

DOCKET NO. 453-05-0945.M5
MDR Tracking No. M5-04-2834-01

SAN ANTONIO ACCIDENT	§	BEFORE THE STATE OFFICE
INJURY CARE	§	
<i>Petitioner,</i>	§	
	§	
	§	
VS.	§	OF
	§	
SAN ANTONIO ISD,	§	
<i>Respondent</i>	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

The worker’s compensation claimant (Claimant) in this case sustained compensable injuries to her back and ankle when a wheel chair ran into her from behind on a ramp. At issue are approximately three months of therapeutic services provided by the petitioner, San Antonio Accident Injury Care (SAAIC). The carrier, San Antonio Independent School District (SAISD), citing a lack of medical necessity, declined to pay for the disputed therapies. A reviewer with an Independent Review Organization (IRO) concluded that the services were not medically necessary. Petitioner requested a hearing. The amount in dispute is \$4,676.85.

The Administrative Law Judge (ALJ) determines that most of the disputed services were not medically necessary, but that aquatics therapy provided in December 2003 was reasonable and necessary medical treatment.

I. DISCUSSION

A. Procedural History

The hearing was convened on April 27, 2005, before State Office of Administrative Hearings (SOAH) Judge Shannon Kilgore. Bill Maxwell, attorney, appeared on behalf of SAAIC. Dean Pappas, attorney represented SAISD. The hearing adjourned, and the record closed, the same day. No party raised any issue concerning notice or jurisdiction.

B. Factual Background and Disputed Services

Claimant was injured on _____. She suffered a left Achilles tendon partial tear¹ and a rib cage contusion.² Claimant reported back pain, but the relationship between the back pain and her work-related incident is unclear.³ She began therapy with SAAIC on September 22, 2003.⁴ On October 7, 2003, she saw an orthopedic surgeon, who immobilized her left ankle with a ‘CAM walker’ (a hard plastic boot).⁵ A physical medicine doctor examined Claimant that month and recommended continued therapy.⁶ In November, Claimant also commenced care under a pain management physician, who suggested that she continue her therapy with her treating doctor.⁷ On follow-up that month, the orthopedic surgeon recommended that Claimant continue to wear the CAM walker.⁸ In December, the pain management doctor recommended, among other things, an ankle brace and more physical and aquatic therapy.⁹ On December 19, 2003, the orthopedic surgeon prescribed four weeks of physical therapy.¹⁰ Throughout that fall, Claimant was reporting severe pain in her left ankle and back (and pain in other areas as well).¹¹

¹ Petitioner Exhibit 1 at 103.

² Petitioner Exhibit 1 at 51.

³ Petitioner Exhibit 1 at 16, 18.

⁴ Petitioner Exhibit 1 at 63-65.

⁵ Petitioner Exhibit 1 at 32, 41-42.

⁶ Petitioner Exhibit 1 at 43.

⁷ Petitioner Exhibit 1 at 34-37.

⁸ Petitioner Exhibit 1 at 38.

⁹ Petitioner Exhibit 1 at 40.

¹⁰ Petitioner Exhibit 1 at 33.

¹¹ Petitioner Exhibit 1 at 34-43.

Although Claimant underwent therapy at SAAIC multiple times per week beginning in late September,¹² the disputed dates of service in this case are December 4, 2003, through March 10, 2004.¹³ SAAIC billed for the disputed services under the following CPT codes:

<u>CPT Code</u>	<u>Service</u>
97110	Therapeutic exercises
97112	Neuromuscular re-education
97113	Aquatic therapy
97116	Gait training
97124	Massage

Only aquatic therapy services were billed for in December 2003. There are no disputed dates of service in January 2004, and the other disputed therapies were administered in February and March. SAISD denied reimbursement for these services under denial code V B ‘unnecessary treatment (with peer review).’¹⁴

An MRI of Claimant’s left ankle, done in January 2004, showed that the partial tear of the Achilles tendon had healed.¹⁵ A functional capacity exam done that month showed some gains in functionality over the results of one done in November 2003, although Claimant remained at a level of function below that of her job requirements.¹⁶ Claimant continued to report high rates of pain (although somewhat improved since her injury) in 2004. She saw an orthopedist in February B apparently on a one-time basis B who suggested that she continue with her therapy.¹⁷ She participated in a work hardening program in April 2004.

¹² Petitioner Exhibit 1 at 69-84.

¹³ The table of disputed services can be found in the record at Carrier Exhibit 1 at 7-10.

¹⁴ Carrier Exhibit 1 at 41-46.

¹⁵ Petitioner Exhibit 1 at 96.

¹⁶ Petitioner Exhibit 1 at 109-116, 117-124.

