

**SOAH DOCKET NO. 453-05-0859.M5  
TWCC MDR NO. M5-04-2318-01**

**SOAH DOCKET NO. 453-05-1035.M5  
TWCC MDR NO. M5-04-1399-01**

**SOAH DOCKET NO. 453-05-4778.M5  
TWCC MDR NO. M5-04-3063-01**

<b>TEXAS MUTUAL INSURANCE COMPANY,     Petitioner</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>HUMBERTO MARTINEZ, D.C.,     Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

**I. DISCUSSION**

Three dockets were joined for a hearing on the merits. The three dockets address the provision of chiropractic treatment services to injured worker \_\_\_\_ (Claimant) from January 2003 through June 2003.

In SOAH Docket No. 453-05-0859.M5, Texas Mutual Insurance Company (TMIC) requested a hearing to contest the medical necessity of treatment services following the August 25, 2004 Findings and Decision (August Decision) of the Texas Workers' Compensation Commission (Commission). The Commission's August Decision relied upon a June 22, 2004 decision of Ziroc, an Independent Review Organization (IRO), and ordered reimbursement for all chiropractic services provided by Humberto Martinez, D.C., to Claimant for dates of service ranging from March 26, 2003, through April 15, 2003, with the exception of joint mobilization. TMIC requested a hearing on the treatment services for which reimbursement was ordered. Dr. Martinez did not request a hearing on the treatment services for which the Commission denied reimbursement.

In SOAH Docket No. 453-05-1035.M5, TMIC requested a hearing following the September 7, 2004 Findings and Decision of the Commission (September Decision). The Commission's September Decision for dates of service ranging from January 13, 2003, through March 16, 2003, relied, in part, upon a decision of Maximus, an IRO.<sup>1</sup> Based upon the IRO decision finding the services medically necessary, the Commission ordered payment for all treatment services from January 13, 2003, through March 16, 2003. With respect to a fee dispute, the Commission ordered, for 11 dates of service, reimbursement for four additional units of therapeutic exercise,<sup>2</sup> office visits,<sup>3</sup> neuromuscular re-education,<sup>4</sup> joint mobilization<sup>5</sup> and myofacial release.<sup>6</sup>

In SOAH Docket No. 453-05-4778.M5, TMIC requested a hearing following a February 3, 2005 Findings and Decision of the Commission (February Decision). The Commission's February Decision relied upon a January 24, 2005 decision of an IRO, Specialty Independent Review Organization, Inc. Based upon medical necessity, the Commission ordered reimbursement for therapeutic exercises, neuromuscular re-education and office visits from May 19, 2003, through June 27, 2003.<sup>7</sup> Based upon medical necessity, the Commission denied reimbursement for joint mobilization and myofacial release provided to Claimant during the same time period. TMIC requested a hearing on the treatment services for which reimbursement was ordered. Dr. Martinez did not request a hearing on the treatment services for which the Commission denied reimbursement.

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<sup>1</sup> Dates of service prior to January 13, 2003, were not considered by either the IRO or the Commission as they were submitted for dispute more than one year from the date of service.

<sup>2</sup> CPT Code 97110.

<sup>3</sup> CPT Code 99213.

<sup>4</sup> CPT Code 97112.

<sup>5</sup> CPT Code 97265.

<sup>6</sup> CPT Code 97250.

<sup>7</sup> Services provided on May 14, 2003, were not considered by either the IRO or the Commission as they were submitted for dispute more than one year from the date of service.

This Decision and Order will address only the treatment services for which the Commission ordered reimbursement. After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that all of the disputed treatment services provided by Dr. Martinez were reasonable, medically necessary and, with respect to the fee dispute, properly documented.

The hearing convened on July 19, 2005, with State Office of Administrative Hearings (SOAH) ALJ Howard S. Seitzman presiding. Dr. Martinez appeared *pro se* and Ryan Willett represented TMIC. David Alvarado, D.C., testified for TMIC. Neither party objected to notice or jurisdiction.

