

THIS DECISION HAS BEEN APPEALED. THE FOLLOWING IS THE RELATES SOAH DECISION:

SOAH DOCKET NO.: 453-04-4566.M5

MDR Tracking Number: M5-04-0907-01

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 assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. The dispute was received on 11-26-03. Per Rule 133.308(e)(1) date of service 11-25-02 was not timely filed.

The Medical Review 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 application modalities, therapeutic procedures and functional capacity examination 11-26-02 through 04-22-03 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 Medical Review Division has determined that medical necessity fees were the only fees involved in the medical dispute to be resolved. As the services listed above were not found to be medically necessary, reimbursement for dates of service 11-25-02 through 04-22-03 are denied and the Medical Review Division declines to issue an Order in this dispute.

This Decision is hereby issued this 1st day of March 2004.

Debra L. Hewitt
Medical Dispute Resolution Officer
Medical Review Division

DLH/dlh

NOTICE OF INDEPENDENT REVIEW DECISION

Date: February 25, 2004

RE: MDR Tracking #: M5-04-0907-01
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 an ADL certification. The 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 suffered alleged sprain/strain injury to his ankle while stepping off a forklift back on ____. It was noted the claimant worked the rest of his shift without reported difficulty and noticed pain and swelling when he went home later that day. The claimant has undergone chiropractic care since approximately 10/24/02 and he has also seen ____, podiatrist, at various times. The claimant underwent an MRI of the right ankle which revealed the presence of severe strain at the lateral fibular side of the ankle with partial tear possible. There was also a reported tendonitis of the peroneus longus and brevis tendons which are also located on the lateral side of the ankle or foot. The mechanism of injury and MRI findings indicate that this was mainly an inversion sprain/strain injury. Several follow ups from the chiropractor and multiple re-evaluations were reviewed. Multiple re-evaluations from _____ were also reviewed. The claimant underwent a designated doctor exam on 7/21/03 and the claimant was felt to be at MMI as of 5/22/03 with 4% whole body impairment rating. It should be noted that the MMI date of 5/22/03 was given by one of the treating physicians.

Requested Service(s)

The medical necessity of the outpatient services including functional capacity exam, application of modality and therapeutic procedures from 11/22/02 through 4/22/03.

Decision

I agree with the insurance carrier and find that the services in dispute are/were not medically necessary.

Rationale/Basis for Decision

The services in dispute only encompass 11/24/02, 11/25/02, 11/26/02, 1/22/03, 1/24/03, 1/27/03, 1/29/03 and 4/22/03. The 4/22/03 disputed service is regarding the FCE of that date which was an initial FCE. The documentation indicates the carrier acted in good faith and paid for services that were considered reasonable and necessary and in accordance with the highly evidence based Official Disability Guidelines. This claimant strained his ankle yet reportedly worked the rest of his shift without reported difficulties. It was not until he finished his shift and went home that

upon removing his shoe he noticed ankle swelling and pain. There were also reported delays in the claimant seeking medical attention. The initial chiropractic report and several subsequent chiropractic follow up evaluations revealed minimal changes in the claimant's condition despite the quite voluminous amounts of chiropractic treatment over time. Even a severe ankle sprain/strain injury does not warrant prolonged physician directed treatment. It should be noted that ____ saw the claimant on 12/2/02 and stated that "on MRI there is soft tissue swelling noted to the anterior lateral aspect of the ankle with no evidence of osseous or cartilaginous injury". The overall assessment was listed to be right ankle sprain. This continued to be the assessment throughout the documentation and there was very little if any change in the claimant's pain levels over time. The claimant's initial strength as of the 12/2/02 follow up with ____ was noted to be normal. A progress note from ____ of 2/3/03 revealed that it was explained to the claimant that swelling and slight discomfort was normal for up to one year after the injury. There were some noted improvements in the claimant's subjective condition; however, the improvements were not beyond the natural history of the injury. In other words, treatment of this particular injury did not serve to progress the claimant's condition any faster than had he done a home based program. The first disputed date of service appears to be 11/24/02 which was about one month after the initiation of chiropractic treatment which would be more than enough time to transition the claimant into a home based exercise program. It is not reasonable to provide a whole hour of active physical therapy for one's ankle after a sprain/strain injury. This line of treatment went on through January 2003 and I saw no appreciable benefit objectively or subjectively through March 2003 despite the quite voluminous amounts of chiropractic treatment. The highly evidence based Official Disability Guidelines in fact only recommend about 9 visits of physical therapy and physician monitoring over an 8 week period. Ankle injuries are fairly easy to rehabilitate and do not particularly get better with prolonged physician treatment. A regimen of self administered exercises along with rest, ice, compression and elevation are the only needed treatment beyond some initial physician directed physical therapy. It was also noted that the claimant was recommended to return to work with some restrictions as of 1/29/03 which was over 4 months post injury for an ankle sprain/strain injury. This would indicate to me that the claimant was not progressing very rapidly in that he could not return to work until over 4 months post injury. The FCE of 4/22/03 was not medically necessary because it was made quite evident that the claimant was released to work with some restrictions as of 1/29/03. This recommended return to work release was authorized about 12 weeks prior to the FCE. I see no point in performing an FCE when it was documented the claimant was capable of returning to work.