

SOAH DOCKET NO. 453-05-4451.M5
MDR Tracking No. M5-04-3475-01

SCD BACK AND JOINT CLINIC	§	BEFORE THE STATE OFFICE
	§	
V.	§	OF
	§	
TEXAS A&M UNIVERSITY SYSTEM	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

The provider, SCD Back and Joint Clinic (SCD) sought reimbursement for five months of various medical and therapeutic services provided to claimant ___in ___ for a shoulder injury. The carrier, Texas A&M University (A&M), declined to pay for the disputed services. A&M cited a lack of medical necessity concerning most of the services, but objected to some bills on the basis of lack of documentation or improper fee calculation. The medical necessity issues were referred to an Independent Review Organization (IRO), which determined that some of the services were necessary and some were not. The Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC)¹ reviewed the other fee disputes and ordered reimbursement for certain of the disputed matters. SCD requested a hearing concerning the items on which it did not prevail at the MRD and IRO level.

The Administrative Law Judge (ALJ) concludes that no reimbursement is warranted for most of the disputed services.

¹ Effective September 1, 2005, the functions of the Commission were transferred to the newly created Division of Workers' Compensation at the Texas Department of Insurance (TDI).

I. NOTICE AND PROCEDURAL HISTORY

The hearing was convened on October 5, 2005, before State Office of Administrative Hearings (SOAH) Judge Shannon Kilgore. Bill Maxwell, attorney, appeared on behalf of SCD. Barbara Klein, Assistant Attorney General, represented A&M. The hearing adjourned, and the record closed, the same day. No party raised any issue concerning notice or jurisdiction.

II. DISCUSSION

A. Background and Disputed Services

___sustained a compensable shoulder injury on____, while scrubbing the walls of a walk-in shower. She saw a physician that day and was treated with medications and an arm sling. ___was off work for two weeks at the direction of the doctor. Following her return to work she continued to have pain. She was first seen at SCD on June 10, 2003, when she was diagnosed by John Wyatt, D.C., with: right rotator cuff strain/sprain and bursitis and tendinitis of the right shoulder. Dr. Wyatt started ___on a course of physical therapy. Dr. Wyatt also referred ___for pain management therapy with a physician. She improved slightly but her pain worsened again in late August.² Dr. Wyatt referred her to a surgeon, Brian R. Seabolt, M.D., who diagnosed ___with impingement syndrome and arthrosis. Dr. Seabolt performed arthroscopic surgery on September 11, 2003.³ ___resumed therapy at SCD in late September 2003.⁴

The disputed treatment in this case occurred from June 10 through November 14, 2003. A&M denied reimbursement for many treatments and services. Some services were denied based on a lack of medical necessity, others for lack of documentation and other reasons. SCD requested dispute resolution. The IRO reviewed the items for which medical necessity was the

² Petitioner Exhibit 2 at 40.

³ Petitioner Exhibit 2 at 192-193, 197.

⁴ Petitioner Exhibit 2 at 45-47.

basis of denial.⁵ The MRD reviewed the other items. SCD then requested a hearing as to all matters on which it did not prevail in the IRO and MRD reviews. A&M did not cross-appeal any items.

Lack of medical necessity. The IRO found the following services unnecessary:

all office visits (CPT Codes 99213, 99214), traction (CPT Code 97012), and muscle testing (CPT Code 97750-MT) from June 12 through August 4, 2003;

all office visits (except on October 2, 2003) (CPT Codes 99211, 99211-25, 99212, 99212-25) and range of motion (ROM) testing (CPT Code 95851) from September 23 through November 3, 2003;

medical report (CPT Code 99080-73) on September 25, 2003;

muscle testing, physical performance testing, and ROM testing (CPT Codes 97750, 97750-MT, 95851) on October 16 and 21, 2003;

all disputed treatments from August 6 through September 9, 2003; and

all disputed treatments after November 3, 2003.

The IRO reasoned that based on the history and examination of the patient, certain passive and active treatments for the six-week period of June 12 through August 4 were warranted. However, the documentation did not support the need for traction and the billing for repeated office visits and testing during that period was excessive. Further, the IRO saw no justification for the treatments and services rendered after August 4 and prior to ___'s surgery in September; the treatments did not relieve the patient's pain or promote recovery. The IRO determined that, following the surgery, another six weeks of rehabilitative therapy was indicated, although billing during the post-surgical period for office visits and testing was somewhat

⁵ The IRO decision can be found at Petitioner Exhibit 1 at 65-67.

excessive. Finally, the IRO concluded that the treatments following the six-week post-surgical period were unnecessary.