On or about \_\_\_\_, Claimant suffered a work-related injury to his neck, right shoulder and right arm. Claimant, \_\_\_\_, sustained his injury while loading 75-100 pound metal casts into the back of a truck. On September 9, 2002, Claimant received treatment at a Concentra Medical Center, was prescribed medication and was returned to work with light duty. Claimant's pain continued and he presented himself to Dr. Martinez on September 18, 2002. He was initially treated with passive modalities including neuromuscular re-education and myofascial release. An October 2, 2002 MRI of the cervical spine revealed cervical disc herniations at C3-4, C4-5 and C5-6. A central spinal stenosis at C4-5 and C5-6 was also identified. The October 2, 2002 MRI of the right shoulder showed a tear of the subscapularis tendon. On October 15, 2002, an orthopaedic consult with James Alexander Ghadially, M.D., resulted in injections to the right shoulder. In October 2002, Claimant also began therapeutic exercises.

A February 11, 2003 Designated Doctor Examination (DDE) by Janis K. Abens, D.C., found moderately restricted range of motion and neck and right shoulder pain. Dr. Abens recommended a surgical consultation. In May 2003, Stephen J. Weiss, M.D., examined Claimant, advised against surgery and recommended continued rehabilitation. Pete Nguyen, M.D., performed a June 24, 2003 DDE and Dr. Nguyen also requested a cervical discogram with a post-discogram CT scan. The June 30, 2003 cervical discogram, with post-discogram CT scan, evidenced: (1) annular tears at C3-4; (2)

annular tears and a posterior protrusion at C4-5; and (3) annular tears and a posterior protrusion at C5-6.

TMIC's principal objections, as expressed by Dr. Alvarado, to the services provided to Claimant focused on the cervical spine and not on the right shoulder. With respect to the cervical spine, TMIC contends (1) there were no clinical correlations between the 2002 diagnostic test results and the diagnosed severity of the injury; (2) the objective findings regarding disc herniation obtained from diagnostic testing in 2003 were not noted in the 2002 diagnostic test results; (3) except when associated with injections, the use of passive modalities more than six weeks post-injury was unnecessary;<sup>8</sup> (4) the demonstrated progress was not sufficient to justify continuation of the treatment plan; and (5) Dr. Martinez failed to adjust Claimant's treatment plan when it failed to achieve satisfactory progress. Dr. Alvarado contended Claimant's cervical injury was a sprain/strain.

TMIC contended there was inconsistency between the October 15, 2002 cervical range of motion (ROM) test results by Dr. Ghadially and the ROM test results obtained by Dr. Martinez. The method by which Dr. Ghadially measured Claimant's ROM is unknown. Claimant's ROM results on the Functional Capacity Evaluations (FCEs) were obtained using dual inclinometers, a generally accurate and reliable ROM measuring device. The medical records evidence Claimant's reasonable improvement over the course of treatment. Although the amount of weight Claimant handled during the treatment program may not have increased dramatically, Claimant's ability to increase the number of repetitions using increased weights during substantially similar exercise time periods, demonstrated acceptable progress. The FCE results also show acceptable improvement in strength. Although TMIC questioned how much of the improvement was due to natural healing over the course of time versus beneficial results from Dr. Martinez's therapy, TMIC bore the burden of proof. There is no persuasive evidence in the record that the passage of time alone contributed significantly to the resolution of Claimant's cervical injury.

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<sup>8</sup> The Commission decisions significantly reduced reimbursement for passive therapy after March 26, 2003, and essentially eliminated reimbursement for passive therapy after May 19, 2003.

