

**SOAH DOCKET NO. 453-04-3063.M5
TWCC MR NO. M5-04-4009-01**

**TEXAS A&M UNIVERSITY SYSTEM,
Petitioner**

V.

**SCD BACK AND JOINT CLINIC, LTD.,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. DISCUSSION

Texas A & M University System (TAMU) requested a hearing to contest the November 8, 2004, Decision of the Texas Workers' Compensation Commission (Commission) allowing SCD Back and Joint Clinic, Ltd. (SCD), reimbursement, on the basis of medical necessity, for analgesic balm,¹ therapeutic exercises,² muscle testing,³ office visits,⁴ joint mobilization,⁵ manipulation,⁶ group therapeutic procedures,⁷ electrical stimulation therapy,⁸ range of motion measurements,⁹ massage,¹⁰ and mechanical traction therapy - cervical¹¹ from July 23, 2003,¹² through December 23,

¹ CPT Code 99070.

² CPT Code 97110.

³ CPT Code 97750-MT.

⁴ CPT Code 99213.

⁵ CPT Code 97265.

⁶ CPT Code 98943.

⁷ CPT Code 97150.

⁸ CPT Code 97139-EU.

⁹ CPT Code 95851.

¹⁰ CPT Code 97124.

¹¹ CPT Code 97014.

2003.

This Decision and Order grants in part and denies in part the relief sought by TAMU and orders payment for the disputed services from July 23 through August 29, 2003, and from September 30 through December 23, 2003.

The hearing convened on April 19, 2005, before Administrative Law Judge (ALJ) Charles Homer III. William Maxwell represented SCD. Assistant Attorney General Brad McClellan represented TAMU. There were no contested issues of notice or jurisdiction. David N. Bailey, D.C., testified for SCD; each party offered documentary exhibits and the documents were admitted into evidence. The hearing adjourned and the record closed on April 19, 2005.

___ (Claimant), a female 39 years old at the time of injury, sustained a work-related injury on ___, when she injured her shoulder attempting to lift a five-gallon bucket containing water. After suffering severe pain in her right shoulder at the time of the accident, Claimant continued to work until she felt more pain in her right shoulder, and went to an emergency room at Scott and White Hospital, where she was evaluated and released with a prescription for Lodine and instructions to apply ice and then hot packs to her shoulder.

On July 23, 2003, Claimant visited SCD Back and Joint Clinic, Ltd. (SCD), where John Wyatt, D.C., first saw Claimant, and recommended various active and passive therapies and a home exercise program to reduce pain and increase range of motion in Claimant's right shoulder. Dr. Wyatt's initial diagnoses of Claimant's injury were grade II right rotator cuff sprain/strain with rotator cuff syndrome and myofascial pain syndrome.

Claimant suffered from right shoulder pain that decreased during her first two weeks of office visits with SCD. On July 23, 2003, retaining his "treating doctor" status, Dr. Wyatt referred Claimant to Rick Seabolt, M.D., who saw her for the first time on August 11, 2003. Claimant told Dr. Seabolt that she had pain and swelling in her right shoulder and that anti-inflammatory medicine had given her no significant relief.

¹² The request for review to the MRD was found to be late for one date of service, July 22, 2003, and thus not reimbursable. SCD did not cross-appeal.

Dr. Seabolt reviewed an MRI and X-ray of Claimant's right shoulder. Findings were a "Type II" acromion. To Dr. Seabolt, the MRI revealed no evidence of full thickness rotator cuff tear. Dr. Seabolt diagnosed Claimant with right shoulder rotator cuff strain and subacromial impingement, performed a steroid and analgesic injection on Claimant's shoulder, and ordered her to continue "physical therapy for rotator cuff strengthening exercises," and nothing else except to see him again in 3-4 weeks.

On September 2, 2003, Claimant again saw Dr. Seabolt, who evaluated Claimant as follows: "she has not done well with conservative care, and seeing that her injury was over 2 months ago, I recommended arthroscopic evaluation of her shoulder." On September 2, 2003, Dr. Seabolt scheduled her for arthroscopic surgery (subacromial decompression in her right shoulder). Claimant reported that she felt better for 3-4 days after her injection, but that her pain had returned and now she felt only slightly better than when she first saw Dr. Seabolt on August 11.

