

Notice of Independent Review Decision

DATE OF REVIEW:

10/18/2008

IRO CASE #:

DESCRIPTION OF THE SERVICE OR SERVICES IN DISPUTE

Please review the item in dispute: Transforaminal lumbar interbody fusion (TLIF) L3-4, L4-5, L5-S1 with Posterior Spinal Fusion (PSF) L3 to S1 spinal surgery.

A DESCRIPTION OF THE QUALIFICATIONS FOR EACH PHYSICIAN OR OTHER HEALTH CARE PROVIDER WHO REVIEWED THE DECISION

Board Certified Orthopaedic Surgeon

REVIEW OUTCOME

Upon independent review the reviewer finds that the previous adverse determination/adverse determinations should be: **Upheld**

Provide a description of the review outcome that clearly states whether or not medical necessity exists for each of the health care services in dispute.

The requested surgical procedure (TLIF L3-4, L4-5, and L5-S1 with PSF L3 to S1 Spinal Surgery) is not medically necessary.

INFORMATION PROVIDED TO THE IRO FOR REVIEW

- MCMC: Case Reports dated 10/04/07, 05/01/07
- MCMC Referral dated 10/04/07
- Letter dated 10/09/07
- ODG Integrated Treatment/Disability Duration Guidelines, Low Back Problems dated 10/08/07
- DWC: Notice To Utilization Review Agent of Assignment dated 10/04/07
- DWC: Notice To MCMC, LLC Of Case Assignment dated 10/04/07
- Letters dated 10/03/07, 04/19/07
- DWC: Confirmation of Receipt of a Request For a Review dated 10/03/07, 04/19/07
- D.O.: Clinic Notes dated 09/11/07, 08/09/07, 07/10/07, 04/12/07, 08/17/06
- Pain Consultants: Medicare W/C LOP PVT INS forms dated 09/11/07, 08/09/07
- LHL009: Request For a Review By An Independent Review Organization dated 09/04/07, 04/12/07
- Reconsideration/Appeal of Adverse Determination dated 08/30/07, 04/02/07
- MD: Request For Reconsideration dated 08/21/07
- Utilization Review Determination letters dated 08/14/07, 03/02/07, 05/30/06
- Dr. Preauthorization Request dated 08/09/07
- M.D.: Report dated 08/03/07

- M.D.: Initial Exam (handwritten) dated 08/03/07
- DWC-73: Work Status Reports dated 04/25/06 through 09/11/07 and two with dates preventing employee's return to work of 08/09/07, 07/10/07
- Hospital: Radiology Services Report dated 07/03/07
- Letters dated 06/20/07, 04/16/07, 08/28/06 from Audit Department
- MCMC: Notice of Independent Review Decision dated 05/18/07 R.N.
- MCMC: IRO Reviewer Report Template-WC dated 05/18/07
- DWC: Notice To Utilization Review Agent of Assignment dated 04/30/07
- DWC: Notice To MCMC, LLC Of Case Assignment dated 04/30/07
- Form letters dated 04/18/07, 03/02/07, 12/15/06 from Nurse Reviewer
- Claimant's Interrogatories To Carrier signed 04/11/07
- Carrier's Interrogatories To Claimant signed 04/11/07
- Healthcare Systems: Letter dated 04/11/07
- Advantage: Request For Reconsideration dated 04/03/07
- Workers' Compensation Reopen Acknowledgment dated 04/02/07
- Surgery: Requests For Reconsideration dated 04/02/07, 02/22/07
- report dated 03/30/07 from M.D.
- Explanation of Reviews dated 03/23/07, 02/26/07, 01/17/07, 01/10/07
- Healthcare Systems: Request For An Appeal dated 03/21/07
- Healthcare Systems: Report dated 02/26/07
- Healthcare Systems: Fax Cover Sheet with note dated 02/26/07
- Healthcare Systems: Evaluation dated 02/16/07 from LPC
- Healthcare Systems: Physical Performance Exam dated 02/07/07
- Healthcare Systems Examination: Handwritten note dated 01/31/07
- Healthcare Systems: Form letter dated 01/31/07
- Dr. : Pre Cert Faxes dated 11/10/06, 07/28/06, 06/30/06, 06/16/06
- Imaging: Precertification fax dated 11/06/06
- Surgery: Operative Reports dated 08/25/06, 06/30/06, 06/16/06 from , D.O.
- Surgery: Anesthesia Records dated 08/25/06, 06/30/06, 06/16/06
- W-9: Request For Taxpayer Identification Number and Certification signed 06/28/06, 01/01/06
- Institute: S.O.A.P. notes dated 06/26/06 through 08/10/06
- Notice Of Disputed Issue and Refusal To Pay Benefits dated 05/23/06
- Neurodiagnostic Associates: Nerve Conduction/EMG report dated 05/18/06 from M.D.
- Institute: Pre-Authorization Request dated 05/18/06
- Open MRI: MRI lumbosacral spine dated 05/04/06
- Associates: Electrodiagnostic Referral Request dated 04/27/06
- D.O.: Office notes dated 04/25/06 through 12/11/06
- MRI request dated 04/24/06
- Letter dated 04/13/06
- Emergency Physician Record dated 10/04/05
- Emergency Department Record dated 10/04/05
- Center: Nursing Record dated 10/04/05
- System: Emergency Department Acuity Level Record dated 10/04/05

