

MDR Tracking Number: M5-02-2762-01

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 request for medical dispute resolution was received in the medical review division on 1-29-02. Therefore, per Rule 133.305(d), dates of service prior to 1-29-01 were submitted untimely per referenced rule.

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.

The IRO review found the following services were medically necessary:

DOS	CPT CODE	Billed	Paid	EOB Denial Code	MAR\$ (Maximum Allowable Reimbursement)	Reference	Rationale
1-29-01 1-30-01 1-31-01 2-6-01 2-7-01 2-12-01	97110	\$105.00	\$0.00	U	\$35.00/15 min	CPT Code Description	Reimbursement per MFG of 6 X \$105.00 = \$630.00
1-29-01 1-30-01 1-31-01 2-6-01 2-7-01 2-12-01	99213MP	\$48.00	\$0.00	U	\$48.00	CPT Code Description	Reimbursement per MFG of 6 X \$48.00 = \$288.00
1-31-01 3-9-01	95851	\$144.00	\$0.00	U	\$36.00 ea.	CPT Code Description	Reimbursement per MFG of 2 X \$144.00 = \$288.00
3-13-01	97750FC	\$00.00	\$0.00	U	\$100.00/hr	Medicine GR (I)(E)(2)(a)	Reimbursement per MFG of 5 X \$100.00 = \$500.00
3-19-01 3-20-01 3-21-01 3-22-01 3-23-01 3-26-01 3-27-01 3-28-01 3-29-01 3-30-01 4-2-01 4-3-01 4-4-01 4-5-01 4-6-01 4-9-01 4-17-01	97545WH	\$102.40	\$0.00	U	\$51.20 /hr X2 = \$102.40	Medicine GR (II)(E)(C)	Reimbursement per MFG of 23 X \$102.40 = \$2355.20

4-18-01 4-19-01 4-20-01 4-24-01 4-25-01 4-26-01							
3-19-01	97546WH	\$204.80	\$0.00	U	\$51.20 /hr	Medicine GR (II)(E)(C)	Reimbursement per MFG of 1 X \$204.80 = \$204.80
3-20-01 3-21-01 3-22-01 3-23-01 3-26-01 3-27-01 3-29-01 3-30-01 4-2-01 4-3-01 4-4-01 4-5-01 4-18-01 4-19-01 4-25-01	97546WH	\$256.00	\$0.00	U	\$51.20 /hr	Medicine GR (II)(E)(C)	Reimbursement per MFG of 15 X \$256.00 = \$3840.00
3-28-01 4-6-01 4-9-01 4-17-01 4-26-01	97546WH	\$102.40	\$0.00	U	\$51.20 /hr	Medicine GR (II)(E)(C)	Reimbursement per MFG of 5 X \$102.40 = \$512.00
4-20-01 4-24-01	97546WH	\$153.60	\$0.00	U	\$51.20 /hr	Medicine GR (II)(E)(C)	Reimbursement per MFG of 2 X \$153.60 = \$307.20
TOTAL		\$8925.20					The requestor is entitled to reimbursement of <b>\$8925.20</b> .

The IRO determined the following services were not medically necessary: manual traction coded 97122 on 1-29-01, 1-30-01, 2-7-01, and 2-21-01; joint mobilization coded 97265 on 1-29-01, 1-31-01, 2-6-01, 2-7-01, and 2-12-01; TENS unit purchased on 2-6-01; and chiropractic services rendered after 4-26-01.

Consequently, the commission has determined that **the requestor prevailed** on the majority of the medical fees. Therefore, upon receipt of this Order and in accordance with §133.308(q)(9), the Commission hereby orders the respondent and non-prevailing party to **refund the requestor \$460.00** for the paid IRO fee.

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.

This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division.

On February 14, 2003, the Medical Review Division submitted a Notice to requestor to submit additional documentation necessary to support the charges and to challenge the reasons the respondent had denied reimbursement within 14 days of the requestor's receipt of the Notice.

The following table identifies the disputed services and Medical Review Division's rationale:

DOS	CPT CODE	Billed	Paid	EOB Denial Code	MAR\$ (Maximum Allowable Reimbursement)	Reference	Rationale
4-27-01 5-7-01 5-8-01 5-9-01 5-10-01 5-15-01 5-16-01 5-17-01	97545WH	\$102.40	\$0.00	U	\$51.20/hr for non-CARF program	Rule 133.301(a)	Since preauthorization was obtained on 5-1-01 for the additional two weeks of work hardening program, the insurance carrier is in violation of Rule 133.301(a) to deny reimbursement based upon medical necessity. Therefore, the requestor is entitled to reimbursement for the work hardening program per <i>Medical Fee Guideline</i> . 8 X \$102.40 = \$819.20.
4-27-01	97546WH	\$204.80	\$0.00	U	\$51.20/hr for non-CARF program	Rule 133.301(a)	Preauthorization approval was obtained see above. Reimbursement of \$204.80 is recommended.
5-7-01 5-8-01 5-10-01 5-15-01 5-16-01 5-17-01	97546WH	\$256.00	\$0.00	U	\$51.20/hr for non-CARF program	Rule 133.301(a)	As stated above regarding preauthorization approval. Reimbursement of 6 X \$256.00 = \$1536.00
5-9-01	97546WH	\$153.60	\$0.00	U	\$51.20/hr for non-CARF program	Rule 133.301(a)	As stated above regarding preauthorization approval. Reimbursement of \$153.60 is recommended.
2-6-01	E0730NU	\$499.00	\$0.00	U	DOP	Rule 134.600 Rule 133.301(a)	Preauthorization was obtained for TENS unit on 2-5-01 for 1 day and 1 week; Preauthorization was not obtained for the purchase of TENS unit. Reimbursement is not recommended.
TOTAL		\$3212.60					The requestor is entitled to reimbursement of <b>\$2713.60</b> .

