefore, those issues are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing in this matter convened January 23, 2006, at the State Office of Administrative Hearings, 300 W. 15th Street, Austin, Texas, with Administrative Law Judge (ALJ) Ann Landeros presiding. The record also closed that date. Attorney Ryan Willett appeared for Carrier.

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1 On September 1, 2005, the Commission became a division within the Texas Department of Insurance. Acts of May 30, 2005, 79th Leg., R.S., ch. 265, 2005 Tex. Sess. Law Serv. Ch 265 (HB 7). All citations in this Decision and Order are to the applicable statutes and rules as they existed at the time this case was referred to the State Office of Administrative Hearings in August 2005.

2 In various documents in this docket, Provider's name appears as "Pain and Recovery Clinic of South Houston," "Pain and Recovery Clinic of North Houston," and "Pain and Recovery Clinic." Carrier was unable to verify the correct name and, as no representative of Provider appeared at the hearing, the ALJ was left uncertain about which name was correct. This decision and order refers to Provider by the name listed on the Commission's referral letter, which is "Pain and Recovery Clinic of North Houston."

No one appeared on behalf of Provider.[3] Commission Staff did not participate in the hearing.

II. DISCUSSION

A. Background Facts

In ___, Claimant sustained an injury to her neck, head, and upper extremities, including a fractured right radius and ulna. These injuries were compensable under the Texas Workers' Compensation Act (Act), TEX. LAB. CODE ANN. ch. 401 *et seq.* At the time of the compensable injury, Carrier was the workers' compensation insurer for Claimant's employer.

Claimant's arm fractures were immobilized with a cast and splint for several months. After the splint was removed, Claimant's hand surgeon, Jacob Varon, M.D., referred her to Provider for physical therapy to regain strength and mobility in the hand. From February 16 through April 30, 2004, Claimant received physical therapy for her hand (billed under CPT 97110-therapeutic exercises, 97140-manual therapy, and 97112-neuromuscular reeducation) at Provider's facility. Carrier declined to pay for the services, claiming they were not medically necessary. Upon appeal to the Commission, the IRO reviewer ruled that Claimant was entitled to three services per session for hand therapy, stating:

> The patient had documented severe decreases in range of motion and strength in her right wrist and hand due to her prolonged immobilization in a cast and splint. She was released to start physical therapy by her surgeon to improve range of motion and strength in her hand and wrist. This was medically necessary and appropriate. There was a documented increase in range of motion and strength, showing that the patient was benefitting from the therapy. . . .

The IRO granted Provider reimbursement for "one unit of therapeutic exercises, manual therapy technique and neuromuscular reeducation per session 2/16/04-4/30/04." Carrier timely appealed the IRO decision.

3 Although Provider had not filed a motion to appear telephonically, at the time of the hearing, the ALJ placed a courtesy call to Provider's only known telephone number but got only a recorded message to the effect that Provider was not open at that time. After the hearing closed, the ALJ received a packet of documents filed by the Provider. As they were not introduced into evidence at the hearing, these documents could not be considered as part of the evidentiary record.

B. Legal Standards

Carrier has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE (TAC) §§ 148.14; 1 TAC § 155.41.

Pursuant to the Act, an employee who has sustained a compensable injury is entitled to all health care reasonably required by the nature of the injury, as and when needed. The employee is specifically entitled to health care 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. LAB. CODE ANN. §408.021(a).

Health care includes all reasonable and necessary medical services, including a medical appliance or supply. TEX. LAB. CODE ANN. §401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. §401.011(31). To be entitled to payment from a carrier, a provider must submit a properly coded bill. See 28 TAC §§ 133.1(a)(3), 133.300, and 133.301

C. Evidence and Analysis

1. Evidence

Carrier introduced various medical records for Claimant and presented the testimony of its expert witnesses, orthopedic and hand surgeon Gary Pamplin, M.D., and chiropractor Jarred Cashion, D.C.

The medical records revealed that on February 16, 2004, Claimant rated her right wrist pain at 5 out of 10 at rest and 8 out of 10 with activity. Her wrist flexion and extension in range of motion (ROM) tests on that date were 17 and 14 degrees. The therapeutic exercises prescribed were scapular retraction, axial extension with rotation, grip strengthening with putty and with Digi-flex, wrist isometrics (flexion and extension) and biceps curls. (Ex. 1 at 33).

On March 18, 2004, pain management specialist Ali Mohamed, M.D., noting that Claimant's wrist was swollen and lacking flexion and that she had already had two weeks of therapy, recommended different types of modalities in a "complete" course of physical therapy. (Ex. 1 at 100). On April 8 and 29, 2004, Dr. Mohamed recommended Claimant continue her physical therapy with Provider. (Ex. 1 at 102 -105).

