DOCKET NO. 453-05-2838.M5
MDR Tracking No. M5-04-1992-01

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 six months of various medical and therapeutic services provided to claimant ___in ___ for a back injury. Citing a lack of medical necessity, the carrier, Texas A&M University (A&M), declined to pay for the disputed services. An Independent Review Organization (IRO) determined that the first six weeks of services were necessary but the remaining services were not. SCD requested a hearing concerning the IRO's determination that some treatments were unnecessary.

The Administrative Law Judge (ALJ) concludes that, among the treatments found by the IRO to be unnecessary, certain group exercises and muscle and range of motion tests were reimbursable. However, the ALJ agrees with the IRO that all other disputed treatments, supplies, and services were not medically necessary.

I. NOTICE AND PROCEDURAL HISTORY

The hearing was convened on August 23, 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. Medical Necessity

SCD has the burden of proof in this proceeding.[1] 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.[2]
>
> *** * ***

Health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.[3]

[1] 28 TEX. ADMIN. CODE § 148.14; TEX. LABOR CODE § 413.031.
[2] TEX. LAB. CODE § 408.021.
[3] TEX. LAB. CODE § 401.011(19).

B. Background and Disputed Services

___sustained a compensable back injury on____, as he was moving a couch. He was treated with medications and underwent chiropractic care and some physical therapy in the spring of 2003, but his pain levels remained high. An MRI done in March 2003 showed mild degenerative changes in the lumbar spine and a disc bulge at L4-5.[4] In early April 2003, ___'s treating physician at the time, a medical doctor practicing occupational medicine, declared__ to have reached maximum medical improvement. The doctor assigned ___ a 0% impairment rating.

___ was first seen at SCD on April 9, 2003, when he was diagnosed by John Wyatt, D.C., with: lumbar disc displacement without myelopathy, lumbar sprain/strain, sacral sprain, and myofascial pain syndrome. Dr. Wyatt started ___on a course of treatment involving numerous chiropractic and physical therapy treatments, including both passive and active therapies. Dr. Wyatt also referred ___for pain management therapy with a physician.

A&M denied reimbursement based on a lack of medical necessity. SCD requested dispute resolution.

The IRO determined that the services provided from April 9 through May 21, 2003, were reasonable and necessary, but the remaining services – delivered from May 23 through October 7, 2003 – were not. In support of the necessity of the first six weeks of care, the IRO reviewer noted that ___had gotten stronger during that period. However, the reviewer found that there was no significant improvement in___'s pain levels or ability to work that warranted the additional therapy into October.[5] SCD sought SOAH review of the medical necessity issue.

[4] Petitioner Exhibit 3 at 131.
[5] Petitioner Exhibit 1 at 50-52.

The disputed treatments and services at issue include:[6]

CPT Code	Service
97110	Therapeutic exercises (one-on-one)
97150	Group therapeutic procedure
99213	Office visit
99070	Supplies (analgesic balm, lumbar ball, TENS supplies, pillow support, ortho lumbar support)
97265	Joint mobilization
97250	Myofascial release
99080	Copies of records
97124	Massage
97014	Electrical stimulation
97024	Diathermy
97012	Traction, mechanical
95851	Range of motion testing
97750-MT	Muscle testing
00211-25	Office visit
98940	Chiropractic manipulation
97139-EU	Electrical stimulation therapy.

C. SCD's Position and Evidence

David Bailey, D.C., an owner of SCD, testified for the provider.[7] He asserted that the IRO's decision did not adequately explain the evidentiary basis of its conclusion that many of the services were unnecessary, and the IRO ignored evidence that ___improved as a result of the treatment. According to Dr. Bailey,__'s strength improved during the course of the treatment

[6] The Table of Disputed Services can be found in the record at Petitioner Exhibit at 5-10.

[7] Dr. Bailey provided oral testimony as well as some written remarks. *See* Petitioner Exhibit 1 at 2-3.

and he was able to work at a higher functional level as a result of the treatment. Dr. Bailey further stated that the patient suffered from complicating psychosocial factors that contributed to his subjective reports of high levels of pain; Dr. Wyatt made referrals to address the psychological aspects of___'s condition. In addition, Dr. Bailey testified that ___experienced an exacerbation of symptoms on July 22, 2003, that necessitated additional treatment.

D. A&M's Position and Evidence

A&M offered no expert testimony, but argued that SCD had not met its burden to show that the disputed treatments were medically necessary. A&M argued that ___had shown insufficient progress to warrant continuation of his treatment, and that SCD had failed to prove the exercises billed for under CPT Code 97110 required one-on-one attendance.

E. ALJ's Analysis and Conclusion

May 23 through July 17, 2003. The record reflects that___ had worked as a custodian in a job that involved heavy lifting.[8] In May 2003 he had deficits in lumbar strength that were greatly reduced by July 17, 2003.[9] There is, therefore, justification for a strengthening regimen during that time period. The group exercises billed as therapeutic procedures (CPT Code 97150) appear warranted, as do the related muscle testing and range of motion testing billed for under CPT Codes 97750-MT and 95851, respectively. The tests are reasonable, as they show the patient's progress in the exercise program. However, SCD failed to show the necessity of the many other charges during the period from late May through July 17, 2003.