Services denied on bases other than medical necessity. The MRD concluded that no reimbursement was warranted for the following services:

<u>Date</u>	<u>Service</u>	<u>CPT Code</u>	<u>Denial Code</u>	<u>MRD Rationale</u>
6-10-03	analgesic balm	99070	M (no MAR) ⁶	requestor did not show amount billed was fair and reasonable
7-8-03	envelope arm sleeve	99070	M (no MAR)	requestor did not show amount billed was fair and reasonable
6-23-03 7-17-03 7-22-03	preparation of TWCC-73 reports	99080-73	N, F (not documented, fee guideline reduction)	6-23, 7-22 not documented 7-17, 7-29 not in compliance with statute
multiple dates from 7-18 through 11-05	therapeutic exercises	97110	F (fee guideline reduction)	need for, and delivery of, one-on-one therapy not documented
7-22-03	office visit	99214	N (not documented)	required elements of level four office visit not documented

⁶ “MAR” is “maximum allowable reimbursement.”

B. Applicable Law

1. Medical Necessity

SCD has the burden of proof in this proceeding.⁷ 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.⁸

* * *

Health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.⁹

2. Fee Disputes

TDI's rules provide that if a fee dispute involves health care for which there is not an established maximum allowable reimbursement, the party requesting medical dispute resolution must provide documentation that discusses, demonstrates, and justifies that the payment amount

⁷ 28 TEX. ADMIN. CODE § 148.14; TEX. LAB. CODE § 413.031.

⁸ TEX. LAB. CODE § 408.021.

⁹ TEX. LAB. CODE § 401.011(19).

being sought is a fair and reasonable rate of reimbursement.¹⁰

At the time of the July 22, 2003, office visit billed under CPT Code 99214, the 1996 Medical Fee Guideline (MFG) was in effect¹¹ and provided that office visits billed under 99214 must include two of three components: a detailed history, a detailed examination, and medical decision making of moderate complexity.

C. Evidence

Petitioner offered medical and billing records for the time period in question. In addition, David Bailey, D.C., an owner of SCD, testified for the provider. William Defoyd, D.C., testified for A&M on medical necessity issues. Dr. Defoyd agreed with the IRO reviewer's decision and rationale.

D. ALJ's Analysis and Conclusion

IRO items. The ALJ is persuaded by Dr. Defoyd's testimony that the treatments from August 6 through September 9, 2003, and after November 3, 2003, were unnecessary. He noted that after the initial six weeks of therapy there had been little improvement; ___ was still reporting pain at a level of four to five on a scale of one to ten, as she had from the beginning.¹² Her range of motion was also still limited¹³ and, according to Dr. Defoyd, her increases in muscle strength were not significant enough to warrant continued therapy. And Dr. Defoyd testified that six weeks of therapy should have been sufficient for post-surgical rehabilitation.

¹⁰ 28 TEX. ADMIN. CODE § 133.307(g)(3)(D).

¹¹ Prior to August 1, 2003, the 1996 Medical Fee Guideline (MFG) was applicable to workers' compensation billing. Following August 1, 2003, the new MFG is applicable. 28 TEX. ADMIN. CODE § 134.202; *Texas AFL-CIO v. Texas Workers Compensation Commission*, 137 S.W.3d 342 (Tex. App–Austin 2004).

¹² Petitioner Exhibit 2 at 5-30.

As to the disputed office visits (CPT Codes 99213, 99214) and muscle testing (CPT Code 97750-MT) from June 12 through August 4, 2003, the ALJ agrees with the IRO reviewer and Dr. Defoyd that the billing was excessive. An extensive office visit on June 10, 2003, was billed for and reimbursed. Further, there was a level-four office visit on July 22, 2003. The numerous other office visits during this period, most or all billed as level-three visits, were unjustified. Therefore, the ALJ determines that SCD should be reimbursed for the office visit of July 22, 2003, billed under CPT Code 99214, but not for the rest of the office visits and muscle tests from July 12 through August 4. Dr. Defoyd also testified convincingly that traction for the cervical spine (CPT Code 97012) was not shown to be necessary during this period to treat this patient's shoulder injury.

In addition, the ALJ determines that the muscle strength, physical performance, and ROM testing (CPT Codes 97750, 97750-MT, 95851) on October 16 and 21, 2003, were necessary, as they do not appear to have been duplicative of one another. However, the ALJ agrees with the IRO reviewer and Dr. Defoyd that the TWCC-73 medical report (CPT Code 99080-73) was unnecessary just after surgery, on September 25, 2003. And the ALJ is persuaded that the ROM testing on September 25, 2003, and the disputed office visits (CPT Codes 99211, 99211-25, 99212, 99213) from September 23 through November 3, 2003, were unnecessary and/or duplicative of billing for other services provided and paid for.