By March 22, 2004, Claimant's wrist ROM measured 39 degrees on flexion and 42 degrees on extension, measurements that did not improve when retested on April 28, 2004. (Ex. 1 at 57, 76).[4]

Dr. Varon examined Claimant's wrist on April 19, 2004, and found significant flexion impairment and almost no ulnar deviation. He stated Claimant reported she was "doing better with therapy in some way" but was still unable to flex her fingers. He believed scarring and fibrotic tissue were compressing the nerves and tendons in the wrist and strongly recommended a "very aggressive" program including physical therapy, for which he gave a prescription. (Ex. 1 at 93). Dr. Varon repeated his advice that Claimant have "aggressive physical therapy" when he saw her on May 3, 2004, after an MRI revealed a minimally displaced fracture of the distal radius. (Ex. 1 at 94).

Dr. Pamplin testified that the hand therapy provided Claimant was inappropriate given her clinical symptoms and complaints. Claimant had stiff and immobile fingers so she needed range of motion exercises. Instead, Dr. Pamplin described the exercises Provider administered to Claimant as dexterity exercises. According to Dr. Pamplin, Provider's progress notes showed no improvement in pain levels for Claimant over the period in dispute. He compared the February 16, 2004, note of a pain level at 5 out of 10 at rest and 8 out of 10 with activity to the April 30, 2004, note of pain levels at an 8 out of 10. Dr. Pamplin found no documented improvement in Claimant's condition over the course of treatment. (Carrier Ex. 1 at 31, 104).

Dr. Cashion testified that an assessment period of six to twelve physical therapy sessions might have been appropriate for Claimant's hand. However, when Claimant showed no improvement after that assessment period, Provider should have changed her treatment plan rather than continue with ineffective treatment. Dr. Cashion also stated that to be appropriate even for an initial period, the physical therapy exercises performed had to be effective and appropriate to treat Claimant's symptoms. In his opinion, the physical therapy provided Claimant from February 16 through April 30, 2004, was not medically necessary after it became apparent Claimant was not improving, which should have been evident after the twelfth session at the latest.

4 Although Provider's notes include wrist strength measurements on the dates the ROM was tested, those measurements were recorded as A2+/5" and 3-/5", notations which are unclear to the ALJ as this record lacked the necessary interpretation of the scale used. (Ex. 1 at 33, 57, 76).

2. Analysis

Carrier's experts analyzed Claimant's medical records and concluded that the physical therapy provided her by Provider from February 16 through April 30, 2004, was not medically necessary, either because it was the wrong type of exercise or because it did not reduce Claimant's pain levels. However, Dr. Varon and Dr. Mohamed both examined Claimant during the period in dispute and concluded she needed intensive physical therapy for her hand and recommended she continue therapy with Provider. With regard to whether the therapy was appropriate, the opinions of the hand surgeon and pain management specialist who actually examined Claimant carry slightly more weight than the opinions of Carrier's experts who did not examine her as.

Dr. Pamplin stated that Claimant needed exercises to improve ROM and strength in her hand. According to the medical records, the therapeutic exercises administered did address ROM and strength and did result in some improvement in ROM between February 16 and March 22, 2004. Although Claimant's pain levels did not improve, her ROM did up for about the first month of therapy. With regard to efficacy, Claimant's hand therapy through March 22, 2004, merited reimbursement.

However, with regard to the level of care administered, the record lacks sufficient documentation to justify Provider's use of CPT 97110 for one-to-one therapy for Claimant. That billing code is to be used primarily where safety is an issue, such as when a physical or cognitive impairment makes group sessions unsafe. The medical records reveal that Claimant had normal cognitive abilities and there was no indication her physical limitations posed a danger if she were not supervised at the one-to-one level. Provider should not have billed under CPT 97110. As Provider did not properly code the therapeutic exercises billed under 97110, no reimbursement is due for them.

For the dates of services from February 16 through March 22, 2004, billed under CPT 97112 or 97140, the documented improvement in Claimant's condition established that those services should be reimbursed. The services rendered after March 22, 2004, did not improve or cure Claimant's condition or relieve her pain and thus were not shown to be medically necessary or reimbursable.

Carrier should reimburse Provider only for services billed under CPT 97112 or 97140 from February 16 through March 22, 2004.

III. FINDINGS OF FACT

1. In ___, Claimant sustained head, neck, and upper extremity injuries compensable under the Texas Workers' Compensation Act (Act), TEX. LAB. CODE ANN, ch. 401 *et seq*.