- Center: Patient information sheet dated 10/04/05
- General Conditions of Admission, Admission Record signed 10/04/05
- Center: Consent signed 10/04/05
- Center: Consent Form signed 10/04/05
- Center: Patient Rights Documentation Summary signed 10/04/05
- Center: Prescription dated 10/04/05
- Center: Undated Discharge Instructions
- Institute: Office notes dated 07/13/05 through 05/15/06
- M.D. & Associates: Medical Record Review dated 02/01/04 from M.D.
- Handwritten Progress Note dated 01/21/04
- Licensing Unit with expiration date of 01/31/08
- Undated Health Care Provider Detail for D.O.

PATIENT CLINICAL HISTORY [SUMMARY]:

The injured individual is a male who was reported to have sustained a work-related injury . The mechanism of injury as documented in the record has varied. It has included falling out of a chair at work. He reported the chair rolling back and landing on his bottom. Another scenario was striking his back on a desk as he fell. The initial treatment record is not available until a peer review was performed by M.D. on 02/01/2004. Dr. noted that the mechanism of injury was most consistent with the diagnosis of lumbar strain. MRI on 08/03/2001 revealed evidence of pre-existing multiple level degenerative disc disease, a disease of life and not related to the original work injury. Electromyogram/Nerve Conduction Velocity (EMG/NCV) was performed on 08/08/2001 and was essentially normal. The injured individual had also undergone a CT/myelogram with findings at L3-L4. The injured individual was noted to be morbidly obese with a height of 5'11" and weight up to 280 pounds. Treatment was primarily chiropractic in nature, but also included pain medication, NSAIDs, and muscle relaxants. He was returned to work without restriction and no follow-up required on 11/20/2001. The injured individual requested a change of treating physician, which was denied on 09/10/2003. Dr. opined that the lumbar strain injury, which was a result of the occupational injury of xx/xx/xxxx, had resolved and that no further active treatment was required. There is a gap in care until 10/2005 (over four years after injury). The injured individual is then seen by D.C of the Institute on 10/13, 10/19, 10/21, and 11/09 of 2005. He began chiropractic care and therapy again at that time. He reported a flare up of the injured individual's previous work-related condition. The injured individual was seen at Hospital on 10/04/2005 for the diagnoses of back pain and hemorrhoids. He was treated with pain medication and prednisone. There is another gap in care until 04/2006 when the injured individual begins seeing M.D., a pain management physician upon referral from Dr. The injured individual began seeing Dr. during this interval and another round of chiropractic care and therapy is instituted. Physical therapy was approved. Three lumbar epidural steroid injections were performed between June and August 2006 by Dr. Initial improvement was reported, but by 10/2006 the symptoms were reported to have returned and were worse. Dr. requested a three level discogram in 12/2006. There is no information if this was subsequently completed. Repeat MRI on 05/04/2006 revealed the following: L3-L4 moderate central canal stenosis due to a 6mm left paracentral disc protrusion/herniation with moderate left neuroforaminal narrowing, L4-L5- 12 mm left paracentral disc protrusion/herniation with mild inferior disc extrusion and mild left neuroforaminal narrowing. Bilateral L5 nerve roots are likely impinged upon particularly on the left side. No significant

