

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective January 1, 2002 and Commission Rule 133.305 and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent.

The Medical Review Division has reviewed the IRO decision. The IRO has not clearly determined the prevailing party over the medical necessity issues. Therefore, in accordance with §133.308(q)(2)(C), the Commission shall determine the allowable fees for the health care in dispute, and the party who prevailed as to the majority of the fees for the disputed health care is the prevailing party.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

Based on review of the disputed issues within the request, the Medical Review Division has determined that medical necessity was not the only issue to be resolved. The disputed services that were denied for unnecessary medical were found to be medically necessary. There is still an unresolved fee dispute.

Per Rule 133.307 (g) (3), the Division notified the parties and required the requestor to submit two copies of additional documentation relevant to the fee dispute. The 14-day Notice was mailed on 12-16-02. Per Commission Rule 102.5(d), the date received is deemed to be five days from the date mailed. The requestor did not respond. The carrier did not respond to the 14-day letter.

| DOS | CPT CODE | Billed | Paid | EOB Denial Code | MARS (Maximum Allowable Reimbursement) | Reference | Rationale |
|----------------------------|----------------------|--------------------------|---------|--------------------|---|-------------------------|---|
| 4-30-01 thru 5-11-01 | 97545-WH 97546-WH | \$2,099.20 | \$ 0.00 | U | \$64.00/hr minus 20% for Non CARF | IRO Decision | IRO reversed carrier's adverse decision. Recommend reimbursement of \$2,099.20 for work hardening program. |
| 5-16-01 thru 6-8-01 | 97545-WH 97546-WH | \$2,457.60 | \$ 0.00 | U | | | IRO reversed carrier's adverse decision. Recommend reimbursement of \$2,457.60 for work hardening program. |
| 5-4-01 6-8-01 | 97750-FC | \$200.00 \$200.00 | \$ 0.00 | No EOB N | \$100.00/hr | 96 MFG Med. GR I E 2 | Since no EOB provided, this charge will be reviewed per the MFG. No documentation submitted to support services rendered. No reimbursement recommended. |

| DOS | CPT CODE | Billed | Paid | EOB Denial Code | MARS (Maximum Allowable Reimbursement) | Reference | Rationale |
|---------|----------------------|----------------------|---------|-----------------|--|--------------------------------|--|
| 5-7-01 | 97010 | \$ 20.00 | \$ 0.00 | F | \$ 11.00 | 96 MFG Med. GR; CPT descriptor | Carrier's denial states this is global. Physical medicine modalities are included in a work hardening program. No reimbursement recommended. |
| 6-13-01 | 97545-WH 97546-WH | \$102.40 \$256.00 | \$ 0.00 | N | \$64.00/hr minus 20% for Non CARF | 96 MFG Med. GR II E | No documentation submitted to support services rendered. No reimbursement recommended. |
| 6-14-01 | 97545-WH 97546-WH | \$102.40 \$256.00 | \$ 0.00 | F | \$64.00/hr minus 20% for Non CARF | 96 MFG Med. GR II E | Carrier's denial states work hardening requires a minimum of four hours per day for the first week. No documentation submitted to support services rendered. No reimbursement recommended. |
| 6-15-01 | 99212 | \$ 40.00 | \$ 0.00 | No EOB | \$ 32.00 | 96 MFG E/M GR VI B | Since no EOB provided, this charge will be reviewed per the MFG. No documentation submitted to support services rendered. No reimbursement recommended. |
| TOTAL | | \$5,733.60 | \$ 0.00 | | | | The requestor is entitled to reimbursement of \$4,556.80. |

The total amount recommended for reimbursement (\$4,556.80) represents a majority of the medical fees of the disputed healthcare; therefore, the requestor prevailed in the IRO decision. Consequently, the requestor is owed a refund of the paid IRO fee of \$460.00.

The above Findings and Decision are hereby issued this 7th day of February 2003.

Dee Z. Torres
Medical Dispute Resolution Officer
Medical Review Division

Pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay \$5,016.80 plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this Order. This Order is applicable to dates of service 4-30-01 through 6-15-01 in this dispute.

This Order is hereby issued this 7th day of February 2003.

Roy Lewis, Supervisor
Medical Dispute Resolution
Medical Review Division

RL/dzt

November 22, 2002

David Martinez
TWCC Medical Dispute Resolution
4000 IH 35 South, MS 48
Austin, TX 78704

MDR Tracking #: M5-02-2485-01
IRO #: 5251

___ has been certified by the Texas Department of Insurance as an Independent Review Organization. The Texas Worker's Compensation Commission has assigned this case to ___ for independent review in accordance with TWCC Rule 133.308 which allows for medical dispute resolution by an IRO.