¹⁷ Petitioner Exhibit 1 at 21.

C. Applicable Law

Provider has the burden of proof in this proceeding.¹⁸ The Texas Labor Code provides in pertinent part that:

- (a) 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. The employee is specifically entitled to health care that:
 - (1) cures or relieves the effects naturally resulting from the compensable injury;
 - (2) promotes recovery; or
 - (3) enhances the ability of the employee to return to or retain employment.¹⁹

Health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.²⁰

D. IRO Decision

In a decision dated July 12, 2004, the IRO determined that the disputed services were not medically necessary. The IRO reviewer stated:

The patient had an adequate trial of medical treatment prior to the dates in dispute. I agree with the physical medicine and rehabilitation specialist who stated that proper casting, orthotics and use of a CAM walker would be sufficient to treat this patient's injuries.²¹ The records from the treating D.C. did not show that chiropractic

¹⁸ 28 TEX. ADMIN. CODE ' 148.14; TEX. LABOR CODE ' 413.031.

¹⁹ TEX. LAB. CODE ' 408.021.

²⁰ TEX. LAB. CODE ' 401.011(19).

²¹ This statement seems to be a reference to a report dated November 15, 2003, by a physical medicine doctor, Radie Perry, M.D., who performed a record review and opined that, with proper casting and/or ankle foot orthotics use, the ankle injury would resolve in an 8- to 12-week period. He further stated that the patient did not need chiropractic care or physical therapy, and should certainly reach maximum medical benefit by six months post-injury. Petitioner Exhibit 1 at 93-95. Dr. Perry testified for the carrier in the hearing in this case.

treatment was necessary in this case. The patient had a prior history of back problems, and was obese (5'9" and 261 pounds), diabetic and deconditioned. . .The documentation from the D.C. failed to show that the treatment provided was beneficial to the patient. . .²²

E. Expert testimony

Richard Alexander, D.C., Claimant's treating doctor with SAAIC, testified for the provider. He stated that when Claimant first came to him, she nearly had to be carried into the clinic. He said Claimant did five weeks of passive therapy (such as electrical stimulation, massage, and ultrasound), and then attempted to move to active therapy in November. However, she did poorly on the stationary bicycle and at that point she was moved to aquatic therapy. At the start of aquatic therapy, Claimant was lifted into the pool in a hydraulic chair. Her aquatic therapy involved walking (without the CAM walker) in a reduced weight-bearing environment. When she stopped aquatic therapy, in late December, she was using a crutch or cane. According to the documentation, she began active land-based therapy on or about December 22, 2003.²³

According to Dr. Alexander, when Claimant began active therapy she required one-on-one supervision because she was unstable due to her ankle injuries. Dr. Alexander testified that the massage therapy was necessary due to the trigger points, spasms, and tenderness in Claimant's tendons. Further, she needed gait training because she was unstable on her feet due to her size and her injuries. By the end of therapy, she no longer used a cane or crutches, but she was still unstable. As to neuromuscular re-education, Dr. Alexander testified that this therapy was necessary to restore range of motion lost due to the ankle injury and the immobilization of the joint in the CAM walker. He described this as a therapy in which the practitioner moves a joint for the patient; the patient cannot do this alone at home. Dr. Alexander emphasized that Claimant was unable to walk at the outset of her therapy and was walking unassisted, albeit with pain, at the end.

In contrast, Dr. Perry, testifying on behalf of SAISD, noted that this case involved no outright tear of the tendon and no surgery. Therefore, he stated, Claimant primarily needed time and gentle

²² Carrier Exhibit 1 at 4.

²³ Petitioner Exhibit 1 at 72.

movement for the injury to heal. Use of the CAM walker, which allowed for walking, plus some gentle stretching, should have been sufficient. However, he indicated that approximately four to six weeks of physical therapy, followed by home exercises, was not unreasonable. According to Dr. Perry, neuromuscular re-education is usually employed where there are balance problems due to a stroke or cerebral palsy. He stated that aquatic therapy is typically used for patients who are not ambulatory; in this case, the aquatics therapy had no advantage over land-based exercises. He also testified that gait training is indicated where a patient has neurological problems or fractures that have rendered the patient unable to walk.

F. Analysis and Conclusion

There is sufficient evidence to support reimbursement for the aquatic therapy in December. Aquatic therapy, which allowed Claimant to exercise and walk in a reduced weight-bearing environment, seems to have been the first real physical therapy she received; the prior treatments consisted of passive modalities. Dr. Alexander was persuasive when he testified that Claimant's obesity and her unsteadiness made the aquatics useful. Claimant's pain management physician recommended the aquatics.