During this time frame SCD billed multiple times under CPT Code 97110 for therapeutic exercises. Under the Medical Fee Guideline in effect at the time, such exercises required one-on-one supervision.[10] Dr. Bailey testified that he believes one-on-one supervision in general

[8] Petitioner Exhibit 3 at 97.
[9] Petitioner Exhibit 3 at 110-114, 121-125.
[10] Medical Fee Guideline, p. 32 (1996) (Medicine Ground Rule I.A.9.b). *See* 30 TEX. ADMIN. CODE §

yields better results. There are also many notes in the records indicating that ___was not motivated to do the exercises properly and so needed constant individual supervision, or that constant individualized attention was necessary to maintain "safety standards."[11] There were also occasional notes stating that one-to-one supervision was required to instruct___ about new exercises.[12] This evidence, however, fails to persuade the ALJ that hours and hours of exercise with individual supervision were warranted. Billing under 97110 tended to cover between two and three hours per day of therapy.[13] There is no evidence in the record that this patient had a cognitive or physical disability that hindered his capacity for performing repetitive exercises. Despite the periodic references to new exercises, the records show little discernible variation in the regimen. Even on those days when new exercises were introduced, it is difficult to imagine – and SCD failed to show – that multiple hours of instruction were necessary. Finally, the ALJ does not believe that a patient's persistent lack of motivation constitutes medical necessity.

Further, numerous office visits during this period were billed under CPT Code 99213. Under the 1996 Medical Fee Guideline, billing under this code requires two of the following: an expanded problem focused history, an expanded problem focused examination, or medical decision making of low complexity.[14] From May 23 through July 17, 2003, SCD billed for 17 visits under 99213. SCD has failed to offer sufficient evidence that there was a medical need for 17 visits of this nature during the period in question.

As to the other supplies and therapies billed for up to July 17, 2003 – joint mobilization, myofascial release, analgesic balm, electrical stimulation, diathermy, and TENS Supplies – SCD has not shown how those therapies contributed to the increases in strength that justify reimbursement for continued treatment during this period. And, as discussed below, no disputed treatment offered by SCD during the period in question successfully relieved___'s pain.

134.201(Commission's rule adopting the Medical Fee Guideline by reference). Following August 1, 2003, the 2002 Medical Fee Guideline 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).

[11] *See, e.g.*, Petitioner Exhibit 3 at 74-76.

[12] *See, e.g.*, Petitioner Exhibit 3 at 70, 72.

[13] Petitioner Exhibit 3 at 67-79.

[14] Medical Fee Guideline, p. 19 (1996).

July 22 through October 7, 2003. After July 17, 2003, there is no evident justification for the continued course of treatment. No additional muscle testing was performed to show any progress in strengthening, and the evidence shows ___had already made great strides in that area. Further, the record shows – and Dr. Bailey acknowledged – that___'s pain levels did not change very much over the entire period in dispute. On the first date in dispute, May 23, 2003, ___ reported pain at a level of six out of ten.[15] On the last day, October 7, 2003, his level of pain was five out of ten.[16] Yet it is evident that___'s chief limiting condition was unrelenting pain. At his first visit to SCD in April 2003,___'s only reported complaint was pain.[17] On examination he showed decreased range of motion secondary to his pain. Throughout his course of treatment he described how his activities were limited by his pain. It appears that Dr. Wyatt appropriately explored various approaches to addressing___'s pain, including referrals for chronic pain management, injections, and psychological evaluation and treatment. However, those services are not at issue here, and there is no evidence in the record that the treatments in dispute in this case had any significant effect on___'s pain.

Dr. Bailey pointed to an exacerbation on July 22, 2003, as justification for continuation of the treatments at issue. The exacerbation, however, was an increase in *pain.*[18] As discussed above,___'s pain levels were mostly unaffected by the treatments.

The evidence fails to show that the treatments following July 17, 2003, addressed functional deficits or relieved___'s considerable pain; therefore, they do not require reimbursement.

Summary. The ALJ determines that services billed under CPT Codes 97150, 97750-MT, and 95851, from May 23 though July 17, 2003, were medically necessary and should be reimbursed. No further disputed services or supplies, however, were shown to be medically necessary.

---

[15] Petitioner Exhibit 3 at 24.
[16] Petitioner Exhibit 3 at 52.
[17] Petitioner Exhibit 3 at 94-99.

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 back injury on____, as he was moving a couch.

3. At the time of his injury, ___worked as a custodian in a job that involved heavy lifting.

4. ___was treated with medications and underwent chiropractic care and some physical therapy in the spring of 2003, but his pain levels remained high.

5. ___was first seen at the SCD Back and Joint Clinic (SCD) on April 9, 2003, when he was diagnosed by John Wyatt, D.C., with: lumbar disc displacement without myelopathy, lumbar sprain/strain, sacral sprain, and myofascial pain syndrome.

