

THIS DECISION HAS BEEN APPEALED. THE  
FOLLOWING IS THE RELATED SOAH DECISION NUMBER:  
SOAH DOCKET NO. 453-05-0623.M5

**MDR Tracking Number: M5-04-2121-01**

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution- General, 133.307 titled Medical Dispute Resolution of a Medical Fee Dispute, 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 3-12-04.

The IRO reviewed unusual travel, therapeutic exercises, group therapeutic procedures, massage therapy, gait training, physical performance test, and neuromuscular reeducation on 3-26-03 to 12-8-03.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor did not prevail** on the issues of medical necessity. The IRO agreed with the previous determination that the therapeutic exercises, massage therapy, group therapeutic procedure, gait training, physical performance test, and neuromuscular reeducation were not medically necessary. The IRO found that the unusual travel was medically necessary. Consequently, the requestor is not owed a refund of the paid IRO fee.

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

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

On 7-30-04, 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. On 8-3-04, the requestor submitted a letter of withdrawal for fee issues only.

The above Findings and Decision are hereby issued this 23<sup>rd</sup> day of August 2004.

Dee Z. Torres  
Medical Dispute Resolution Officer  
Medical Review Division

## 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 Order is applicable for dates of service 3-26-03 through 12-8-03 in this dispute.

This Order is hereby issued this 23rd day of August 2004.

Roy Lewis, Supervisor  
Medical Dispute Resolution  
Medical Review Division

RL/dzt

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### NOTICE OF INDEPENDENT REVIEW DECISION

July 16, 2004

**Re: IRO Case # M5-04-2121**

Texas Worker's Compensation Commission:

Envoy Medical Systems, LP (Envoy) has been certified as an independent review organization (IRO) and has been authorized to perform independent reviews of medical necessity for the Texas Worker's Compensation Commission (TWCC). Texas HB. 2600, Rule 133.308 effective January 1, 2002, allows a claimant or provider who has received an adverse medical necessity determination from a carrier's internal process, to request an independent review by an IRO.

In accordance with the requirement that TWCC assign cases to certified IROs, TWCC assigned this case to Envoy for an independent review. Envoy has performed an independent review of the proposed care to determine if the adverse determination was appropriate. For that purpose, Envoy received relevant medical records, any documents obtained from parties in making the

adverse determination, and any other documents and/or written information submitted in support of the appeal.

The case was reviewed by a physician who is Board Certified in Orthopedic Surgery and specializes in the lower extremities, and who has met the requirements for TWCC Approved Doctor List or has been approved as an exception to the Approved Doctor List. He or she has signed a certification statement attesting 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 referral to Envoy for independent review. In addition, the certification statement further attests that the review was performed without bias for or against the carrier, medical provider, or any other party to this case.

The determination of the Envoy reviewer who reviewed this case, based on the medical records provided, is as follows:

#### Medical Information Reviewed

1. Table of disputed services
2. Explanation of benefits
3. M.D. clinic notes 2/7/03 – 5/3/04
4. Physical therapy prescriptions from M.D.
5. Operative reports 1/23/03, 5/28/03, 9/11/03
6. Initial rehabilitation evaluation 3/21/03
7. SOAP notes 3/24/03 – 3/23/04
8. FCE reports 7/25/03, 8/8/03, 1/8/04, 4/14/04
9. Physical performance test reports 8/24/03, 1/9/04
10. Psychological screening evaluation 7/25/04
11. Psychologist progress notes
12. Letters of medical necessity 1/27/04, 1/30/04

#### History

The patient is a 32-year-old male who was injured on \_\_\_ when a co-worker ran over the patient's right leg while he was working on a sprinkler system. The patient suffered a mid-shaft tibia fracture, and he underwent surgery on 1/23/03, including an intramedullary nailing of the right tibial shaft fracture. The patient was initially placed on partial weight-bearing status. In March, the patient was given his first prescription for post operative physical therapy and rehabilitation. He attended physical therapy, but he continued to experience pain at the fracture site. The surgeon reported minimal evidence of fracture healing and recommended dynamization of the intramedullary implant by removing the locking screws to try and facilitate fracture healing, and surgery was performed on 5/28/03. The patient was referred back to outpatient physical therapy ( 3 x week for 4 weeks) on 6/11/03. the patient was treated with therapeutic exercises, but he continued to complain of pain. The surgeon reported a delayed or nonunion of the tibia fracture, and on 9/11/03 a right fibular osteotomy was performed to help with increasing compression across the tibial shaft fracture site. The procedure was performed to try to facilitate the tibial shaft fracture to heal. Rehabilitation treatment was continued. The patient did not have his own transportation to the rehab facility, and transportation for him was arranged by the facility.

Requested Service(s)

Unusual travel, ther exer, gait train, phys perf test, mas ther, ther proc, neuro re-ed 3/26/03  
– 12/8/03

Decision

I agree with the carrier's decision to deny the requested services, except for the unusual travel.

I disagree with the denial of unusual travel.

Rationale

The patient suffered a significant injury to his right leg. His right tibia fracture required multiple procedures to achieve fracture healing. After each of these surgical procedures, postoperative physical therapy was definitely indicated. However, I agree with the carrier that the therapy provided (and charges for therapy) were excessive for each visit. The carrier approved what would be the appropriate amount of therapy for this patient's condition. (For example, one hour and thirty minutes of one on one physical therapy followed by gait training for 30 minutes, and group therapy exceeded the level of care for a patient with a tibial shaft fracture non-union.) The physical performance test was not indicated because a functional capacity evaluation had already been performed to provide a level of physical performance capability.

The patient was unable to drive and had no transportation to the rehabilitation facility. It was necessary for the patient to have a means to attend the physical therapy sessions that were necessary.

This medical necessity decision by an Independent Review Organization is deemed to be a Commission decision and order.

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