

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, 133.307 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. This dispute was received on 01-09-04.

The IRO reviewed therapeutic exercises, office visits, paraffin bath, range of motion measurements and report, manual muscle testing with report and manual therapy rendered from 10-02-03 through 10-14-03 that were denied based on “U”.

The Medical Review Division has reviewed the IRO decision and determined that the **requestor prevailed** on the issues of medical necessity. Therefore, upon receipt of this Order and in accordance with §133.308(r)(9), the Commission hereby orders the respondent and non-prevailing party to **refund the requestor \$460.00** for the paid IRO fee. For the purposes of determining compliance with the order, the Commission will add 20-days to the date the order was deemed received as outlined on page one of this order.

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

On 03-12-04, 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	MARS	Reference	Rationale
09-23-03	95851	\$35.78 (1 unit)	\$0.00	NO EOB	\$35.78	Rule 133.304(c)	Requestor submitted relevant information to support delivery of service. Reimbursement recommended in the amount of \$35.78
09-23-03	99213	\$66.19 (1 unit)	\$0.00	F	\$66.19	Rule 133.307 (g)(3)(A-F)	Requestor submitted relevant information to support delivery of service. Reimbursement recommended in the amount of \$66.19
09-23-03	97110	\$136.20 1 unit @ (\$34.05	\$0.00	F	\$144.00	Rule 133.307 (g)(3)(A-F)	See rationale below. No reimbursement recommended.

DOS	CPT CODE	Billed	Paid	EOB Denial Code	MARS	Reference	Rationale
		X 4 units)					

DOS	CPT CODE	Billed	Paid	EOB Denial Code	MARS	Reference	Rationale
09-30-03	97110	\$136.20 (1 unit @ \$34.05 X 4 units)	\$0.00	L	\$144.00	96 MFG MEDICINE GR(I)(9)(b)	See rationale below. No reimbursement recommended.
09-25-03	97110	\$136.20 (1 unit @ \$34.05 X 4 units)	\$0.00	NO EOB	\$144.00	Rule 133.304(c)	See rationale below. No reimbursement recommended.
09-23-03	97018	\$8.98 (1 unit)	\$0.00	F	\$8.60	Rule 133.307 (g)(3)(A-F)	Requestor submitted relevant information to support delivery of service. Reimbursement recommended in the amount of \$8.60
09-25-03	99213	\$66.19 (1 unit)	\$0.00	NO EOB	\$66.19	Rule 133.304(c)	Requestor submitted relevant information to support delivery of service. Reimbursement recommended in the amount of \$66.19
09-25-03	97018	\$8.98 (1 unit)	\$0.00	NO EOB	\$8.60	Rule 133.304(c)	Requestor submitted relevant information to support delivery of service. Reimbursement recommended in the amount of \$8.60
09-25-03	95831	\$39.39 (1 unit)	\$0.00	NO EOB	\$39.39	Rule 133.304(c)	Requestor submitted relevant information to support delivery of service. Reimbursement recommended in the amount of \$39.39
09-30-03	99212	\$47.23 (1 unit)	\$0.00	L	\$47.23	96 MFG E/M GR(VI)(B)	Requestor is the treating doctor of record. Reimbursement recommended in the amount of \$47.23
09-30-03	97018	\$8.98 (1 unit)	\$0.00	L	\$8.60	96 MFG MEDICINE GR(I)(a)(ii)	Requestor is the treating doctor of record. Reimbursement

DOS	CPT CODE	Billed	Paid	EOB Denial Code	MARS	Reference	Rationale
							recommended in the amount of \$8.60
TOTAL		\$690.32	\$0.00				Requestor is entitled to additional reimbursement in the amount of \$280.58

**RATIONALE:** Recent review of disputes involving CPT code 97110 by the Medical Dispute Resolution section as well as analysis from recent decisions of the State Office of Administrative Hearings indicate overall deficiencies in the adequacy of the documentation of this code both with respect to the medical necessity of one-on-one therapy and documentation reflecting that these individual services were provided as billed. Moreover, the disputes indicate confusion regarding what constitutes “one-on-one”. Therefore, consistent with the general obligation set forth in Section 413.016 of the Labor Code, the Medical Review Division (MRD) has reviewed the matters in light of the Commission requirements for proper documentation.

The MRD declines to order payment for code 97110 because the daily notes did not clearly delineate the severity of the injury that would warrant exclusive one-to-one treatment.

**ORDER**

Pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay 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 Decision is applicable for dates of service 09-23-03 through 10-14-03 in this dispute.