6. Dr. Wyatt started ___on a course of treatment involving numerous chiropractic and physical therapy treatments, including both passive and active therapies.

7. Throughout the spring, summer, and into the fall of 2003,___'s chief complaint was pain.

8. A&M denied reimbursement based on a lack of medical necessity. SCD requested dispute resolution.

9. An Independent Review Organization (IRO) determined that services provided from April 9 through May 21, 2003, were reasonable and necessary, but services delivered from May 23 through October 7, 2003, were not.

10. The Medical Review Division of the Texas Workers' Compensation Commission (Commission) issued its order, based on the IRO decision, on October 15, 2004.

11. SCD requested a hearing before the State Office of Administrative Hearings (SOAH) to contest the IRO's decision concerning the services rendered from May 23 through October 7, 2003.

---

[18] Petitioner Exhibit 2 at 125-126.

12. On December 21, 2004, the Commission issued a notice of hearing in this matter.

13. 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.

14. SCD billed for the disputed items under the following CPT Codes:

CPT Code	**Service**
97110	Therapeutic exercises (one-on-one)
97150	Group therapeutic procedure
99213	Office visit
99070	Supplies (analgesic balm, lumbar ball, TENS supplies, pillow support, ortho lumbar support)
97265	Joint mobilization
97250	Myofascial release
99080	Copies of records
97124	Massage
97014	Electrical stimulation
97024	Diathermy
97012	Traction, mechanical
95851	Range of motion testing
97750-MT	Muscle testing
00211-25	Office visit
98940	Chiropractic manipulation
97139-EU	Electrical stimulation therapy.

Dates of Service from May 23 through July 17, 2003

15. In May 2003 ___ had deficits in lumbar strength that were greatly reduced by July 17, 2003.

16. During the period from May 23 through July 17, 2003, a strengthening regimen was warranted.

17. During the period from May 23 through July 17, 2003, the group exercises billed as

therapeutic procedures (CPT Code 97150) were medically necessary.

18. Also during the period from May 23 through July 17, 2003, the muscle testing (CPT Code 97750-MT) and range of motion testing (CPT Code 95851) were reasonable and necessary, as they showed the patient's progress in the exercise program.

19. SCD's billing under CPT Code 97110 for therapeutic exercises tended to cover between two and three hours per day of therapy.

20. There is no evidence in the record that ___had a cognitive or physical disability that hindered his capacity for performing repetitive exercises.

21. Although SCD's clinic notes sometimes refer to new exercises, the records show little discernible variation in the exercise regimen.

22. Even on those days when some new exercises were introduced, multiple hours of instruction were not necessary.

23. ___'s persistent lack of motivation did not constitute medical necessity for weeks and months of exercise with individual attendance.

24. The therapeutic exercises with one-on-one supervision billed under CPT Code 97110 were not medically necessary.

25. From May 23 through July 17, 2003, SCD billed for 17 office visits under CPT Code 99213.

26. There was no medical necessity for 17 visits during this period, each involving two of the following: an expanded problem focused history, an expanded problem focused examination, or medical decision making of low complexity.

27. The joint mobilization, myofascial release, analgesic balm, electrical stimulation, diathermy, and TENS Supplies billed for from May 23 through July 17, 2003, neither contributed to___'s functional progress nor relieved his pain to a significant degree.

28. The joint mobilization, myofascial release, analgesic balm, electrical stimulation, diathermy, and TENS Supplies billed for from May 23 through July 17, 2003, were not

medically necessary.

Dates of Service from July 22 through October 7, 2003

29. The continuation of___'s treatment following July 17, 2003, did not contribute to his functional progress or relieve his pain to any significant degree.

30. The many treatments, services, and supplies provided to ___at SCD from July 22 through October 7, 2003, were not medically necessary.

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. LABOR 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. The 1996 Medical Fee Guideline 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 2002 Medical Fee Guideline 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).

8. Under the 1996 Medical Fee Guideline, exercises billed under CPT Code 97110 required one-on-one supervision. Medical Fee Guideline, p. 32 (1996) (Medicine Ground Rule I.A.9.b).

9. Under the 1996 Medical Fee Guideline, billing for an office visit under CPT Code 99213 requires two of the following: an expanded problem focused history, an expanded problem focused examination, or medical decision making of low complexity. Medical Fee Guideline, p. 19 (1996).

10. Based on the above Findings of Fact and Conclusions of Law, the Act requires A&M to reimburse SCD for services rendered from May 23 though July 17, 2003, and billed under CPT Codes 97150, 97750-MT, and 95851, but not for any other disputed treatment of R.T. from May 23 through October 7, 2003.

ORDER

IT IS THEREFORE ORDERED that the Texas A&M System reimburse SCD Back and Joint Clinic for services rendered from May 23 though July 17, 2003, and billed under CPT Codes 97150, 97750-MT, and 95851, but not for any other disputed treatment of __from May 23 through October 7, 2003.

ISSUED October 21, 2005.

SHANNON KILGORE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW JUDGE