

**THIS DECISION HAS BEEN APPEALED. THE FOLLOWING
IS THE RELATED SOAH DECISION NUMBER:
SOAH DOCKET NO. 453-04-3602.M5**

MDR Tracking Number: M5-04-0681-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution - General and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division (Division) assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. The dispute was received on November 3, 2003.

The Division has reviewed the enclosed IRO decision and determined that **the requestor did not prevail** on the issues of medical necessity. The IRO agrees with the previous determination that the ultrasound, office visits with manipulation, electric stimulation, manual traction, hot/cold packs, mechanical traction, neuromuscular re-education, myofascial release, iontophoresis, required medical reports, electric stimulation of the unattended and attended variety, prolonged physician services, somatosensory testing, H-reflex study, electrodiagnostic testing, NCV testing and diagnostic spinal ultrasound were not medically necessary. Therefore, the requestor is not entitled to reimbursement of the IRO fee.

Based on review of the disputed issues within the request, the Division has determined that fees were the only fees involved in the medical dispute to be resolved. As the treatments listed above were not found to be medically necessary, reimbursement for dates of service from 11-04-02 to 08-25-03 is denied and the Division declines to issue an Order in this dispute.

This Decision is hereby issued this 23rd day of January 2004.

Patricia Rodriguez
Medical Dispute Resolution Officer
Medical Review Division

PR/pr

Enclosure: IRO decision

NOTICE OF INDEPENDENT REVIEW DECISION - AMENDED

Date: January 21, 2004
RE: MDR Tracking #: M5-04-0681-01
IRO Certificate #: 5242

___ 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 proposed 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 Chiropractic reviewer who has a temporary ADL exemption. The Chiropractic reviewer 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

It appears the claimant was carrying a sheet of plate glass across a room and this reportedly caused an immediate onset of neck pain that radiated into both shoulders and he also complained of low back pain that radiated into both legs. The claimant has had extensive chiropractic care beginning on or about 4/26/02 to the tune of 27 visits through 8/1/02. The claimant was involved in a motor vehicle accident back on ___ which reportedly caused him to have a road rash as well as head, neck and low back injuries. The fact that the claimant had road rash leads me to believe that this may have been a motorcycle accident. The claimant also had a prior workers' compensation injury back on ___ which reportedly consisted of a lumbar sprain/strain injury. Diagnostic imaging of the cervical and lumbar spines revealed significant pre-existing degenerative disc disease and degenerative joint disease. The claimant underwent bilateral shoulder MRIs which revealed pre-existing degenerative changes as well. The claimant has seen ___ and was considering surgical options as of 8/21/02; however, ___ wanted the claimant to undergo another round of cervical spine and shoulder physical therapy prior to entertaining any options of surgery. The claimant saw ___ for Electrodiagnostic work up on 5/10/02 and this revealed right sided L5 radiculopathy, left sided S1 radiculopathy and left sided C5 radiculopathy. A lumbar epidural steroid injection was performed on 6/18/02. A chiropractic re-evaluation of 7/16/02 revealed the claimant to essentially be the same. His self perceived disability scores were still in the severe category. The claimant appears to have undergone an epidural steroid injection at the cervical spine on 7/16/02 and he may have undergone a cervical epidural steroid injection earlier in July 2002 as well. A cervical spine myelogram/post myelogram CT scan was performed on 7/24/02. Another lumbar epidural steroid injection was approved on 8/1/02. A chiropractic re-evaluation of 8/21/02 revealed the claimant to still be essentially unchanged. The claimant's cervical and lumbar ranges of motion were also noted to be unchanged, or worse, from 4/24/02 through 9/10/02. A letter from the treating chiropractor was reviewed which gave a rationale for continued treatment. This letter was fundamentally wrong. It was felt by the treating chiropractor that a registered nurse had performed a peer review when indeed it was ___ who performed a peer review back in October 2002. ___ is a board certified chiropractic neurologist as well as a lecturer, professor and treating physician for the last 20 years. As of November and December 2002 the claimant continued to be subjectively worse or the same. His pain levels remained very high and this pattern continued well through 2003. The claimant continued to be off of all forms of work. A repeat electrodiagnostic study of 3/20/03, in which the tests were performed in Texas and interpreted in Florida, revealed only the presence of right sided