This Decision is hereby issued this 1<sup>st</sup> day of July 2003.

Elizabeth Pickle  
Medical Dispute Resolution Officer  
Medical Review Division

**ORDER.**

On this basis, and pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay \$11,638.80 for the unpaid medical fees in accordance with the fair and reasonable rate as set forth in Commission Rule 133.1(a)(8) 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 1-29-01 through 6-19-01 in this dispute.

The respondent is prohibited from asserting additional denial reasons relative to this Decision upon issuing payment to the requestor in accordance with this Order (Rule 133.307(j)(2)).

This Order is hereby issued this 1<sup>st</sup> day of July 2003.

Roy Lewis  
Medical Dispute Resolution Supervisor  
Medical Review Division

NOTICE OF INDEPENDENT REVIEW DECISION

January 29, 2003

Rosalinda Lopez  
Program Administrator  
Medical Review Division  
Texas Workers Compensation Commission  
4000 South IH-35, MS 48  
Austin, TX 78704-7491

RE: MDR Tracking #: M5-02-2762-01  
IRO Certificate #: 4326

\_\_\_ has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Texas Workers' Compensation Commission (TWCC) has assigned the above referenced 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 rendered care to determine if the adverse determination was appropriate. In performing this review, relevant medical records, any documents utilized by the parties referenced above in making the adverse determination, and any documentation and written information submitted in support of the appeal was reviewed.

The independent review was performed by a matched peer with the treating health care professional. This case was reviewed by a health care professional licensed in chiropractic care. \_\_\_ health care professional has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians 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 this case.

Clinical History

This 37 year old female sustained a work-related injury on \_\_\_ when she slipped on a wet floor and her left foot fell into and twisted in the floor drain. She injured both knees, her right hand and right thigh. An MRI of the lumbar spine revealed a disc herniation at L4-5. Nerve conduction studies revealed abnormal lower extremity dematomal/somatosensory study as well as an abnormal electromyography at L-4. The patient was under the care of a chiropractor.

### Requested Service(s)

Chiropractic services from 01/29/01 through 06/19/01

### Decision

It is determined that the following services were medically necessary to treat this patient's condition:

- Spinal manipulation and therapeutic exercises on 01/29/01, 01/30/01, 01/31/01, 02/06/01, 02/07/01, and 02/12/01.
- Range of motion assessment conducted on 01/31/01 and 03/09/01.
- Functional capacity evaluation (FCE) conducted on 03/13/01.
- Work hardening activities from 03/19/01 to 04/26/01.

It is determined that the following services were not medically necessary to treat this patient's condition:

- The use of manual traction (97122) on 01/29/01, 01/30/01, 01/31/01, 02/07/01, and 02/21/01.
- The use of joint mobilization (97265) on 01/29/01, 01/31/01, 02/06/01, 02/07/01, and 02/12/01.
- TENS unit purchased on 02/06/01.
- Work hardening sessions after 04/26/01.
- Chiropractic services rendered after 04/26/01.

### Rationale/Basis for Decision

The use of manual traction (97122) and joint mobilization (97265) were not medically necessary on 01/29/01, 01/30/01, 01/31/01, 02/07/01, and 02/21/01 because the records reviewed demonstrated that the patient also received spinal manipulation on those same dates of services. The simultaneous use of joint mobilization and manual traction in conjunction with spinal manipulation represents duplication of services. There was no substantive evidence in the record that the patient suffered from any disc-related or radicular complaints that would necessitate the use of multiple sessions of manual traction. The doctor indicated that the patient had EMG/NCV and MRI evidence of a disc herniation, however, the medical record documentation demonstrated a diffusely bulging disc (2mm) at L4-5 and no evidence of nerve root impingement at any level. The nerve conduction velocity of the lower extremities were normal and the EMG study indicated the presence of occasional positive sharp waves in the right vastus lateralis (quadriceps muscle), which was innervated by L2-L4. No evidence of nerve root compression was identified in the MRI study that would corroborate the doctor's diagnosis of disc herniation with radiculopathy.