MRD items. The largest item addressed by the MRD consisted of the therapeutic exercises billed under CPT Code 97110. A&M has paid for some of these services, but the MRD recommended no additional reimbursement because the delivery and necessity of one-on-one instruction was not documented. Dr. Defoyd agreed with the MRD's decision concerning these services. According to Dr. Bailey, however, the documentation meets the requirements of the new MFG that went into effect on August 1, 2003.

¹³ Petitioner Exhibit 2 at 27.

The ALJ is unable to determine from the record that the new MFG's documentation requirements for 97110 are significantly different from those under the 1996 Medical Fee Guideline. Further, although the exercise session notes frequently state that the patient needed one-on-one help, they do not explain *why* such extensive assistance was necessary over the course of an exercise program that spanned months.¹⁴ Therefore, the ALJ agrees with the MRD's determination that no additional reimbursement for these services is warranted.

The MRD concluded that certain supplies – analgesic balm and envelope arm sleeve – billed under 99070, should not be reimbursed because the items lacked MARs and SCD had failed to provide support for the amounts billed. The ALJ agrees with the MRD's findings that there is no evidence indicating the reasonableness of those disputed charges.

The MRD also determined that no reimbursement was warranted for several TWCC-73 reports because they had not been properly documented or otherwise did not comply with the statute. The ALJ sees no reason to disturb the MRD's determination except as to the report of June 23, 2003, which does exist and is in the record.¹⁵

As to the MRD's finding that the office visit of July 22, 2003, did not meet the billing requirements for CPT Code 99214, the ALJ disagrees. The office visit that day was extensive, involved a detailed examination, and resulted in a decision to refer the patient for a neurological evaluation.¹⁶

¹⁴ Petitioner Exhibit 2.

¹⁵ Petitioner Exhibit 2 at 137.

¹⁶ Petitioner Exhibit 2 at 143-151.

Summary. The following disputed services should be reimbursed:

preparation of the June 23, 2003 TWCC-73, billed under CPT Code 99080-73;

the July 22, 2003, office visit, billed under CPT Code 99214; and

the muscle strength, physical performance, and ROM testing (CPT Codes 97750, 97750-MT, 95851) on October 16 and 21, 2003.

The remaining disputed services need not be reimbursed.

III. FINDINGS OF FACT

1. Texas A&M University System (A&M) is the workers' compensation insurer with respect to the claims at issue in this case.
2. Claimant ___sustained a compensable shoulder injury on____, while scrubbing the walls of a walk-in shower.
3. ____ was first seen at SCD Back and Joint Clinic (SCD) on June 10, 2003, when she was diagnosed by John Wyatt, D.C., with: right rotator cuff strain/sprain and bursitis and tendinitis of the right shoulder.
4. Dr. Wyatt started____ on a course of physical therapy.
5. ____improved slightly but her pain worsened again in late August.
6. Dr. Wyatt referred ____to a surgeon, Brian R. Seabolt, M.D., who diagnosed____ with impingement syndrome and arthrosis.
7. Dr. Seabolt performed arthroscopic surgery on September 11, 2003.
8. ____resumed therapy at SCD in late September 2003.
9. The disputed treatments in this case occurred from June 10 through November 14, 2003.

10. A&M denied reimbursement for many treatments and services. Some services were denied based on a lack of medical necessity, others for lack of documentation and other reasons. SCD requested dispute resolution.
11. An Independent Review Organization (IRO) reviewed the items for which medical necessity was the basis of denial. The Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) reviewed the other items.
12. In a decision dated December 16, 2004, the IRO found some of the disputed services medically necessary and some unnecessary.
13. In a decision dated January 14, 2005, the MRD determined that some of the services for which reimbursement was not disallowed by the IRO should nevertheless not be reimbursed due to reasons related to documentation or the reasonableness of the billed amounts.
14. SCD then requested a hearing before the State Office of Administrative Hearings (SOAH) as to all matters on which it did not prevail in the IRO and MRD reviews. A&M did not cross-appeal any items.
15. On March 7, 2005, the Commission issued a notice of hearing in this matter.
16. 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.
17. After the initial six weeks of treatment at SCD, ___ was still reporting pain at a level of four to five on a scale of one to ten, as she had from the beginning. Further, her range of motion was still limited and her increases in muscle strength were not significant enough to warrant continued therapy.
18. The disputed treatments from August 6 through September 9, 2003, were unnecessary.
19. ___ needed no more than six weeks of therapy for rehabilitation following her surgery in September 2003.
20. The disputed treatments rendered after November 3, 2003, were unnecessary.
21. The office visit of July 22, 2003, billed under CPT Code 99214, was necessary and met the applicable billing requirements, but all other office visits (CPT Codes 99213, 99214)

and muscle testing (CPT Code 97750-MT) from June 12 through August 4, 2003, were medically unnecessary.