carpal tunnel syndrome. There were some alleged dermatomal sensory evoked potential evidence of C6, C7 and C8 involvement; however, the side of the involvement was not stated. An internet search did reveal that the physician who interpreted the testing was located in Florida. A completely unnecessary diagnostic spinal ultrasound was performed on 3/20/03 and this revealed the bilateral presence of facet inflammation throughout the entire cervical spine. This finding would in no way contribute to or enhance the treatment plan or prognosis of the claimant. In fact, these findings would be consistent with the already pre-existing degenerative changes in the claimant's cervical spine. The claimant underwent a surgical consultation with ___ on 11/25/02 and the claimant was stated to still be very symptomatic and his pain levels were rated at an 8/10 and sometimes went higher. At this time it was stated that 90% of the claimant's pain was in his neck. It was stated the claimant had no past medical history; however, this obvious false. ___ overall impressions were that the C3/4 disc protrusion was the likely culprit and cervical epidural steroid injections and a home based exercise program were recommended. It was felt by ___ that if no improvement was appreciated after these recommendations, then surgical consideration would be appropriate. A designated doctor evaluation report of 1/17/03 was reviewed and it was stated that the physical therapy and chiropractic care was only helpful for 1-2 days. The claimant was felt to be at maximum medical improvement with 10% whole body impairment rating and there was no clinical evidence of radiculopathy at this time. It was also stated that a TENS unit was not effective and it was further stated that the epidural steroid injections were also not effective. A physical performance evaluation report of 3/21/03 revealed the claimant to be at the sedentary to light duty level only. The claimant's cervical range of motion at this time was essentially half of normal in all ranges. There is a list of activities which the claimant was either unable to do or was very restricted and I will refer to this list later in the report. This list was dated 3/21/03. The claimant saw ___ on 10/24/03 and this report was carefully reviewed. It was stated that the cervical and lumbar epidural steroid injections were helpful; however, this is contrary to what the rest of the documentation including the designated doctor report stated. It was also stated that every time the claimant was progressed to an active exercise program, he was unable to perform due to increased pain. The claimant's current pain levels at the time of the visit with ___ in October 2003 were listed to be 10/10 which in and of itself is suspicious. The claimant stated that his pain was made better by lying down, pain pills and changing positions. The claimant was also unable to lift anything and he reclined for 8 hours per day. There was no mention of whether or not the chiropractic care was helping the claimant. ___ exam revealed decreased sensation and strength in the left upper extremity; however, there was no evidence of radiculopathy in the lumbar spine. The claimant appeared to be very somatic. There was no recommendation made for further chiropractic care; however, a physical capacity test was recommended with a consultation with ___, an orthopedist. A follow up on 11/5/03 with ___ revealed the claimant to be very depressed and dependent on Hydrocodone and Soma. The claimant was reportedly scheduled to see ___. I believe ___ is involved in a chronic pain management type of program and it appears that ___ is recommending a program that resembled work conditioning or chronic pain management.

Requested Service(s)

The medical necessity of the outpatient services including ultrasound, office visits with manipulation, electric stimulation, manual traction, hot/cold packs, mechanical traction, neuromuscular re-education, myofascial release, iontophoresis, required medical reports, electric stimulation of the unattended and attended variety, prolonged physician services, somatosensory

testing, H-reflex study, electrodiagnostic testing, NCV testing and diagnostic spinal ultrasound which were rendered from 11/4/02 through 8/25/03.

Decision

I agree with the insurance carrier and find that none of the services in dispute were medically necessary.