The necessity of the further therapy in February and March, however, is not supported by the record. Dr. Perry's testimony that a partial tear, with no surgery, requires no more than four to six weeks of physical therapy was convincing. Claimant began exercising in the pool in the middle of November and continued throughout December. In December, Claimant's orthopedic surgeon prescribed four weeks of physical therapy, and the record indicates that Claimant did active therapy in January. By the beginning of February, Claimant had undergone a total of about four months of clinic-based, supervised therapy B passive, aquatic, and active land-based. Objective testing in

January showed that the torn tendon had healed. The ALJ declines to overturn the IRO's determination that the therapies in February and March were unnecessary.

II. FINDINGS OF FACT

1. The San Antonio Independent School District (SAISD) is the workers' compensation insurer with respect to the claims at issue in this case.
2. Claimant sustained compensable injuries to her back and ankle when a wheel chair ran into her from behind on a ramp.
3. Claimant was injured on _____. She suffered a left Achilles tendon partial tear and a rib cage contusion.
4. Claimant began therapy with San Antonio Accident Injury Care (SAAIC) on September 22, 2003.
5. Claimant underwent five weeks of passive therapy at SAAIC.
6. Claimant, who was obese and unsteady on her feet due to her injuries, began aquatic therapy – walking and performing exercises in a pool – in November 2003 at SAAIC.
7. Claimant continued the aquatics throughout December 2003.
8. In January 2004, Claimant participated in active land-based physical therapy at SAAIC.
9. In February and March, Claimant continued her physical therapy.
10. The disputed dates of service in this case are December 4, 2003, through March 10, 2004.
11. SAAIC billed for the disputed services under the following CPT codes:

<u>CPT Code</u>	<u>Service</u>
97110	Therapeutic exercises
97112	Neuromuscular re-education
97113	Aquatic therapy
97116	Gait training
97124	Massage.

12. Only aquatic therapy services were billed for in December 2003. There are no disputed dates of service in January 2004, and the other disputed therapies were administered and billed for in February and March.
13. SAISD denied reimbursement for these services under denial code V B 'unnecessary treatment (with peer review).'
14. SAAIC requested medical dispute resolution.

15. The amount in dispute is \$4,676.85.
16. In a decision dated July 12, 2004, the Independent Review Organization (IRO) determined that the disputed services were not medically necessary.
17. The Medical Review Division of the Texas Workers' Compensation Commission (Commission) issued its order, based on the IRO decision, on July 16, 2004.
18. SAAIC requested a hearing.
19. Notice of the hearing was issued October 25, 2004.
20. The notice contained a statement of the time, place, and nature of the hearing; a statement of 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.
21. The hearing was convened April 27, 2005, before State Office of Administrative Hearings (SOAH) Judge Shannon Kilgore. Bill Maxwell, attorney, appeared on behalf of SAAIC. Dean Pappas, attorney represented SAISD. The hearing adjourned, and the record closed, the same day. No party raised any issue concerning notice or jurisdiction.
22. Four to six weeks of physical therapy was reasonable and necessary to treat Claimant's injuries.
23. Claimant was obese and unsteady on her feet.
24. Aquatics therapy for Claimant in December 2003 was reasonable and necessary.
25. By the beginning of February, Claimant had undergone a total of about four months of clinic-based, supervised therapy B passive, aquatic, and active land-based.
26. Objective testing in January showed that the torn tendon had healed.
27. The disputed therapies in February and March 2004 were not reasonable and necessary to treat Claimant's compensable injuries.

III.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. TEX. LAB. CODE ch. 401 *et seq.* (the Act).
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE § 413.031; TEX. GOV'T CODE ch. 2003.

3. Adequate and timely notice of the hearing was provided in accordance with the Administrative Procedure Act. TEX. GOV'T CODE § 2001.052.
4. Provider has the burden of proof in this matter. 28 TEX. ADMIN. CODE ch.148; TEX. LABOR CODE § 413.031.
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. TEX. LAB. CODE § 408.021.
6. Based on the above Findings of Fact and Conclusions of Law, the Act requires SAISD to reimburse SAAIC for the disputed aquatics therapy provided in December 2003, but not for the disputed therapeutic exercises, neuromuscular re-education, gait training, or massage provided in February and March 2004.

ORDER

IT IS THEREFORE ORDERED that the San Antonio Independent School District reimburse San Antonio Accident Injury Care for the aquatics therapy provided to Claimant ___ in December 2003, but need not pay for the disputed therapeutic exercises, neuromuscular re-education, gait training, or massage provided to ___ in February and March 2004.

ISSUED June 24, 2005.

SHANNON KILGORE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW JUDGE