22. Traction for the cervical spine (CPT Code 97012) was not necessary to treat___'s shoulder injury.
23. The muscle strength, physical performance, and range of motion (ROM) testing (CPT Codes 97750, 97750-MT, 95851) on October 16 and 21, 2003, were not duplicative of one another and were necessary.
24. The TWCC-73 medical report (CPT Code 99080-73) of September 25, 2003, was unnecessary.
25. The ROM testing on September 25, 2003, and the disputed office visits (CPT Codes 99211, 99211-25, 99212, 99213) from September 23 through November 3, 2003, were unnecessary and/or duplicative of billing for other services provided and paid for.
26. The disputed therapeutic exercises billed under CPT Code 97110 from July 18 through November 5, 2003, were inadequately documented, in that the exercise session notes fail to explain why one-on-one assistance was necessary over the course of an exercise program that spanned months.
27. There is no evidence indicating the reasonableness of charges for analgesic balm and envelope arm sleeve billed under CPT Code 99070 for dates of service June 10 and July 8, 2003, respectively.
28. A TWCC-73 report dated June 23, 2003, was prepared and should be paid for, but other disputed bills under CPT Code 99080-73 need not be paid.

IV. CONCLUSIONS OF LAW

1. The Texas Labor Code gives the Commission jurisdiction over this matter. TEX. LAB. CODE ch. 401 *et seq.* (the Act).
2. Effective September 1, 2005, the functions of the Commission were transferred to the newly created Division of Workers' Compensation at the Texas Department of Insurance (TDI).

3. 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.
4. Adequate and timely notice of the hearing was provided in accordance with the Administrative Procedure Act. TEX. GOV'T CODE § 2001.052.
5. SCD has the burden of proof in this matter. 28 TEX. ADMIN. CODE ch.148; TEX. LAB. CODE § 413.031.
6. 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.
7. TDI's rules provide that if a fee dispute involves health care for which there is not an established maximum allowable reimbursement, the party requesting medical dispute resolution must provide documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement. 28 TEX. ADMIN. CODE § 133.307(g)(3)(D).
8. The 1996 Medical Fee Guideline (MFG) applies to dates of service prior to August 1, 2003. 28 TEX. ADMIN. CODE § 134.201 (Commission's rule adopting the Medical Fee Guideline by reference). Following August 1, 2003, the new MFG is applicable. 28 TEX. ADMIN. CODE § 134.202; *Texas AFL-CIO v. Texas Workers Compensation Commission*, 137 S.W.3d 342 (Tex. App–Austin 2004).
9. Under the 1996 MFG, exercises billed under CPT Code 97110 required one-on-one supervision. Medical Fee Guideline, p. 32 (1996) (Medicine Ground Rule I.A.9.b).
10. The 1996 MFG provided that office visits billed under 99214 must include two of three components: a detailed history, a detailed examination, and medical decision making of moderate complexity.
11. Based on the above Findings of Fact and Conclusions of Law, the Act requires A&M to reimburse SCD for:

preparation of the June 23, 2003 TWCC-73, billed under CPT Code 99080-73;

the July 22, 2003, office visit, billed under CPT Code 99214; and

the muscle strength, physical performance, and ROM testing (CPT Codes 97750, 97750-MT, 95851) on October 16 and 21, 2003.

12. Based on the above Findings of Fact and Conclusions of Law, the Act does not require A&M to reimburse SCD for any other disputed services provided to claimant____. from June 10 through November 14, 2003.

ORDER

IT IS THEREFORE ORDERED that the Texas A&M System reimburse SCD Back and Joint Clinic for the following services provided to claimant____: preparation of the June 23, 2003 TWCC-73, billed under CPT Code 99080-73; the July 22, 2003, office visit, billed under CPT Code 99214; and the muscle strength, physical performance, and ROM testing (CPT Codes 97750, 97750-MT, 95851) on October 16 and 21, 2003; but not for any other disputed services provided to ____from June 10 through November 14, 2003.

ISSUED December 1, 2005.

SHANNON KILGORE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW JUDGE