Dr. Alvarado, who did not physically examine Claimant, relied extensively upon Dr. Ghadially's October examination of Claimant. The ALJ likewise finds Dr. Ghadially's reports quite helpful and persuasive, but not necessarily supportive of TMIC's position that the cervical injury was a sprain/strain rather than a disc herniation. TMIC pointed to Dr. Ghadially's October 15, 2002 evaluation as evidence that the injury was a sprain/strain. TMIC also pointed to the failure to implement Dr. Ghadially's suggested pain blocks as a shortcoming in the treatment plan. Dr. Ghadially, in his October 15, 2002 evaluation of Claimant, noted Claimant exhibited signs of inflammation and severe pain and should be considered for cervical epidural steroid injections (ESIs) if the cervical radiating pain persisted. Dr. Alvarado acknowledged that cervical ESIs would not be used for pain emanating from the shoulder injury. Therefore, Dr. Ghadially, cognizant of Claimant experiencing pain radiating from the neck, considered the injury to be more than a sprain/strain. Although, on a follow-up visit on December 2, 2002, Dr. Ghadially noted that Claimant was slowly improving and that physical therapy should continue, by January 14, 2003, because of Claimant's continuing cervical pain and limitations, Dr. Ghadially recommended a select nerve block at C5-6 and then a select nerve block at C4-5 to identify and isolate the level or levels contributing to the pain. By Claimant's next visit with Dr. Ghadially on February 12, 2003, TMIC had denied preauthorization for these procedures. Dr. Alvarado testified that Dr. Ghadially's recommendations seemed reasonable and may well have been helpful in treating Claimant's cervical injury. He did not know why TMIC denied preauthorization. Dr. Ghadially's findings, conclusions, course of treatment and recommendations are not supportive of TMIC's cervical sprain/strain position.

The ALJ does not find persuasive TMIC's argument that Dr. Martinez failed to change the treatment plan when TMIC unilaterally precluded such a change. In February 2003, after having a change in Claimant's treatment protocol rejected by TMIC, Dr. Martinez's decision to continue treatments was reasonable because they were showing some demonstrable benefit. Given Claimant's medical condition, the option of ceasing treatment was not reasonable and surgery was not indicated.

An April 29, 2004 examination by Homer A. Anchondo, M.D., concludes there is a disc herniation and does not support TMIC's cervical sprain/strain theory. Dr. Anchondo opines that the

C5-6 herniation could be causing the pain radiating from Claimant's neck and, if conservative measures fail, surgery could be required. Dr. Anchondo's opinion, approximately 18 months after Dr. Ghadially's initial consultation and approximately 15 months after TMIC's preauthorization denial, is that a disc herniation is the likely source of the cervical pain. TMIC's suggestion that the cervical herniation may have arisen after Dr. Ghadially's October 2002 examination finds no support in the evidence.

TMIC acknowledged that Claimant had a psychological overlay which complicated his treatment program and his recovery. TMIC questioned the objectivity of Claimant's high pain levels. The ALJ finds the medical evidence is consistent with Claimant experiencing significant pain and that the pain also complicated his treatment and recovery. In addition to the aforementioned complicating components, TMIC admitted Claimant's concomitant shoulder injury also contributed to the complexity of treatment and rehabilitation. The severity and complications of Claimant's injury were sufficiently documented to warrant one-on-one therapy. TMIC's denial of a proposed alteration in the treatment plan in February 2003 extended Claimant's need for therapy, including one-on-one therapy.

TMIC failed to prove by a preponderance of the evidence that the disputed treatment services provided to Claimant were unreasonable and medically unnecessary.

## **II. FINDINGS OF FACT**

1. On or about \_\_\_\_, \_\_\_\_ (Claimant) suffered a work-related injury to his neck, right shoulder and right arm.
2. On September 9, 2002, Claimant received treatment at a Concentra Medical Center, was prescribed medication and returned to work with light duty.
3. Claimant's pain continued and he presented himself to Humberto Martinez, D.C., on September 18, 2002.
4. Claimant was initially treated with passive modalities including neuromuscular re-education and myofascial release.