___ has performed an independent review of the care rendered to determine if the adverse determination was appropriate. In performing this review, all relevant medical records and documentation utilized to make the adverse determination, along with any documentation and written information submitted, was reviewed.

The independent review was performed by a matched peer with the treating doctor. This case was reviewed by a licensed Doctor of Chiropractic. The ___ health care professional has signed a certification statement stating that no known conflicts of interest exist between the reviewer and any of the treating doctors or providers or any of the doctors or providers who reviewed the case for a determination prior to the referral to ___ for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to the dispute.

CLINICAL HISTORY

___ was injured while at work on ___. She injured her low back while lifting tubs of mail while working for ___.

An MRI of lumbar spine was performed on 3/21/01. It was read as containing evidence of severe thoracolumbar spondylosis demonstrated at the T11-12 level with loss of disc space height, disc desiccation and an approximately 3 mm broad-based, soft-tissue disc protrusion at the level. At L4-5, grade 1 spondylosis as well as disc desiccation and

approximately 3 mm soft tissue disc protrusion was demonstrated. Facetal arthropathy is also demonstrated at this level. An approximately 2 mm annular bulge is demonstrated at L3-4 and L5-S1. Facet arthropathy is demonstrated at these levels.

An FCE was performed on 5/4/01. ___ clinical impression included 847.3, 847.2 and 847.0 (Sprain/strain of the neck, lumbar and sacrum). He stated that ___ was unable to give accurate test results due to extreme pain and several of the tests as well as the ROM tests were incomplete. Work simulation testing indicated that she could not even lift only a basket containing 10 lbs. The standard NIOSH lifting testing revealing an average of 7.3 to 13.4 lbs. was exerted at varying postures during the lifts. One of the lifts contained a 34% coefficient of variation indicating inconsistent effort. Oswestry outcome assessment testing was graded at 62%. Her physical demand capacity was sub-sedentary but her required physical demand capacity was a medium. No job description was available for review, therefore it was difficult to determine the required PDC.

___, a psychologist, evaluated ___ on 5/11/01. ___ noted, *"She did report difficulty getting to and staying asleep, headaches, numbness in fingers, depression, decreased sexual activity, change in memory and concentration, change in self esteem, problems making decisions, and change in energy level."* His clinical impression included Axis I and II deferred at this time. He recommended work hardening and group psychotherapy to learn coping skills and personal adjustment to injury and rehabilitation (every other week while in work hardening).

___ performed group therapy on 5/11/01 as part of the work hardening program. The topic of the group was drug use of pain management.

___, the carrier's selected RME and board certified orthopaedic surgeon, evaluated ___ on 5/31/01. He opined that she was at MMI on 5/31/01 and assigned her an 8% whole person impairment rating based upon loss of range of motion. ___ noted, *"At this time I do not recommend any further treatment, diagnostic tests, and/or prescriptions, as I do not feel that it would change her condition or complaints."* ___ submitted a TWCC-73 to return to light duty.

An FCE was performed on 6/4/02. ___ clinical impression included 847.3, 847.2 and 847.0 (Sprain/strain of the neck, lumbar and sacrum). He recommended that ___ continue two additional weeks of work hardening to help regain her strength and ROM and also lower her pain levels. Lumbar ROM reduced in the flexion and extension planes of motion. The lateral flexion planes were not performed. No validity criteria were listed relative this measurement. This work simulation testing showed an improvement of pain complaints from a previous perceived 10 to a perceived 8. However no improvement in weight was demonstrated, though she was able to finish more of the testing this time. The standard NIOSH lifting testing displayed ability from 6.6 lbs. at the squat (leg) lift to a maximum of 27.9 lbs. at the high near lift. The coefficients of variation for the trials were all within valid limits. The Oswestry outcome testing was graded at a 56%. This is a decrease of 6% as compared to the last FCE results. The current physical demand level of

___ did not change. She still is only functioning at a sub-sedentary to sedentary demand level. This is not consistent with her required minimum physical demand capacity.

___ performed a peer review on 6/17/01. She notes:

“Given the ‘extreme pain’ symptoms noted in the records, a work hardening program was not considered to be an appropriate treatment regimen at this time. It should also be noted that this individual participated in a work hardening program and despite the work hardening program her physical demand capacity level did not change from one week to another week. She continued to remain at the sedentary physical demand capacity.”