Surgery (nerve decompression in her right shoulder) was performed on Claimant on September 16, 2003, without complications, and on September 30, 2003, Claimant returned to SCD and resumed treatments, with the only change noted being different exercises. According to Dr. Bailey, SCD began more aggressive exercises as directed by Dr. Seabolt.

TAMU contends Claimant's care was not medically necessary because it was too intensive and continued for too long, and because it failed to follow both Commission and general chiropractic protocols. SCD and Dr. Bailey contend that Claimant improved to some extent under the care, that the care was justified by Claimant's injury and condition when first seen. As to treatment after her surgery, SCD and Dr. Bailey contend that it was modified to meet the need for post-surgery exercise as recommended by Dr. Seabolt and that post-surgical treatment for a period of less than ninety days, as was rendered to Claimant, is justified.

II. ANALYSIS

The ALJ finds that all services rendered to Claimant were medically necessary except for the period from September 2, 2003, through September 15, 2003, when she was scheduled for and awaiting surgery. During that period, there is little or no indication that of an expectation that either passive therapies or exercise would have benefitted Claimant. The evidence established that Claimant experienced some improvement, at least over short terms, while under Dr. Wyatt's care, even though on August 11, 2003 she complained to orthopedic surgeon John Seabolt, M.D., about pain and swelling in her right shoulder. On that date, Dr. Seabolt gave her a steroid injection to the affected shoulder and directed that she continue Aphysical therapy for rotator cuff strengthening exercises.@ The instruction is unclear as to whether, on August 11, Dr. Seabolt believed that Claimant needed the entire array of passive therapies that SCD was providing to Claimant; Dr. Bailey's testimony was that those services were reasonable and necessary within chiropractic protocols for the ___ injury.

On this record, the preponderance of the evidence is that Dr. Wyatt had a reasonable medical expectation his treatment from July 23 through August 29, 2003, could reduce Claimant's pain, extend her range of motion, and perhaps even enable her to increase her activities of daily living and speed her return to work. Thus, all services disputed as not medically necessary from July 23 through August 29, 2003, were medically necessary. Once surgery had been prescribed, the preponderance of the evidence is that there was no need for therapy or rehab until Claimant=s post-surgical rehab began,¹³ and thus the disputed services from September 3 through September 15, 2003, 2003, were not medically necessary. After surgery, there is compelling evidence that the exercise therapies were requested by Dr. Seabolt and that both doctors reasonably believed that such exercises would assist Claimant's recovery.

¹³ Dr. Bailey testified that "conservative care" between the recommendation for surgery and the surgery was "appropriate." This general statement does not show how, in reasonable medical probability, therapy in the two weeks before could be expected to benefit a patient about to undergo surgical intervention in the affected area. For one egregious example, what could have been the benefit of Delorme muscle testing and the Dynatron human performance testing on September 15, 2003, the day before surgery? The record does not answer.

Under cross-examination, Dr. Bailey admitted that after her surgery, Claimant could have performed the new exercises at home, but that SCD, by providing one-on-one supervision at the clinic improved the possibility that Claimant would return to work earlier than if she had been unsupervised. Although the treatment record does not answer every one of TAMU's questions about the nature and intensity of Claimant's treatment, it is sufficient in the absence of other evidence to show that she began new exercises after her surgery and therefore needed at least some instruction and that, more likely than not, SCD's staff had a reasonable expectation that the treatment would aid Claimant's recovery from her compensable injury. Without contradicting expert testimony, the ALJ has no basis for any conclusion but that the evidence supports the medical necessity of treatment rendered from September 30 through December 23, 2005. Therefore, TAMU should reimburse SCD for all disputed services under all CPT codes except only for those services rendered on September 3, 9, 10, 12, and 15, 2003.