This Findings and Decision and Order are hereby issued this 30<sup>th</sup> day of June 2004.

Debra L. Hewitt  
 Medical Dispute Resolution Officer  
 Medical Review Division  
 DLH/dlh

March 9, 2004  
**Amended June 16, 2004**

MDR Tracking #: M5-04-1285-01  
 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 reviewer is on the TWCC Approved Doctor List (ADL). 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

\_\_\_, a 46-year-old woman, injured her left wrist on \_\_\_ when she was struck by machinery while performing her duties at work. She saw \_\_\_, an orthopedic surgeon who diagnosed her with DeQuervains of the wrist and hand. \_\_\_ performed surgery on her left wrist and referred her to \_\_\_, a chiropractor, to undergo post surgical rehabilitation. \_\_\_ first examined \_\_\_ on 9/17/03 and prescribed a treatment plan for 2x per week for four weeks. Treatment plan objectives included decreasing muscle pain and increasing joint function.

#### DISPUTED SERVICES

Under dispute is the medical necessity of therapeutic exercises, office visits, paraffin bath, manual therapy, range of motion measurements and report and manual muscle testing with report provided from 10/2/03 through 10/14/03.

#### DECISION

The reviewer disagrees with the prior adverse determination.

#### BASIS FOR THE DECISION

The \_\_\_ denied payment to \_\_\_ based on “unnecessary treatment (without peer review)”. The TWCC adoption of Medicare guidelines is mandated in labor code 413.011(a)HB2600. In *Vorster v. Bowen* (709 F. Supp 734D. California 1989) the courts significantly limited the ability of Medicare to deny claims and reconsideration solely based upon the utilization review criteria. When documentation is submitted with the claim, then screening criteria may not be used alone to deny the claim. It must be reviewed. The carrier provides no medical documentation to substantiate its claim that the treatment provided by \_\_\_ was medically unnecessary. The carrier’s attorney, \_\_\_, in a three-page letter titled, RESPONSE TO REQUEST FROM IRO FOR RECORDS, dated 2/13/04 stated “Section 413.011 of the labor code provides that the TWCC must use the reimbursement policies and guidelines promulgated by the Medicare system.” \_\_\_ quotes Medicare guidelines:

“It is expected that patients undergoing rehabilitative therapy for musculoskeletal injuries in the absence of neurological compromise will transition to self-directed physical therapy within two months... Only the more refractory cases requiring additional therapy are expected to continue. Beyond this point, additional documentation of necessity and medical certification by the supervising physician is required.”

TWCC addresses this issue in Advisory 2003-11. This advisory clarifies that in the Texas Workers Compensation system, medical necessity prevails.

\_\_\_ used a paraffin bath during therapy on several occasions to relieve this patient’s pain and to increase circulation to promote healing. On 10/9/03 \_\_\_ advised the patient to discuss with her treating doctor the possibility of a paraffin unit for home use, as the patient reported that it helped her.

\_\_\_, the carrier's attorney, points out that he feels the use of passive care is so far from the date of injury is inappropriate. The \_\_\_ reviewer disagrees due to the fact that this patient was going through a post-surgical active rehabilitation program, which tends to exacerbate pain in an injured area. It is neither uncommon nor unreasonable for a provider to use passive care to provide pain relief and care that promotes palliation and general relaxation which increased function during this type of active rehabilitation. It is well within the applicable law that an employee is entitled to health care that cures or relieves the effects naturally resulting from the work-related injury.

\_\_\_ believes that a home exercise program should have been prescribed to \_\_\_ for her post-surgical rehabilitation instead of a one-on-one setting. The reviewing doctor disagrees, as the use of an unsupervised home exercise program in this case would be below the accepted standard of care of a prudent Chiropractor and places the patient at great risk of re-injury and damage to the sensitive post-surgical healing tissue.

\_\_\_ use of manual muscle testing, ROM measurements and data analysis and the reports generated from these tests in this case are well within the TCA guidelines for Quality Assurance and Practice Parameters, and are necessary to monitor the patient's progress.

The care rendered by \_\_\_ was reasonable and medically necessary and falls within the parameters set forth in the Texas Guidelines for Chiropractic Quality Assurance and Practice Parameters, a TCA Publication, 1994. The care provided by \_\_\_ was necessary to enhance the ability of Yolanda Ayala to return to and retain employment.

\_\_\_ has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. \_\_\_ has made no determinations regarding benefits available under the injured employee's policy.

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,