___ also noted that the program does not meet TWCC guidelines or the Medical Fee Guidelines for a work hardening program. The program was not more than a simple regimen of occupational therapy with most of the activities focused on the upper extremity functions. The program did not appear to be interdisciplinary in nature.

___ submitted a pre-authorization request for two additional weeks of work hardening on 6/19/01. It is noted that “The patient has made substantial progress however; she still has some functional limitations.”

Pre-authorization for work hardening was given on 6/22/01 for 10 units of 97546 from 622/01 through 7/22-01.

___ submitted an appeal letter for non-payment of the first six weeks of work hardening on 10/23/01.

___ position statement was dated 4/17/02. He notes:

“The patient has been placed into a work hardening program because she did not demonstrate the functional requirements of her job through the initial and intermediate phases of care. The documentation provided demonstrates that the treatment was adequately documented for substantive and continued improvement.

It should also be noted that at the conclusion of the initial six weeks of work hardening, pre-authorization was submitted on June 19, 2001 for an extension of the work hardening program, as the patient had made excellent improvement in the program. On June 22, 2001, I spoke with ___ who was the carrier review doctor. ___ agreed that the additional two weeks of work hardening was medically necessary and preauthorized the services as such. (We have received payment for the last two weeks of work hardening.) However, the carrier maintains that the first six weeks of work hardening were not medically necessary, which does not make sense.

This patient was reviewed by ___, on June 6, 2001, for the purpose of an Independent Medical Examination requested by the insurance carrier. On page 2

of ___'s report, he states, "She (___) feels that the treatment (work hardening) is helping."

DISPUTED SERVICES

Under dispute are office visits and work hardening rendered from 4/30/01 through 6/15/01 for ___.

DECISION

The reviewer disagrees with the prior adverse determination.

BASIS FOR THE DECISION

No job description was submitted for review, and therefore it is difficult for the reviewer to determine the required physical demand capacity. According to the FCE's, ___ is required to function at a medium physical demand capacity. The first FCE displayed that she could only function at sub-sedentary PDC. The second FCE displayed that she could then function at a sedentary PDC. A small amount of improvement is noted.

___ submitted a pre-authorization request for an additional two weeks of work hardening. This was pre-authorized by the carrier. If the last two weeks of work hardening were medically necessary, then it must be assumed that the first six weeks of work hardening must also have been medically necessary. The carrier's representative, ___, handled this decision.

The Texas Medical Fee Guidelines allow for an injured worker to have access to her treating physician. The office visits were therefore appropriate between the dates of 4/30/01 and 6/15/01.

The initial FCE revealed decreased physical demand capacity. As stated in the Texas Medical Fee Guidelines:

"Entrance/admission criteria shall enable the program to admit: persons who are likely to benefit from the program; persons whose current levels of functioning due to illness or injury interfered with their ability to carry out specific tasks required in the workplace; persons whose medical, psychological, or other conditions do not prohibit participation in the program; and persons who are capable of attaining specific employment upon completion of the program.."

Further criteria listed in the spinal treatment guidelines were used to determine medical necessity of work hardening:

"The tertiary phase of care is interdisciplinary, individualized, coordinated and intensive. It is designed for the injured employee who demonstrates physical and

psychological changes consistent with a chronic condition. Psychosocial issues such as substance abuse, affective disorders and other psychological disorders may be present. There is documented inhibition of physical function evidenced by pain sensitivity, and non-organic signs such as fear which produce a physical inhibition or limited response to reactivation treatment. This phase of care may also be indicated for the injured employee whose physical capacity to work still does not meet the current or expected job requirements after adequate treatment, thereby causing an inability to return to full duty. This situation would be evidenced by an excessive transition period of light duty or significant episodes of lost work due to a need for continued medical treatment. This phase of care is also indicated for those injured employees who cannot tolerate either initial or intermediate phases or care.”

___ benefited somewhat from the program as demonstrated in the last FCE that was performed. She progressed from a sub-sedentary physical demand capacity to a sedentary physical demand capacity in only eight weeks time. She was unable to perform at the physical demand level required by his employer prior to the entrance of the work hardening program. Psychological records indicate that depressive symptoms were present, but no specific diagnosis or clinical impression was provided. The documentation of the work hardening program was performed as prescribed within the parameters of CARF Guidelines or TWCC Guidelines.

As an officer of ___, I certify that there is no known conflict between the reviewer, ___ and/or any officer/employee of the IRO with any person or entity that is a party to the dispute.

___ is forwarding this finding by US Postal Service to the TWCC.

Sincerely,