5. Claimant had disc herniations at C3-4, C4-5 and C5-6; spinal stenosis at C4-5 and C5-6; and a tear of the right shoulder subraspinatus tendon.
6. Following an October 15, 2002 orthopaedic consult with James Alexander Ghadially, M.D., Claimant received injections to the right shoulder.
7. In October 2002, Claimant also began therapeutic exercises.
8. On February 11, 2003, Janis K. Abens, D.C., conducted a Designated Doctor Examination (DDE).
9. Claimant had a moderately restricted range of motion, neck pain and right shoulder pain.
10. Dr. Abens recommended a surgical consultation.
11. In May 2003, Stephen J. Weiss, M.D., examined Claimant, advised against surgery and recommended continued rehabilitation.
12. Pete Nguyen, M.D., performed a June 24, 2003 DDE and requested a cervical discogram with a post-discogram CT scan.
13. The June 30, 2003 cervical discogram, with post-discogram CT scan, evidenced: (1) annular tears at C3-4; (2) annular tears and a posterior protrusion at C4-5; and (3) annular tears and a posterior protrusion at C5-6.
14. Claimant showed reasonable improvement over the course of treatment.
15. Claimant's range of motion (ROM) improved.
16. Claimant's ROM results on the Functional Capacity Evaluations (FCEs) were obtained using dual inclinometers, a generally accurate and reliable ROM measuring device.
17. Claimant's strength and endurance improved.
18. Claimant was able to increase the number of repetitions using increased weights during substantially similar exercise time periods.
19. The FCEs showed acceptable improvement in strength.
20. Texas Mutual Insurance Company (TMIC) acknowledged the severity of the shoulder injury and the improvement in response to treatment.
21. TMIC contended Claimant's cervical injury was a sprain/strain rather than a cervical disc herniation.

22. In October 2002, Dr. Ghadially was cognizant of Claimant experiencing pain radiating from Claimant's neck.
23. Dr. Ghadially recognized Claimant's cervical disc herniation in his October 15, 2002 evaluation of Claimant.
24. Cervical epidural steroid injections (ESIs) were recommended if the cervical radiating pain persisted.
25. Cervical ESIs would not be used for pain emanating from the shoulder injury.
26. In December 2002, Dr. Ghadially recommended physical therapy continue because Claimant was slowly improving.
27. On January 14, 2003, Dr. Ghadially recommended a select nerve block at C5-6 and then a select nerve block at C4-5 to identify and isolate the level or levels contributing to the pain.
28. By February 12, 2003, TMIC had denied preauthorization for the recommended procedures.
29. Dr. Ghadially's recommendations were medically reasonable and may well have been helpful in treating Claimant's cervical injury.
30. Dr. Ghadially's findings, conclusions and recommendations are not supportive of a cervical sprain/strain diagnosis.
31. Dr. Ghadially's findings, conclusions and recommendations are supportive of a cervical disc herniation.
32. An April 29, 2004 examination by Homer A. Anchondo, M.D., concluded that the C5-6 herniation was the likely source of the pain radiating from Claimant's neck.
33. Claimant suffered from a cervical herniation and not from a cervical sprain/strain.
34. In February 2003, after having a change in Claimant's treatment protocol rejected by TMIC, Dr. Martinez's decision to continue treatments that were showing some demonstrable benefit was reasonable.
35. Given Claimant's medical condition, the option of ceasing treatment was not reasonable and surgery was not indicated.
36. Claimant had a psychological overlay which complicated his treatment program and his recovery.
37. Claimant experienced moderate to severe pain.