2. At the time of the compensable injury, Claimant's employer had workers' compensation insurance coverage with Texas Mutual Insurance Company (Carrier).

3. Claimant's right arm ulna and radius fracture was treated with a cast and splint, resulting in loss of mobility and increased stiffness in her fingers.

4. Claimant's hand surgeon referred her to Pain and Recovery Clinic of North Houston (Provider) for therapy for her hand.

5. From February 16 through April 30, 2004, Provider provided Claimant with therapeutic services billed as therapeutic exercises (CPT 97110), manual therapy (CPT 97140), and neuromuscular re-educations (CPT 97112).

6. Claimant's pain rating for her hand did not change from February 16 to April 29, 2004, but from February 16 to March 22, 2004, her flexion and extension range of motion in her hand doubled, which showed the range of motion exercises were effective healthcare.

7. After March 22, 2004, Claimant's hand flexion and extension range of motion did not show further improvement.

8. Claimant did not suffer from either a cognitive or physical impairment that posed safety issues that required her to receive therapy in a one-on-one setting.

9. Neither Claimant's pain levels or functional use of her hand improved after March 22, 2004

10. The services billed under CPT 97110 provided by Provider to Claimant from February 16 through April 30, 2004, were not properly billed as there was no need for one-to-one therapy.

11. The services billed under CPT 97140 and 97112 from February 16 through March 22, 2004, improved Claimant's hand's range of motion and were medically necessary.

12. Those services billed under CPT 97140 and 97112 from March 23 through April 30, 2004, did not improve Claimant's hand and were not medically necessary.

13. Carrier denied reimbursement to Provider for the services rendered Claimant from February 16 through April 30, 2004.

14. Provider's appeal of the denial was considered by the Texas Workers' Compensation Commission's (Commission) designee, an Independent Review Organization (IRO).

15. Carrier appealed the IRO's decision to grant reimbursement to Provider for services to Claimant billed under CPT 97110, 97112, and 97140.

16. The Commission Staff sent notice of hearing to the parties that stated the date, time, and location of the hearing and cited to the legal statutes and rules involved along with a short, plain statement of the factual matters involved.

17. Carrier was represented at the hearing held January 23, 2006, but the Commission Staff chose not to participate and Provider was not represented, despite having been notified of the date, location, and time of the hearing.

IV. CONCLUSIONS OF LAW

1. The Workers' Compensation Division of the Texas Department of Insurance[5] (formerly the Texas Workers' Compensation Commission) has jurisdiction related to this matter pursuant to the Texas Workers Compensation Act (Act), 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 § 413.031 of the Act 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) §§1133.305 and 133.308.

4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§1112001.051 and 2001.052.

5. Carrier had the burden of proof in this proceeding. 28 TAC §§148.14; 1 TAC §1155.41.

6. The IRO had authority to review the parties' positions and issue a decision pursuant to the Commission's rule at 28 TAC §§133.305 and 133.308.

7. Pursuant to the Act, an employee who has sustained a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care 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. LAB. CODE ANN§408.021(a).

8. Health care includes all reasonable and necessary medical services, including a medical appliance or supply. TEX. LAB. COD ANN. §401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. § 401.011(31).

9. To be entitled to payment from a carrier, a provider must submit a properly coded bill. See 28 TAC §§133.1(a)(3), 133.300, and 133.301

10. Provider is not entitled to be reimbursed by Carrier for services to Claimant billed under CPT 97110 provided from February 16 through April 30, 2004.

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5 Acts of May 30, 2005, 79th Leg., R.S., ch. 265, 2005 Tex. Sess. Law Serv. Ch 265 (HB 7).

11. Provider is entitled to be reimbursed by Carrier for services to Claimant billed under CPT 97112 and 97140 provided from February 16 through March 22, 2004.

12. Provider is not entitled to be reimbursed by Carrier for services to Claimant billed under CPT 97112 and 97140 provided from March 23 through April 30, 2004.

ORDER

It is **ORDERED** that Pain and Recover Clinic of North Houston (Provider) is not entitled to reimbursement from Texas Mutual Insurance Company (Carrier) for services billed under CPT 97110 provided to Claimant from February 16 through April 30, 2004.

It is further **ORDERED** that Provider is entitled to reimbursement from Carrier for services billed under CPT 97112 and 97140 for services provided from February 16 through March 22, 2004, but not for services provided from March 23 through April 30, 2004.

SIGNED February 10, 2006.

ANN LANDEROS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS