

**DOCKET NO. 453-05-2932.M5
TWCC MR NO. M2-05-1249-01**

**SOUTHEAST HEALTH
SERVICES, INC.,
Petitioner**

BEFORE THE STATE OFFICE

v.

OF

**AMERICAN HOME ASSURANCE
COMPANY, Respondent**

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Southeast Health Services, Inc. (Southeast) requested a hearing to contest an independent review organization (IRO) determination, issued on behalf of the Texas Workers' Compensation Commission (Commission),¹ that certain services it provided to an injured worker (Claimant) from September 12, 2003, through February 13, 2004, were not medically necessary; and a Commission medical review division (MRD) decision that certain services provided on February 4, 2004, were inadequately documented. The Administrative Law Judge (ALJ) concludes Southeast's claim should be denied because it failed to prove the services were medically necessary.²

I. PROCEDURAL HISTORY

A hearing convened on September 1, 2005, before the undersigned ALJ. There were no objections to notice or jurisdiction. Southeast appeared and was represented by Bryan L. Weddle, D.C. The workers= compensation insurance carrier providing coverage to the Claimant=s employer, American Home Assurance Company (American Home), appeared and was represented by its attorney, Peter Macaulay. The hearing closed on September 1, 2005.

¹ Effective September 1, 2005, the Commission's functions have been transferred to the newly-created Texas Department of Insurance, Division of Workers' Compensation.

² Because this decision finds that Southeast's claim should be denied on the basis of a lack of medical necessity, it does not address the MRD decision denying payment of the February 4, 2004, services.

II. DISCUSSION

A. Factual and Legal Background

The Claimant suffered a compensable injury on ____, when she picked up an unstable, thirty-pound flower pot and her left thumb “popped backward.” Before presenting to Southeast, she saw Concerta Medical Centers (Concerta), which diagnosed her with left wrist contusion and left wrist and thumb pain. Concerta referred her to Healthsouth, where she underwent physical therapy for about three weeks. She next saw Charles Wallace, M.D., who is board certified in plastic and reconstructive surgery, with whom she had 13 visits. In July 2003, Dr. Wallace took her off work for a month and for an additional month on August 12, 2003. However, after an August 15, 2003, magnetic resonance imaging (MRI) showed her wrist to have no significant soft-tissue abnormalities and mild osteoarthritic problems, he returned her to work without restrictions.

The Claimant began treatment at Southeast on August 25, 2003, and had approximately 13 sessions of therapy before September 12, 2003, the first day of the disputed treatment. Southeast diagnosed her condition as de Quervain’s Syndrome, an inflammation of the wrist tendon, and treated her for that condition.

Southeast requested a consultation from R. E. Branch, M.D., who recommended on August 26, 2003, that the Claimant undergo physical therapy and see an orthopedist. Dr. Branch saw the Claimant again on September 16, 2003, and recommended that she continue physical therapy.

The Claimant underwent a motor nerve conduction velocity study on September 4, 2003, that was essentially normal.³

The Claimant saw Michael Muncy, D.O., on September 26, 2003. He recommended a left thumb splint, continued ice and physical therapy. The services in question include ultrasound, electrical stimulation, hot/cold pack, paraffin bath, unlisted therapeutic procedure, vasopneumatic device, and manual therapy techniques.

³ Ex. 2 at 106.

Southeast requested medical dispute resolution after American Home denied its claim. The IRO reviewer agreed with American Home's decision based on the following rationale:

The patient received an extensive course of physical therapy and medication prior to the dates in dispute, without relief of symptoms or improved function. The patient's subjective pain levels and complaints remained unchanged and intensified, despite continuing treatment with her D.C. On 10/2/03 it was noted that her symptoms were getting worse. On 2/4/04, some nine months after treatment started, the patient's VAS was still 8/10. The documentation provided for this review lacked objective evidence of any functional, work related deficits or of progress toward functional improvement. Continued treatment, such as the treatment in this dispute, without revision of the treatment plan is not reasonable and necessary in the absence of functional, objective improvements. The records failed to identify the specific progression of treatment or exercise performed. It (sic) also did not show that treatment helped the patient return to work. Based on the records provided, it appears that the patient's condition plateaued under the D.C.'s care prior to the dates in dispute. Treatment for the dates in dispute failed to be beneficial to the patient, and was over utilized, inappropriate and probably encouraged doctor dependency.⁴

In addition to the IRO's determination, the MRD denied treatments on February 4, 2004, under CPT codes 99212, 97139, 97016, and 97018, based on its conclusion that Southeast failed to present adequate information to show the services were provided.⁵

Employees have a right to necessary health care under TEX. LABOR CODE ANN. §§ 408.021 and 401.011. Section 408.021(a) provides, "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." Section 401.011(19) of the Labor Code provides that health care includes "all reasonable and necessary medical . . . services."

Southeast has the burden of proof.⁶

B. Discussion

⁴ Ex. 3, fourth page.

⁵ Ex. 3, second page.

⁶ 1 TEX. ADMIN. CODE (TAC) § 155.41(b); 28 TAC § 148.14(a).

Based on two primary factors, the ALJ concludes that Southeast failed to carry its burden of proving that the disputed services were medically necessary. First, the evidence shows that the Claimant did not suffer from the condition Southeast diagnosed and treated her for, de Quervain's Syndrome. And second, irrespective of any diagnosis issues, the Claimant's response to Southeast's treatment and to similar services provided prior to the disputed services show the disputed services were not medically indicated.

1. Incorrect Diagnosis

American Home called Robert M. Hamby, D.C., as a witness.⁷ On several bases, his testimony was persuasive that Southeast's de Quervain-Syndrome diagnosis was incorrect. On the most basic level, he testified that de Quervain's Syndrome and related infirmities such as carpal tunnel syndrome are a malady brought on by the cumulative effect of repetitive movement such as lifting the same object in the same way frequently over a period of time. He said de Quervain's Syndrome does not result from a single accident such as the one suffered by the Claimant. Dr. Weddle did not testify to or state any disagreement with Dr. Hamby's assertion.

Dr. Hamby maintained that Healthsouth, which treated the Claimant over a three-week period immediately after her injury, followed the correct protocol by administering a steroid injection when conservative treatment failed to provide relief. The injection did not provide relief, however. He said when the injection failed to bring either temporary or permanent relief, the appropriate course was to consider a different diagnosis. He asserted that the absence of relief from the injection ruled out de Quervain's Syndrome.

Dr. Hamby next addressed the Claimant's treatment with Dr. Wallace beginning in July 2003 about three weeks after Healthsouth. After taking the Claimant off work for one month and then for another,⁸ he immediately returned her to work at full duty⁹ after receiving the MRI results showing mild osteoarthritic changes in the Claimant's wrist and no significant tissue abnormalities.¹⁰ Dr.

⁷ Dr. Hamby has been licensed in California and Texas since 1986. He is a qualified medical evaluator for the California Department of Workers' Compensation and is vice-chair of the California Board of Chiropractic Examiners.

⁸ Ex. 2 at 74, 80.

⁹ Dr. Wallace could have chosen to return her to work at light duty, but did not do so.

¹⁰ An x-ray taken in May 2003 also failed to show any pathology.

Hamby assumed Dr. Wallace's decision to return the Claimant to work was influenced by the MRI results. Dr. Hamby maintained the MRI results ruled out de Quervain's Syndrome. He asserted that the Claimant's complaints of pain and being unable to work were not supported by objective findings. Dr. Weddle did not attempt to counter these assertions.

Dr. Hamby next noted the results of the September 4, 2003, electrodiagnostic study, including an electromyogram, that were essentially normal. He maintained if de Quervain's Syndrome were present, there would have been motor nerve conduction velocity changes. Their absence indicated the diagnosis was incorrect. Again, Dr. Weddle did not argue or testify otherwise.

On an overall basis, Dr. Hamby testified there was no objective evidence to support any injury to the Claimant other than a strain, which, he said, should have resolved in four to six or at most eight or nine weeks after her injury.

The ALJ concludes that de Quervain's Syndrome was not the right diagnosis for the Claimant's condition. This determination weighs strongly against the efficacy of Southeast's treatment and its proof at the hearing, which were both based on that diagnosis. Based on these considerations, Southeast's services were not shown to be medically necessary.

2. Claimant's Lack of Progress Under Care

The preponderant evidence is that the Claimant's lack of progress under Southeast and previous providers demonstrated that the disputed services were not indicated.

Dr. Weddle acknowledged that the Claimant's care lasted for an unusually long time and that her pain improved at times and worsened at other times, but maintained that her job continually caused flare ups and she was entitled to reasonable care when that occurred. He noted a particular flare up on September 3, 2003, that caused severe pain and difficulty in driving a car. He said her subsequent treatment was to address and help resolve her condition.

Dr. Weddle also cited evidence that the Claimant's left-hand-grip strength progressed from what he said was a significant weakness of 40 pounds on September 8, 2003, to 47.5 pounds on October 6, 2003, and to 55 pounds on October 16, 2003.¹¹ He said a physical performance

¹¹ Ex. 2 at 116, 140, 163.

evaluation on October 6, 2003, also showed fine motor improvement and that she was competitive at the eightieth percentile level.¹² He noted that her strength improved to “5/5” as of February 13, 2003, the day her treatment ended.¹³

Dr. Weddle cited a report from Michael Muncy, D.O., an orthopedic surgeon, who on September 29, 2003, recommended that the Claimant be treated with a thumb splint, continued ice, and physical therapy as discussed.¹⁴

Although Southeast’s evidence carried some weight, the contrary evidence was more persuasive.

Dr. Hamby cited several treatment guidelines supporting his position and testified that they provide a well-thought-out and well-researched guide to an appropriate course of treatment. He explained it would be inadvisable to always follow a single guideline, but when there is general agreement, the direction they provide has substantial validity. He cited the following guidelines:

- § The Medical Disability Advisor, Fourth Edition, saying treatment for a thumb or wrist sprain should consist of 12 visits of conservative therapy over a 4 to 6 week period, followed by a steroid injection if the treatments do not work. Dr. Hamby said the Healthsouth treatments followed that course.
- § The American College of Occupational and Environmental Medicine recommends a 4 to 6 week course of conservative care for patients with a de Quervain-Syndrome diagnosis, with surgery as an option in unusual cases.
- § The 2003 Brigham and Women’s Hospital Guidelines and 2002 American Academy of Orthopedic Surgeon Guidelines recommend similar treatment.
- § The Official Disability Guidelines, revised in 2005, indicate the best practice is to allow a 12-visit course of conservative care over an 8-week period for a wrist sprain/strain.

Dr. Hamby asserted these guidelines show the services were not medically necessary. He emphasized the fact that the Claimant had, before the disputed service dates, approximately 12

¹² Ex. 2 at 149.

¹³ Ex. 2 at 201.

¹⁴ Ex. 2 at 130-131. As indicated above, Dr. Branch recommended on August 6, 2003, and September 16, 2003, that the Claimant continue therapy.

treatment sessions with Healthsouth, approximately 13 visits to Dr. Wallace, and approximately 13 sessions with Southeast, with no improvement.

Dr. Hamby testified he completely agreed with the IRO reviewer that the Claimant showed no evidence of objective functional improvement over approximately 9 months of treatment. He pointed out that, of the 29 dates of disputed service, 15 showed the Claimant's condition as unchanged or worsening, 8 showed her as progressing, and 6 were left blank. He cited the fact that the Claimant's treatment plan was usually continued without modification despite a lack of improvement.¹⁵ He cited 22 peer reviews of Southeast's services on behalf of American Home by 4 different providers,¹⁶ in which all found that Southeast's treatment did not improve the Claimant's condition.

The IRO decision was detailed and consistent with Dr. Hamby's testimony as described above. The reviewer asserted that the Claimant had an extensive course of physical therapy and medication prior to the disputed dates of service, without relief of symptoms or improved function; the Claimant's subjective pain levels and complaints remained unchanged and intensified, despite continuing treatment; as of October 2, 2003, her symptoms were worsening;¹⁷ as of February 4, 2004, about nine months after treatment started, her visual pain analog scale was 8/10;¹⁸ continued treatment, such as provided in this case, without revision of the treatment plan was not reasonable and necessary in the absence of functional, objective improvements; the records do not show that treatment helped the patient return to work; and based on the records provided, it appears that the patient's condition plateaued under Southeast's care prior to the dates in dispute.

Two additional factors added weight to a conclusion that the Claimant did not adequately improve under Southeast's services. One is the previously-discussed evidence showing the diagnosis was incorrect. It is not surprising that treatment provided under an erroneous diagnosis would fail to provide relief.

The second is the fact of continued passive care several months after the injury, including

¹⁵ Ex. 2 at 119 *et seq.*

¹⁶ Ex. 2 at 4-40.

¹⁷ Ex. 2 at 135.

¹⁸ The date of the visual analog scale was actually February 3, 2004. Ex. 2 at 183.

electrical stimulation, hot/cold pack, and paraffin bath.¹⁹ Some of the peer reviews commented specifically on this factor and asserted that their continued use several months post-injury is not supported by peer-reviewed, evidence-based practice literature.²⁰ This evidence was certainly convincing and threw doubt on the efficacy of the other Southeast services.

III. FINDINGS OF FACT

1. The Claimant suffered a compensable injury on ____, when she picked up an unstable, thirty-pound flower pot and her left thumb popped backward.
2. The Claimant was diagnosed with left wrist contusion and left wrist and thumb pain by Concerta Medical Centers (Concerta).
3. Concerta referred the Claimant to Healthsouth, where she underwent physical therapy for about three weeks.
4. When the Claimant did not improve, Healthsouth administered a steroid injection.
5. The steroid injection did not relieve the Claimant's pain.
6. The Claimant then saw Charles Wallace, M.D., who is board certified in plastic and reconstructive surgery, and with whom she had thirteen visits.
7. In July 2003, Dr. Wallace took the Claimant off work for a month.
8. On August 12, 2003, Dr. Wallace took the Claimant off work for another month.
9. On August 21, 2003, after an August 15, 2003, magnetic resonance imaging (MRI) showed the Claimant's wrist to have no significant soft-tissue abnormalities and mild osteoarthritic problems, Dr. Wallace returned her to work, effective August 22, 2003, without restrictions.
10. The Claimant began treatment at Southeast Health Services, Inc. (Southeast) on August 25, 2003, and had approximately 13 sessions of therapy before September 12, 2003, the first day of the treatments at issue (disputed issues).
11. Southeast diagnosed the Claimant's condition as de Quervain's Syndrome, an inflammation of the wrist tendon, and treated her for that condition.
12. Southeast provided the disputed services to the Claimant through February 13, 2004.

¹⁹ It is not clear whether other services such as unlisted therapeutic procedure and vasopneumatic device were passive or active therapy.

²⁰ Ex. 2 at 6, 7, 11, 17, 26, 36.

13. Southeast requested payment for the services from American Home Assurance Company (American Home), the insurance company providing workers' compensation insurance to the Claimant's employer.
14. The disputed services included ultrasound, electrical stimulation, hot/cold pack, paraffin bath, unlisted therapeutic procedure, vasopneumatic device, and manual therapy techniques.
15. American Home denied Southeast's claim.
16. Southeast requested medical dispute resolution.
17. On October 18, 2004, an independent review organization (IRO) issued an opinion agreeing with American Home that the services were medically unnecessary.
18. On October 22, 2004, MRD issued an order stating, on the basis of the IRO decision, that Southeast is not entitled to reimbursement, and also stating separately that Southeast's claim for services provided on February 4, 2004, was denied because Southeast did not submit relevant information for that date of service to show the services were provided as billed.
19. It is undisputed that the Commission's Chief Clerk of Proceedings received Southeast's request for a hearing on the MRD and IRO decisions not more than 20 days after Southeast received notice of those decisions.
20. All parties received adequate notice of not less than 10 days of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
- 21.** All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.
22. De Quervain's Syndrome is an infirmity brought on by the cumulative effect of repetitive movement such as lifting the same object in the same way frequently over a period of time.
23. De Quervain's Syndrome is not the type of infirmity that would have occurred after a single accident such as the one suffered by the Claimant.
24. Healthsouth followed the correct protocol in treating the Claimant by administering a steroid injection after conservative treatment failed to provide relief.
25. When the steroid injection failed to bring either temporary or permanent relief, the appropriate course was to consider a different diagnosis.
26. The absence of relief from the steroid injection ruled out de Quervain's Syndrome.
27. The results from the Claimant's August 15, 2003 MRI ruled out de Quervain's Syndrome and tenosynovitis.

28. The Claimant underwent an electrodiagnostic study on September 4, 2003, that included an electromyogram.
29. The results of the September 4, 2003, electrodiagnostic study were essentially normal.
30. If de Quervain's Syndrome had been present, the September 4, 2003, electrodiagnostic study would have shown motor nerve conduction velocity changes.
31. The absence of motor nerve conduction velocity changes in the September 4, 2003, electrodiagnostic study indicated the de Quervain's Syndrome diagnosis was incorrect.
32. The Claimant's complaints of pain and being unable to work were not supported by objective findings.
33. There was no objective evidence to support any injury to the Claimant other than a strain, which should have resolved in four to six or at most eight or nine weeks after her injury.
34. The Claimant had an extensive course of treatment, with no relief of symptoms or improved function, over a three-month period from May through late August 2003, before presenting to Southeast.
35. The Claimant underwent 13 sessions of treatment with Southeast, from August 25, 2003 until September 12, 2003, before the disputed services began, with no relief of symptoms or improvement in function.
36. The Claimant's subjective pain levels and complaints remained unchanged and sometimes intensified during the period of disputed services.
37. As of February 3, 2004, about nine months after treatment started, the Claimant's visual pain analog scale was 8/10.
38. Southeast continued the Claimant's treatment, without adequate revision of the treatment plan and without functional, objective improvements.
39. The Claimant's condition plateaued under the Southeast's care prior before the disputed services.
40. The Claimant continued to undergo passive therapy under Southeast's care for several months after the injury, including electrical stimulation, hot/cold pack, and paraffin bath.
41. The passive care disputed services were medically unnecessary.
42. The disputed services were not shown to be reasonably required by the nature of the Claimant's condition.

IV. CONCLUSIONS OF LAW

1. 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. TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T. CODE ANN. ch. 2003.
2. Notice of the hearing was proper and timely. TEX. GOV'T. CODE ANN. §§ 2001.051 and 2001.052.
3. Southeast had the burden of proving that the disputed services were medically necessary.
4. Southeast failed to prove the disputed services were medically necessary.
5. Southeast's claim should be denied.

ORDER

IT IS THEREFORE ORDERED that the claim of Southeast Health Services, Inc., against American Home Assurance Company for services provided to the Claimant from September 12, 2003, through February 13, 2004, be, and the same is hereby, denied.

Signed September 26, 2005.

**JAMES W. NORMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**