

**THIS DECISION HAS BEEN APPEALED. THE
FOLLOWING IS THE RELATED SOAH DECISION NUMBER:
SOAH DOCKET NO. 453-04-8256.M5**

MDR Tracking Number: M5-04-2143-01

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 March 15, 2004.

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 level IV office visit, electrical stimulation, myofascial release, joint mobilization, neuromuscular re-education, level III office visit, ultrasound, therapeutic exercises/activities, nursing evaluation, kinetic activities, and AFO double upright free plantar orthosis (custom fabricated) 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 03-27-03 to 06-11-03 is denied and the Division declines to issue an Order in this dispute.

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

Patricia Rodriguez
Medical Dispute Resolution Officer
Medical Review Division

PR/pr

REVISED 6/14/04

May 24, 2004

MDR Tracking Number: M5-04-2143-01
IRO Certificate# 5259

An independent review of the above-referenced case has been completed by a medical physician board certified in physical medicine and rehabilitation. The appropriateness of setting and medical necessity of proposed or rendered services is determined by the application of medical screening criteria published by ___ or by the application of medical screening criteria and protocols formally established by practicing physicians. All available clinical information, the medical necessity guidelines and the special circumstances of said case was considered in making the determination.

The independent review determination and reasons for the determination, including the clinical basis for the determination, is as follows:

See Attached Physician Determination

___ hereby certifies that the reviewing physician is on Texas Workers' Compensation Commission Approved Doctor List (ADL). Additionally, said physician has certified that no known conflicts of interest exist between him and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for determination prior to referral to ___.

CLINICAL HISTORY

This is a gentleman who sustained a lumbar injury. The diagnosis of a HNP was made. The treatment was conservative as this was not felt to be a surgical lesion. In February 2003 a comprehensive assessment was completed by ___ who noted that maximum medical improvement had not been reached and interventional care, such as ESI, should be undertaken. Approximately ten months after the date of injury (___) there was a change in primary treating physician and ___ re-tried the same types of conservative modalities (via the chiropractic provider) and a work hardening program. The passive modalities gave no measurable improvement or relief of pain complaints. In August 2003 the Designated Doctor determined maximum medical improvement with a 10% whole person impairment rating. It would appear that the requestor is alleging that the quantity of medical evidence is supportive of the requested treatments as opposed to the quality of the medical records. In the RME, Designated Doctor, primary treating physician and consulting provider assessments, there is no indication of any psychological injury that would require a work hardening protocol over a work-conditioning program.

REQUESTED SERVICE(S)

Level IV office visit
Electrical stimulation
Myofascial release
Joint mobilization
Neuromuscular reeducation
Level III office visit
Ultra sound
Therapeutic exercises/activities
Nursing evaluation
Kinetic activities
AFO Double upright free plantar orthosis (custom fabricated)

DECISION

Denied.

RATIONALE/BASIS FOR DECISION

The date of injury was noted as ___. The date the disputed services were completed started on ___ (__ later). Therefore a comprehensive evaluation (Level IV office visit) would not be needed as there are medical records presented that would obviate the need for complex decision-making. The ___ progress notes clearly states who the prior treating providers were and the actual diagnosis made. Additionally, with the actual notation that physical therapy did not make the clinical situation any better would be an

absolute indicator that a repeat trial of passive physical modalities is not warranted. The lack of any efficacy in prior treatment is not an indicator to repeat the same treatment.

Thus use of muscle stimulation ten months after injury has been shown in repeated clinical studies to have no measure of utility.

The foot orthosis was addressing an ordinary disease of life and this is not reasonable and necessary care for the disc herniation. The chiropractic provider attempted to relate a flat foot arch with an ankle pronation, leading to a rotational deformity of the tibia, a derotation of the femur affecting the pelvis. None of these issues are causative or curative for a disc herniation.

The diagnosis of HNP had been made. Joint mobilization, electrical stimulation, ultrasound, myofascial release, and extended office visits are not reasonable and necessary care ___ out from the date of injury. As noted by the RME provider, while maximum medical improvement had not been reached, a more definitive protocol (ESI) should have been pursued. Repeating the conservative modalities is not warranted. As noted by several studies, the use of passive modalities more than ten weeks after the date of injury is not warranted. The indication for a foot orthosis for a disc herniation is not indicated.

Noting the level of physician involvement and the date of the physician evaluation there is no clinical indication for the need of nursing assessment. This would have to be construed as excessive treatment. The kinetic activities should have been included in the other modalities completed. This represents an excessive unbundled billing contrary to applicable rules.