

**THIS DECISION HAS BEEN APPEALED. THE FOLLOWING IS THE RELATED SOAH DECISION NUMBER:**

**SOAH DOCKET NO. 453-05-2075.M5**

MDR Tracking Number: M5-04-2353-01

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, 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 03-26-04.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor prevailed** on the majority of 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 \$650** 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 the work hardening program rendered from 4/07/03 through 4/25/03 and the physical performance test performed on 4/25/03 **was found** to be medically necessary. The physical performance test performed on 4/10/03 **was not** found to be medically necessary. The respondent raised no other reasons for denying reimbursement for the above listed services.

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 June 8, 2004, 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.

**CPT Codes 97545 and 97546** for dates of service 3/24/03 through 3/28/03 were denied by the carrier for N-not appropriately documented. No treatment information was submitted by the requestor in accordance with and outlined under the criteria set forth for documentation requirements under the 1996 Medical Fee Guidelines. Therefore, **reimbursement is not recommended.**

**CPT code 97545 and 97546** for dates of service 3/31/03 through 4/04/03 were denied by the carrier on 5/13/03 for H-half payment (used when the carrier is paying 50% of the billed amount because it is conducting an onsite audit that will delay payment beyond 45 days). A re-audit of the bills dated 3/17/04 does not document the basis for denial of additional payments for the disputed services. As the re-audit date is well beyond the 45 day timeframe noted above, **additional reimbursement is recommended** in the amount of \$1280.

On this basis, and pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay 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 to dates of service 3/31/03 through 4/25/03 as outlined above in this dispute.

The respondent is prohibited from asserting additional denial reasons relative to this Decision upon issuing payment to the requestor in accordance with this Order (Rule 133.307(j)(2)).

This Decision and Order is hereby issued this 5<sup>th</sup> day of October 2004.

Regina L. Cleave  
Medical Dispute Resolution Officer  
Medical Review Division

RLC/rlc

May 14, 2004  
Amended June 16, 2004

David Martinez  
TWCC Medical Dispute Resolution  
4000 IH 35 South, MS 48  
Austin, TX 78704

Patient:  
TWCC #:  
MDR Tracking #: M5-04-2353-01  
IRO #: 5251

Ziroc 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 Ziroc for independent review in accordance with TWCC Rule 133.308 which allows for medical dispute resolution by an IRO.

Ziroc 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 Medical Doctor specialized in Occupational Medicine. The reviewer is on the TWCC Approved Doctor List (ADL). The Ziroc 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 Ziroc 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

\_\_\_ injured his right rib cage and thoracic area \_\_\_ when he was struck by a commercial mower. The MRI of the lumbar spine dated December 24, 2002 is incomplete, but shows a disc protrusion at L4/5. He underwent a functional capacity evaluation March 5, 2003 that documents multiple physical deficits. There are work-hardening notes from March 24 through April 25 documenting attendance, compliance and improvement in objective parameters. A physical performance evaluation was performed April 10<sup>th</sup> that showed interval improvement in tested parameters. A FCE dated April 25<sup>th</sup> demonstrates improvement in virtually every aspect of the patient's objective deficits and subjective complaints

### DISPUTED SERVICES

Under dispute is the medical necessity of work hardening/conditioning and physical performance testing.

### DECISION

The reviewer agrees with the prior adverse determination regarding the April 10<sup>th</sup> physical performance testing.

The reviewer disagrees with the prior adverse determination regarding the work hardening/conditioning from 04/07/03 through 04/25/03.

### BASIS FOR THE DECISION

Though the diagnosis is not clearly documented, it appears that this patient sustained a thoracolumbar injury in \_\_\_. He underwent a work hardening program that was directed towards his existing job. He had objective deficits and subjective complaints that were monitored during treatment for improvement. Work hardening programs that include a behavioral modification approach plus physical training specific to the job (including aerobic capacity, muscle strength and endurance, and coordination) are effective in the restoration of function in patients with chronic low back pain. It is best if these programs are supervised by a multidisciplinary team, as in this case. The reviewer can find no documentation for the necessity of a physical performance examination during the middle of work hardening, especially when the patient is making steady improvements throughout the program.

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

As an officer of ZRC Services, Inc, dba Ziroc, I certify that there is no known conflict between the reviewer, Ziroc and/or any officer/employee of the IRO with any person or entity that is a party to the dispute.

Ziroc is forwarding this finding by US Postal Service to the TWCC.

Sincerely,