Rationale/Basis for Decision

The services as billed were largely passive in nature and the documentation revealed that the claimant already received about 27 visits of passive chiropractic care through 8/1/02. The documentation also revealed that the claimant had failed repeated attempts at active care due to his ongoing pain. This pattern is still ongoing as of 18 months post injury and was made quite evident in ___ reports of October and November 2003. This is also testament to the fact of the non-efficacy of the chiropractic care to date. A claimant's non-responsiveness to repeated and prolonged over utilized passive chiropractic care does not justify further passive care. The repeat electrodiagnostic studies and spinal diagnostic ultrasound studies which were performed in Texas and interpreted in Florida were inappropriate. The electrodiagnostic studies of the upper extremity only showed the presence of non-related right sided carpal tunnel syndrome. The American Association of Electrodiagnostic Medicine has stated in a position paper that the practice of administering electrodiagnostic tests in one location and interpreting them in another state is inappropriate and not recommended. The diagnostic spinal ultrasound studies also provide no useful clinical information beyond that of a regular clinical exam. (There is insufficient evidence in the peer-reviewed medical literature establishing the value of diagnostic spinal ultrasound. Therefore, the AIUM states that, at this time, the use of diagnostic spinal ultrasound (for study of facet joints and capsules, nerve and fascial edema, and other subtle paraspinal abnormalities) for diagnostic evaluation, for evaluation of pain or radiculopathy syndromes, and monitoring of therapy has no proven clinical utility. 1993 Mercy Consensus Conference report) (Diagnostic ultrasound had "no proven clinical utility as a screening, diagnostic or adjunctive imaging tool" for evaluating pain, fluid in the tissues, nerve disorders or other subtle abnormalities adjacent to the spine." American College of Radiology, 1993. American Chiropractic Association, 1996.) In 1998, a radiology research team reported on their study of ultrasound images of 15 patients with neck pain, 21 patients with low-back pain, 23 patients with both neck and back pain, and 23 symptom-free persons who served as controls. After the images were recorded, four board-certified radiologists who knew nothing about the patients' symptoms interpreted the images independently. No relationship was found between the radiologist's reports and the patients' symptoms.

The ultrasound findings also showed the presence of facet inflammation bilaterally at all cervical levels. This finding would be obvious from a clinical exam and would certainly be consistent with the multiple level pre-existing degenerative changes in the claimant's cervical spine. The electrodiagnostic findings and the ultrasound findings in no way enhanced, changed, or contributed to this claimant's treatment plan or prognosis. It was quite clear that the ongoing chiropractic care beyond August 2002 was in no way benefitting this claimant or leading his condition toward a curative state. The claimant may have benefitted for a short duration of approximately 1 day after

each treatment; however, this would not be considered medically necessary or reasonable in that the care was only benefitting the claimant temporarily. Again, failure to progress does not justify more of the same treatment. It should also be noted that ___ report of 10/24/03 revealed that the claimant's pain was made better by lying down, pain pills and changing positions. It was also stated the claimant was only able to recline 8 hours per day and did no lifting whatsoever. This is further testament to the failure of the chiropractic care and certainly does not justify more passive treatment as occurred here. Failure to progress into even a light active program demands further referral and certainly not additional passive chiropractic treatment which would certainly lead to further physician induced disability. It should also be noted that a 3/21/03 capabilities report revealed that the claimant was very restricted in his abilities to push and pull a shopping cart or retrieve even a small tool from the floor. The claimant was also very restricted with respect to getting into and out of an automobile or being able to retrieve a 5 pound can between waist and overhead positions. At any rate the claimant was obviously very restricted after voluminous amounts of passive chiropractic care had been administered and the services in question consisted mainly of passive care and unnecessary diagnostic testing. It was also stated in the designated doctor report of January 2003 that the TENS unit was not effective and the epidural steroid injections were not effective. Therefore, further use of durable medical equipment is not justified at this time and it is obvious that the use of passive durable medical equipment has not been effective.