38. The pain complicated Claimant's treatment and recovery.
39. Claimant's shoulder injury also contributed to the complexity of treatment and rehabilitation.
40. The severity and complications of Claimant's injury warranted one-on-one therapy.
41. TMIC's denial of a proposed alteration in the treatment plan in February 2003 extended Claimant's need for therapy, including one-on-one therapy.
42. The treatment services provided to Claimant were needed to relieve the effects of his work-related injury.
43. The treatment services provided to Claimant relieved the effects of Claimant's work-related injury.
44. With respect to the fee dispute, Dr. Martinez properly documented the therapeutic exercise, office visits, neuromuscular re-education, joint mobilization and myofascial release procedures for the 11 dates of service in issue.
45. There are three dockets covering treatment dates beginning January 2003 and ending June 2003.
46. The three dockets were joined for hearing and decision.
47. In SOAH Docket No. 453-05-0859.M5, on September 12, 2004, Texas Mutual Insurance Company (TMIC) requested a hearing to contest the medical necessity of treatment services following the August 25, 2004 Findings and Decision (August Decision) of the Texas Workers' Compensation Commission (Commission). The Commission's August Decision relied upon a June 22, 2004 decision of Ziroc, an Independent Review Organization (IRO), and ordered reimbursement for all chiropractic services provided by Dr. Martinez to Claimant for dates of service ranging from March 26, 2003, through April 15, 2003, with the exception of joint mobilization. TMIC requested a hearing on the treatment services for which reimbursement was ordered. Dr. Martinez did not request a hearing on the treatment services for which the Commission denied reimbursement.
48. In SOAH Docket No. 453-05-1035.M5, on September 23, 2004, TMIC requested a hearing following the September 7, 2004 Findings and Decision of the Commission (September Decision). The Commission's September Decision for dates of service ranging from January 13, 2003, through March 16, 2003, relied in part upon a decision of Maximus, an IRO. Dates of service prior to January 13, 2003, were not considered by either the IRO or the Commission as they were submitted for dispute more than one year from the date of service. Based upon the IRO decision finding the services medically necessary, the Commission ordered payment for all treatment services from January 13, 2003, through March 16, 2003. With respect to a fee dispute, the Commission ordered, for 11 dates of

service, reimbursement for four additional units of therapeutic exercise, office visits, neuromuscular re-education, joint mobilization and myofacial release.

49. In SOAH Docket No. 453-05-4778.M5, on February 22, 2005, TMIC requested a hearing following the February 3, 2005 Findings and Decision of the Commission (February Decision). The Commission's February Decision relied upon a January 24, 2005 decision of Specialty Independent Review Organization, Inc., an IRO. Based upon medical necessity, the Commission ordered reimbursement for therapeutic exercises, neuromuscular re-education and office visits from May 19, 2003, through June 27, 2003. Services provided on May 14, 2003, were not considered by either the IRO or the Commission as they were submitted for dispute more than one year from the date of service. Based upon medical necessity, the Commission denied reimbursement for joint mobilization and myofacial release provided to Claimant during the same time period. TMIC requested a hearing on the treatment services for which reimbursement was ordered. Dr. Martinez did not request a hearing on the treatment services for which the Commission denied reimbursement.
50. The Commission issued a notice of hearing on October 13, 2004, in SOAH Docket No. 453-05-0859.M5.
51. The Commission issued a notice of hearing on November 4, 2004, in SOAH Docket No. 453-05-1035.M5.
52. The Commission issued a notice of hearing on March 15, 2005, in SOAH Docket No. 453-05-4778.M5.
53. In all three dockets, the notices of hearing contained: (1) a statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and rules involved; and (4) a short, plain statement of the matters asserted.
54. The hearing convened on July 19, 2005, with State Office of Administrative Hearings (SOAH) ALJ Howard S. Seitzman presiding. Dr. Martinez appeared *pro se* and Ryan Willett represented TMIC.

### **III. 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(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. TMIC's requests for a hearing were 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. The party requesting the contested case hearing has the burden of proof.
6. TMIC failed to demonstrate by a preponderance of the credible evidence that the disputed treatment services Dr. Martinez provided to Claimant from January 13, 2003, through June 27, 2003, were not reasonably required by the nature of the Claimant's compensable injury or properly documented.

**ORDER**

**THEREFORE IT IS ORDERED** that Texas Mutual Insurance Company reimburse Humberto Martinez, D.C., for charges, plus any applicable interest, associated with disputed treatment services provided to injured worker \_\_\_ from January 13, 2003, through June 27, 2003.

**SIGNED September 14, 2005.**

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**HOWARD S. SEITZMAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**