pathology was reported at L5-S1. Repeat EMG/NCV on 05/18/2006 was normal. Dr. noted on 02/16/2007 that the injured individual was no longer working as a hair stylist, which was his occupation at the time of injury, but for the last seven months was a security guard. His pain level was 9/10 and was present 100% of the time. Mr. was a smoker (1 ½ packs/day for 12 years) and carried the diagnosis of lymphoma. Treatment included being taken off work completely for a period of time. He was return to work (RTW) on 09/11/2007 with restriction by injured individual request. It was noted that he did not want another epidural steroid injection. A request was made in 03/2007 for a pain management program, which was initially denied and upheld on appeal. There was a comment regarding a contested case hearing (CCH) on 05/30/2007, but there is no information regarding the outcome. The injured individual was referred to M.D., an orthopedic surgeon. Dr. evaluated the injured individual one time on 08/03/2007. His examination is sparse and documented little objective clinical findings. There is minimal exam, but he reported that back pain was greater than leg pain. He recommended TLIF L3-4, L4-5, L5-S1 with PSF L3 to S1 spinal surgery. There were no focal neurological deficits documented. The surgery was denied on initial review by M.D., orthopedic surgeon, and the denial upheld upon appeal/reconsideration by M.D., orthopedic surgeon. Dr. noted that a three level procedure was requested although there was no pathology documented at L5-S1. Both physicians felt that the surgical criteria as outlined by the Official Disability Guidelines (ODG) were not met. Dr. authored a letter on 08/21/2007 that he felt the request met the criteria of AANS/NASS guidelines. He was not specific how the request followed those guidelines.

ANALYSIS AND EXPLANATION OF THE DECISION INCLUDE CLINICAL BASIS, FINDINGS AND CONCLUSIONS USED TO SUPPORT THE DECISION.

The injured individual is a male who was reported to have sustained a lumbar strain as a result of a work-related fall. This injury would have been expected to resolve in six to eight weeks with conservative management according to the evidence-based Official Disability Guidelines and Medical Disability Advisor's (MDA) length of disability. The record clearly documented evidence of pre-existing degenerative disease, which is not a result of the work-related injury, but a "disease of life". Dr. opined in 02/2004 that the effects of the work injury had resolved by 11/20/2001. There is no objective documentation to dispute that opinion in the available medical record. There is a large gap in care and then treatment increased in frequency late in 2005 and again in 04/2006. The injured individual has undergone extensive evaluation and treatment (repeat MRI, repeat EMG/NCV, pain management, lumbar epidural steroid injections three times, chiropractic care, physical therapy, pain medications, muscle relaxants, NSAIDs, and electrical muscle stimulation) without any objective evidence of sustained clinical improvement. His subjective complaint of pain has consistently been out of proportion to documented objective clinical findings. Both the ODG and MDA recommend investigation and addressing of nonphysical factors (psychosocial, workplace, socioeconomic) in cases of delayed recovery or RTW. There is no evidence that this has occurred in this injured individual. The medical record does not reveal any evidence of objective neurological deficit. The evidence-based Occupational Medicine Practice Guidelines 2nd. Ed. of the American College of Occupational and Environmental Medicine notes that the biggest predictor of a future episode of back pain is a prior history of one. The etiology of back pain is multi-factorial. The injured individual's body habitus (5'11"- 280 pounds) and overall conditioning contribute to his symptoms.