The patient also had dermatomal/somatosensory evoked potential studies performed on 01/15/01 that revealed findings suggestive of a possible L4 or L5 radiculopathy on the right. Again, no definitive evidence was produced on the MRI study supporting the radiculopathy diagnosis. Additionally, the American Academy of Neurology's Therapeutics and Technology Assessment Subcommittee indicated that, at the present time there is no evidence that dermatomal somatosensory evoked potential (DSEP) findings provide any reliable information beyond the routine clinical examination and there is no evidence to suggest that DSEPs are superior to already established neurophysiological techniques. It was their conclusion that the current evidence supporting the use of DSEPs is Type D (Negative recommendation based on inconclusive or conflicting Class II evidence. Class II evidence is provided by one or more clinical studies of a restricted population using a reference test in a blinded evaluation of diagnostic accuracy) as referenced in American Academy of Neurology's Therapeutics and Technology Assessment Subcommittee, "Assessment: Dermatomal somatosensory evoked potentials", Neurology; 49:1127-1130,1997).

As spinal manipulation necessitates the use of traction and joint mobilization in performance of the procedure, the use of manual traction and joint mobilization in conjunction with spinal manipulation was not medically necessary.

The TENS unit purchased on 02/06/01 was not medically necessary. The TENS unit prescribed was not consistent with the diagnoses. Deyo et al. examined the effectiveness of transcutaneous electrical nerve stimulation (TENS), a program of stretching exercises, or a combination of both for low back pain. Patients with chronic back pain (median duration, 4.1 years) were randomly assigned to receive daily treatment with TENS, sham TENS, TENS plus a program of exercises, or sham TENS plus exercises. After one month no clinically or

statistically significant treatment effect of TENS was found on any of 11 indicators of outcome measuring pain, function, and back flexion; there was no interactive effect of TENS with exercise. By contrast, after one month patients in the exercise groups had significant improvement in self-rated pain scores, reduction in the frequency of pain, and greater levels of activity as compared with patients in the groups that did not exercise. The authors concluded that for patients with chronic low back pain, treatment with TENS is no more effective with a placebo, and TENS adds no apparent benefit to that of exercise alone as referenced in Deyo RA, Walsh NE, Martin DC, Schoenfeld LS, and Ramamurthy S., "A controlled trial of transcutaneous electrical nerve stimulation (TENS) and exercise for chronic low back pain. New England Journal of Medicine, 1990 Jun 7;322(23):1627-34.

Milne et al. conducted a systematic review to determine the efficacy of TENS in the treatment of chronic low back pain (LBP). The study examined five trials comparing active TENS and placebo sham-TENS. There were no statistically significant differences between the active TENS group when compared to the placebo TENS group for any outcome measures. Subgroup analysis performed on TENS application and methodology quality did not demonstrate a significant statistical difference. The reviewers concluded that the results of the meta-analysis presented no evidence to support the use of TENS in the treatment of low back pain as referenced in Milne S, Welch V, Brosseau L, Sagimur M, Shea B, Tugwell P, and Wells G, "Transcutaneous electrical nerve stimulation (TENS) for chronic low back pain (Cochrane Review)." Cochrane Database Syst Rev 2001;2:CD003008.

The use of the work hardening program from 03/19/01 to 04/26/01 was medically necessary, as the medical records documented deficits in the patient's functional abilities that were amenable to work hardening. Bressiner et al. conducted a study to identify factors that predict successful work hardening outcomes. Two measures of success were used: return to work and case closure (i.e., resolution of medical treatment issues). Persons with spine-related injuries who completed a work hardening program were the subjects. The authors found that three months after program completion, 68% of the subjects had returned to work and 86% had successful case closure. Twelve months after program completion, 77% of the subjects had returned to work and 90% had successful case closure. The more treatment subjects received prior to entering the program, the less likely they were to be working or achieving case closure following treatment. Subjects' work status and initial time off of work were factors predicting early return to work, but not 12 months after program completion as referenced in Beissner KL, Saunders RL, McManis BG, "Factors related to successful work hardening outcomes", Physical Therapy, 1996 Nov;76(11):1188-201.

There are no records for dates of service after 04/26/01 submitted in support of the treatments rendered after 04/26/01. Therefore, with no supportive documentation of the medical necessity of care after 04/26/01, all work hardening treatment after 04/26/01 were not medically necessary.

The medical records documented that the patient also received chiropractic treatments after 04/26/01. As no records were submitted for review for dates of service after 04/26/01, the services were not medically necessary.

Therefore, it is determined that the following services were medically necessary to treat this patient's condition:

- Spinal manipulation and therapeutic exercises on 01/29/01, 01/30/01, 01/31/01, 02/06/01, 02/07/01, and 02/12/01.
- Range of motion assessment conducted on 01/31/01 and 03/09/01.
- Functional capacity evaluation (FCE) conducted on 03/13/01.
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It is determined that the following services were not medically necessary to treat this patient's condition:

- The use of manual traction (97122) on 1/29/01, 01/30/01, 01/31/01, 02/07/01, and 02/21/01.
- The use of joint mobilization (97265) on 01/29/01, 01/31/01, 02/06/01, 02/07/01, and 02/12/01.
- TENS unit purchased on 02/06/01.
- Work hardening sessions after 04/26/01.
- Chiropractic services rendered after 04/26/01.

Sincerely,