III. FINDINGS OF FACT

1. ___ (Claimant), a female 39 years old at the time of injury, sustained a work-related injury on___, when she injured her shoulder attempting to lift a five-gallon bucket containing water.
2. ZiroC, an Independent Review Organization (IRO), determined that disputed services were medically necessary by decision dated September 24, 2004.
3. TAMU requested a hearing to contest the November 8, 2004 Findings and Decision of the Texas Workers' Compensation Commission (Commission) allowing SCD reimbursement for analgesic balm, therapeutic exercises, muscle testing, office visits, joint mobilization, therapeutic procedures, electrical stimulation therapy, range of motion measurements, massage, and mechanical traction therapy - cervical from July 23, 2003, through December 23, 2003.
4. The Commission issued a notice of hearing on January 11, 2005.
5. After suffering severe pain in her right shoulder at the time of the accident, Claimant continued to work until she felt more pain in her right shoulder, and went to an emergency room at Scott and White Hospital, where she was evaluated and released with a prescription for Lodine and instructions to apply ice and then hot packs to her shoulder.
6. On July 23, 2003, Claimant visited SCD Back and Joint Clinic, Ltd. (SCD), where John Wyatt, D.C., first saw Claimant, and recommended various active and passive therapies and a home exercise program to reduce pain and increase range of motion in Claimant's right shoulder.

7. Dr. Wyatt's initial diagnoses of Claimant's injury were grade II right rotator cuff sprain/strain with rotator cuff syndrome and myofascial pain syndrome.
8. Claimant suffered from right shoulder pain that decreased during her first two weeks of office visits with SCD.
9. On July 23, 2003, retaining his "treating doctor" status, Dr. Wyatt referred Claimant to Rick Seabolt, M.D., who saw her for the first time on August 11, 2003.
10. Dr. Seabolt diagnosed Claimant with right shoulder rotator cuff strain and subacromial impingement, and ordered her to continue "physical therapy for rotator cuff strengthening exercises," and nothing else except to see him again in 3-4 weeks.
11. On August 11, 2003, Claimant had pain and swelling in her right shoulder and that anti-inflammatory medicine had given her no significant relief.
12. On August 11, 2003, Dr. Seabolt performed a steroid and analgesic injection on Claimant's shoulder.
13. On September 2, 2003, Claimant again saw Dr. Seabolt, and reported that she felt better for 3-4 days after her injection, but that her pain had returned and as of that date she felt only slightly better than when she first saw Dr. Seabolt on August 11.
14. As of September 2, 2003, Claimant had not done well with conservative care. Dr. Seabolt recommended arthroscopic evaluation of her shoulder.
15. On September 2, 2003, Dr. Seabolt scheduled Claimant for arthroscopic surgery (subacromial decompression in her right shoulder).
16. Claimant had surgery on her right shoulder September 16, 2003.
17. On September 30, 2003, Claimant returned to SCD and resumed treatments, including different exercises and a more aggressive approach.
18. SCD altered Claimant's exercise regimen to meet needs related to her surgery.
19. Dr. Seabolt prescribed "aggressive ROM and rotator cuff strengthening" at his September 24, 2003, office visit with Claimant, and released her with "no restrictions."
20. After her September 16, 2003, surgery, a reasonable medical expectation existed that aggressive strength training would benefit Claimant.
21. After September 16, 2003, there remained a reasonable medical expectation that exercise therapy would increase Claimant's range of motion, reduce her pain, and hasten her return to work.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation 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 TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T. CODE ANN. ch. 2003.
3. TAMU timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 102.7 and 148.3.
4. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. ch. 2001.
5. 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).
6. TAMU had the burden of proof in this matter, which was the preponderance of evidence standard. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41(b).
7. TAMU proved by a preponderance of the evidence that from September 2, 2003, through September 15, 2003, the disputed services were not medically necessary.
8. All disputed medical services from July 23, 2003, through August 29, 2003, and from September 30, 2003, through December 23, 2003, were medically necessary.
9. SCD is not entitled to reimbursement for all disputed medical services from July 23 through August 29, 2003, and from September 30 through December 23, 2003.

ORDER

THEREFORE IT IS ORDERED that the Texas A & M University System reimburse SCD Back and Joint Clinic, Ltd., for analgesic balm, therapeutic exercises, muscle testing, office visits, joint mobilization, therapeutic procedures, electrical stimulation therapy, range of motion measurements, massage, and mechanical traction therapy - cervical from July 23 through August 29, 2003, and from September 30 through December 23, 2003, plus all applicable interest. SCD Back and Joint Clinic, Ltd., is not entitled to reimbursement for any services provided to Claimant from September 2, through September 15, 2003.

SIGNED June 20, 2005.

**CHARLES HOMER III
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**