

MDR Tracking Number: M5-04-2989-01

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 05-11-04. Dates of service 05-02-03 through 05-08-03 were not timely filed per Rule 133.308(e)(1) and will not be reviewed by the Medical Review Division.

The Medical Review Division has reviewed the enclosed IRO decision and determined that **the requestor did not prevail** on the **majority** of issues of medical necessity. The IRO determined that the myofascial release, therapeutic exercises, office visits, ultrasound, chiropractic manual treatment, supplies and materials, massage therapy, self-care management training and electrical stimulus unattended rendered from 05-27-03 through 06-09-03 **were** medically necessary. The IRO determined that all services rendered 05-13-03, 05-16-03 and after 06-09-03 **were not** medically necessary. Therefore, the requestor is not entitled to reimbursement of the IRO fee.

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 respondent raised no other reasons for denying reimbursement for the above listed services.

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 05-27-03 through 06-09-03 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 Findings and Decision and Order are hereby issued this 23rd day of September 2004.

Debra L. Hewitt  
Medical Dispute Resolution Officer  
Medical Review Division

DLH/dlh

## Amended Report

September 2, 2004

David Martinez  
TWCC Medical Dispute Resolution  
7551 Metro Center Suite 100  
Austin, TX 78744

Patient:  
TWCC #:  
MDR Tracking #: M5-04-2989-01  
IRO #: 5284

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

Specialty 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.

This case was reviewed by a licensed Chiropractor. The Specialty IRO 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 Specialty IRO 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

\_\_\_ was initially treated by Dr. D but was ultimately released from his care as he felt that this case was not a chiropractic case due to severe herniations with spinal cord compression in the cervical spine. He withdrew from \_\_\_'s care on 8-20-2002. \_\_\_ changed treating doctors to Dr. A. During that time, medical records indicate that an MRI on 11-19-2001 demonstrated multilevel irregular posterior osteophytosis indenting the spinal cord with moderate to considerable spinal stenosis and bilateral foraminal stenosis. A Designated Doctor evaluation performed by Dr. S stated \_\_\_ was not at MMI. On 3-27-2003, an NCS/EMG of the left upper extremity is performed and indicates left C5 nerve root irritation and mild left C6 nerve root irritation. On 4-04-2003, a CT demonstrated multilevel posterior disc herniations with underfilled nerve root at the right C4 and bilateral C5 and C6 nerve roots. There is indication of a completely amputated left C4 nerve root. Dr. M reviewed the CT and recommended an ACDF from C3-C6 on 4-15-2003. It does not appear that this procedure was performed. There is

indication an IDET was performed on 2-05-2002 by reviewing the peer review completed by Dr. P on 4-17-2003. Dr. P diagnosis was a sprain/strain. A note date 5-16-2003 from Texas Pain Solutions indicated that \_\_\_ had cervical facet blocks and radiofrequency rhizotomy to the right cervical facets. First narrative report submitted on 6-03-2003 from Dr. A related that \_\_\_ has decreased subjective pain levels, positive foraminal and maximum cervical compression tests and noted referral for FCE. There is indication of a FCE on 6-06-2003 that recommended a work hardening program for \_\_\_. This program began around 6-19-2003 although Week 1's note is not dated. \_\_\_ participates well until Week 3 where its indicated that \_\_\_ is refusing to participate in some activities and discharge from program to psychological counseling is recommended if no further improvement is made. \_\_\_'s condition and participation appears to continue to deteriorate with work hardening until discharged on approximately 7-23-2003. On 9-02-2003 there is a note from Vista Surgical Center indicating that bilateral facet injections/arthrogram was performed. On 9-03-2003, Dr. A noted that the patient's condition is unchanged from 6-03-2003 report and that the ranges of motion have decreased. Subjective pain levels however have decreased. Dr. H evaluated \_\_\_ on 11-21-2003 and noted he is doing well and participating in a home exercise program. \_\_\_ is looking for a job which conflicts with Dr. A's complete restrictions. On 11-26-2003, Dr. A reported that the orthopedic, palpatory and range of motion findings have not changed from the 6-03-2003 examination and \_\_\_ is to continue to remain off work.

#### DISPUTED SERVICES

The items in dispute are the retrospective medical necessity of the following from 5-13-2003 to 2-27-2004: Myofascial release, therapeutic exercises, office visits, ultrasound, chiropractic manual treatment, supplies and materials, massage therapy, self-care management training, electrical stimulus unattended.

#### DECISION

The reviewer disagrees with the previous adverse determination regarding the following services: All services performed from 5/27/03 through 6/9/03.

The reviewer agrees with the previous determination regarding all other services.

#### BASIS FOR THE DECISION

After thorough review of all medical records, the reviewer indicates that they cannot justify most treatment beyond 5/2/03 based upon the submitted documentation. The records prior to this date reflect a substantial amount of physical therapy and chiropractic manipulation, which failed to improve the patient's condition; therefore, the same types of treatments would not be indicated at a future date without substantial change. In fact, the patient has evidence of posterior osteophytes with spinal cord contact and foraminal stenosis yielding a contraindication to spinal manipulation for fear of neural compromise.

The reviewer indicates the need for treatment from 5/27/03 through 6/9/03 for post injection therapy at a rate of 3 times per week for two weeks with each injection. The FCE of 6/6/03 recommends a work hardening program; therefore, treatment after 6/9/03 cannot be found to be reasonable outside of a return to work program. The reviewer states there is no justification in the medical records for a 99212 or 99211 to be billed (per the records submitted) concurrently with a 98940 based upon the AMA CPT Correct Coding Institute. There is no indication that the code 97535 was performed on 9/3/03, 9/4/03 and 9/5/03 as per the notes; therefore, it cannot be found to be medically reasonable and necessary.

Specialty IRO has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. Specialty IRO has made no determinations regarding benefits available under the injured employee's policy. Specialty IRO believes it has made a reasonable attempt to obtain all medical records for this review and afforded the requestor, respondent and treating doctor an opportunity to provide additional information in a convenient and timely manner.

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

Sincerely,