Official Disability Guidelines:

Lumbar fusion in workers' comp patients: In cases of workers' compensation, patient outcomes related to fusion may have other confounding variables that may affect overall success of the

procedure, which should be considered. Until further research is conducted there remains insufficient evidence to recommend fusion for chronic low back pain in the absence of stenosis and spondylolisthesis, and this treatment for this condition remains “under study.” It appears that workers’ compensation populations require particular scrutiny when being considered for fusion for chronic low back pain, as there is evidence of poorer outcomes in subgroups of patients who were receiving compensation or involved in litigation. ([Fritzell-Spine, 2001](#)) ([Harris-JAMA, 2005](#)) ([Maghout-Juratli, 2006](#)) ([Atlas, 2006](#)) Despite poorer outcomes in workers’ compensation patients, utilization is much higher in this population than in group health. ([Texas, 2001](#)) ([NCCI, 2006](#)) Presurgical biopsychosocial variables predict patient outcomes from lumbar fusion, which may help improve patient selection. Workers’ compensation status, smoking, depression, and litigation were the most consistent presurgical predictors of poorer patient outcomes. Other predictors of poor results were number of prior low back operations, low household income, and older age. ([DeBerard-Spine, 2001](#)) ([DeBerard, 2003](#)) ([Devo, 2005](#)) ([LaCaille, 2005](#)) ([Trief-Spine, 2006](#)) Obesity and litigation in workers’ compensation cases predict high costs associated with interbody cage lumbar fusion. ([LaCaille, 2007](#))

Pre-Operative Surgical Indications Recommended: Pre-operative clinical surgical indications for spinal fusion should include all of the following: (1) All pain generators are identified and treated; & (2) All physical medicine and manual therapy interventions are completed; & (3) X-rays demonstrating spinal instability and/or myelogram, CT-myelogram, or discography (see [discography criteria](#)) & MRI demonstrating disc pathology; & (4) Spine pathology limited to two levels; & (5) [Psychosocial screen](#) with confounding issues addressed. (6) For any potential fusion surgery, it is recommended that the injured worker refrain from smoking for at least six weeks prior to surgery and during the period of fusion healing. ([Colorado, 2001](#)) ([BlueCross BlueShield, 2002](#))

The criteria as outlined above have not been met. The pain generators in this injured individual have not been clearly defined. The request is for a three level procedure and there is no evidence of spinal instability or radiculopathy. Psychosocial issues have not been addressed and the injured individual is a obese smoker. According to the recently released AANS/NASS Guidelines, lumbar fusion is recommended as a treatment for carefully selected patients with disabling low back pain due to one- or two-level degenerative disc disease after failure of an appropriate period of conservative care. This recommendation was based on one study that contained numerous flaws, including a lack of standardization of conservative care in the control group. At the time of the two-year follow up it appeared that pain had significantly increased in the surgical group from year one to two. Follow-up post study is still pending publication. In addition, there remains no direction regarding how to define the “carefully selected patient.” ([Resnick, 2005](#)) ([Fritzell, 2004](#))



managing care. managing claims.

88 Black Falcon Avenue, Suite 353 Boston, MA 02210 (T) 800-227-1464 (F) 617-375-7777

A DESCRIPTION AND THE SOURCE OF THE SCREENING CRITERIA OR OTHER CLINICAL BASIS USED TO MAKE THE DECISION:

- **ACOEM- AMERICAN COLLEGE OF OCCUPATIONAL & ENVIRONMENTAL MEDICINE UM KNOWLEDGEBASE**
- **ODG- OFFICIAL DISABILITY GUIDELINES & TREATMENT GUIDELINES**