

MDR Tracking Number: M5-04-2789-01

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 4-29-04.

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 the only issue** to be resolved. The office visits, office visits with manipulation, therapeutic exercises, work hardening-initial, work hardening-each additional hour, and functional capacity evaluation from 5-7-03 through 7-8-03 were found to be medically necessary. The respondent raised no other reasons for denying reimbursement for the above listed

This Findings and Decision is hereby issued this 25<sup>th</sup> day of August 2004.

Donna Auby  
Medical Dispute Resolution Officer  
Medical Review Division

DA/da

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 through 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 Order is hereby issued this 25<sup>th</sup> day of August 2004.

Roy Lewis, Supervisor  
Medical Dispute Resolution  
Medical Review Division

Enclosure: IRO decision

August 23, 2004

Texas Workers Compensation Commission  
MS48  
7551 Metro Center Drive, Suite 100  
Austin, Texas 78744-1609

**NOTICE OF INDEPENDENT REVIEW DECISION  
Amended Letter C**

**RE: MDR Tracking #: M5-04-2789-01  
TWCC #:  
Injured Employee:  
Requestor: Neuromuscular Institute of Texas – PA  
Respondent: Lumbers Mutual Casualty Co. c/o Harris & Harris  
MAXIMUS Case #: TW04-0263**

MAXIMUS has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The MAXIMUS IRO Certificate Number is 5348. Texas Worker's Compensation Commission (TWCC) Rule §133.308 allows for a claimant or provider to request an independent review of a Carrier's adverse medical necessity determination. TWCC assigned the above-reference case to MAXIMUS for independent review in accordance with this Rule.

MAXIMUS has performed an independent review of the proposed care to determine whether or not the adverse determination was appropriate. Relevant medical records, documentation provided by the parties referenced above and other documentation and written information submitted regarding this appeal was reviewed during the performance of this independent review.

This case was reviewed by a practicing chiropractor on the MAXIMUS external review panel who is familiar with the with the condition and treatment options at issue in this appeal. The reviewer has met the requirements for the ADL of TWCC or has been approved as an exception to the ADL requirement. The MAXIMUS chiropractor reviewer signed a statement certifying that no known conflicts of interest exist between this chiropractor and any of the treating physicians or providers or any of the physicians or providers who reviewed this case for a determination prior to the referral to MAXIMUS for independent review. In addition, the MAXIMUS chiropractor reviewer certified that the review was performed without bias for or against any party in this case.

Clinical History

This case concerns a 43 year-old male who sustained a work related injury on \_\_\_\_\_. The patient reported that while at work he injured his back. On 7/25/02 the patient underwent a bilateral L3-4 laminotomy, foraminotomy, partial fasciectomy, bilateral L4-5 laminotomy discectomy, partial fasciectomy, L3-4 and L4-5 lateral transverse process fusion, L3-L5 posterior spinal instrumentation with external bone stimulator Omega system, and a L4-5 posterior lumbar interbody fusion with brantigan cage, right and left for the diagnoses of spinal stenosis at L3-L4 with instability, and herniated nucleus pulposus L4-5 with spinal stenosis and instability. Postoperatively the patient began a physical therapy rehabilitation program that included manipulations, therapeutic exercises, and a Work Hardening program.

Requested Services

Office visit, office visit with manipulation, therapeutic exercises, Work Hardening-initial, Work Hardening-each additional hour, and functional capacity evaluation from 5/7/03 through 7/8/03.

Documents and/or information used by the reviewer to reach a decision:

*Documents Submitted by Requestor:*

1. Consults and Office visits 8/28/00 – 6/17/03
2. Treatment Logs 5/6/02 – 7/14/03
3. Work Hardening 6/2/03 – 6/27/03
4. Office visits 4/26/02 – 6/13/03
5. Operative Report 7/25/02

*Documents Submitted by Respondent:*

1. No documents submitted

Decision

The Carrier's determination that these services were not medically necessary for the treatment of this patient's condition is overturned.

Rationale/Basis for Decision

The MAXIMUS chiropractor reviewer noted that this case concerns a 43 year-old male who sustained a work related injury to his back on \_\_\_\_\_. The MAXIMUS chiropractor reviewer indicated that the patient had undergone spine surgery on 7/25/02 and was released to begin postoperative rehabilitation on 3/3/03. The MAXIMUS chiropractor reviewer explained that the treatment this patient received was in accordance with the National Spine Society clinical guidelines for multidisciplinary spine care. The MAXIMUS chiropractor reviewer noted that the postoperative care for spine surgery could last up to 6 months. The MAXIMUS chiropractor reviewer indicated that the work-hardening program this patient participated in from 6/9/03 through 6/13/03 is considered a functional restoration program and falls within the tertiary phase of treatment for this patient. The MAXIMUS chiropractor reviewer explained that the functional capacity evaluation performed on 5/22/03 was necessary to determine if the patient was a candidate for a work-hardening program. The MAXIMUS chiropractor reviewer also explained that the functional capacity evaluation performed on 7/8/03 was necessary to determine this patient's return to work status. Therefore, the MAXIMUS chiropractor consultant concluded that the office visit, office visit with manipulation, therapeutic exercises, Work Hardening-initial, Work Hardening-each additional hour, and functional capacity evaluation from 5/7/03 through 7/8/03 were medically necessary to treat this patient's condition.

Sincerely,  
**MAXIMUS**

Elizabeth McDonald  
State Appeals Department