

THIS DECISION HAS BEEN APPEALED. THE  
FOLLOWING IS THE RELATED SOAH DECISION NUMBER:  
SOAH DOCKET NO. 453-05-4778.M5

MDR Tracking Number: M5-04-3063-01

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 5-17-04.

In accordance with Rule 133.308 (e), requests for medical dispute resolution are considered timely if it is filed with the division no later than one (1) year after the date(s) of service in dispute. The following date(s) of service are not timely and are not eligible for this review: 5-14-03

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 \$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.

All disputed services in this dispute were referred to an IRO pursuant to Rule 133.308. They had been deemed to be "Unnecessary Treatment without a Peer Review" based upon the respondent's response and the requestor's position paper. Both the requestor and insurance carrier failed to provide initial EOB's Per Rule 133.308(f) and (g) which states that both requestor and the carrier shall provide information required on the form, which shall include notice of adverse determinations of prospective or retrospective medical necessity." This violation by both parties will be forwarded to the Compliance and Practices Division of TWCC.

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 therapeutic exercises, neuromuscular re-education, office visits from 5-19-03 through 6-27-03 were **found** to be medically necessary. The joint mobilization and myofascial release from 5-19-03 through 6-27-03 **were not** found to be medically necessary. The respondent raised no other reasons for denying reimbursement for the above listed services.

This Findings and Decision is hereby issued this 3rd day of February, 2005.

Donna Auby

Medical Dispute Resolution Officer  
Medical Review Division

Pursuant to 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay for the unpaid medical fees from 5-19-03 through 6-27-03:

- in accordance with the fair and reasonable rate as set forth in Commission Rule 133.1(a)(8) for dates of service through July 31, 2003;

plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this order.

This Order is hereby issued this 3<sup>rd</sup> day of February, 2005.

Roy Lewis, Supervisor  
Medical Dispute Resolution  
Medical Review Division

RL/da  
Enclosure: IRO decision

January 24, 2005

Hilda Baker  
TWCC Medical Dispute Resolution  
7551 Metro Center Suite 100  
Austin, TX 78744

Patient:  
TWCC #:  
MDR Tracking #: M5-04-3063-01  
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 reviewer is on the TWCC ADL. 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

The records indicate that the patient was injured on \_\_\_ while lifting heavy objects into a trailer. During the lift he felt pain in the neck, right shoulder, right shoulder blade and right arm. He presented to a company doctor and then to North Freeway Health and Rehabilitation Center in mid to late September of 2002. He underwent diagnostic imaging of the neck and shoulder and passive therapeutics. He was referred for an orthopedic evaluation and given medicinal management, ESI's, a discogram and trigger point injections. The patient was prescribed and participated in an active therapy program. The patient was evaluated for and completed a chronic pain management program. He was placed at MMI by Dr. Naniz on 7/16/04 with a 17% IR.

#### RECORDS REVIEWED

Records were requested from the treating doctor/requestor, Humberto Martinez, DC and from the respondent, Texas Mutual Insurance. Despite multiple attempts via fax and phone, Texas Mutual chose to not send medical records in this case.

The following records were received from Dr. Martinez on 1/12/05. 9/13/04 MDR letter, Maximus IRO report of 3/26/04, 6/22/04 Ziroc finding letter, DD examination by Janis Abens, DC of 2/11/03, DD examination by Pete Nguyen, MD of 6/24/03, therapy progress notes of 5/14/03 through 7/3/03, exercise flow sheets from 5/9/03 to 6/27/03, cervical MRI of 10/2/02, right shoulder MRI of 10/2/02, 6/30/03 cervical discogram with post CT, thoracic MRI of 8/8/03, 11/28/03 request for reconsideration letter, impairment report of 7/16/04 by Priscilla Naniz (form is difficult to read), ROM/MM evaluation of 9/27/02, FCE of 11/26/02, ROM and MMT report of 11/8/02, functional abilities test of 6/20/03, reports by James A. Ghadially, MD from 10/15/02 through 2/12/03, reports by Stephen Weiss MD 5/1/03 through 5/27/03, therapy prescription 12/2/03 by Gulf Coast Orthopedic and Spine Associates, 5/27/03 script for cervical TP injection, various prescriptions from TX orthopedic and trauma associates 5/3/03 through 5/27/03, initial report and follow up reports by Med Psych Services, PA from 9/12/03 through 10/21/03, consultation report by Long Nguyen, MD, left cervical ESI operative reports 8/27/03, 10/8/03 and bilateral suprascapular nerve block of 11/20/03, 1/14/04 operative report, 6/2/04 consult by Benny Sanchez, MD, 12/24/03 letter of medical necessity by Dr. Martinez, 1/6/04 psychological evaluation by Ron Ziegler, Ph D, notes by Jennifer Aune, MA, LPC, 5/20/04 discharge summary by Dr. Ziegler, 4/21/04 PT discharge report by L Ooms, LPT.

#### DISPUTED SERVICES

Items in dispute include the following according to the TWCC Notification of IRO Assignment: therapeutic exercises, neuromuscular re-education, office visits (99211 and 99213), joint mobilization and myofascial release from 5/19/03 through 6/27/03. The 5/14/03 dates of service

are not reviewable as they were submitted to TWCC after one year of the date of service; therefore, they are not eligible for review.

### DECISION

The reviewer agrees with the previous adverse determination regarding code 97265 and 97250 on all dates of service.

The reviewer disagrees with the previous adverse determination regarding all remaining services.

### BASIS FOR THE DECISION

The reviewer indicates the literature indicates that active therapy combined with the pain management therapy (i.e. injections) is a proven method of increasing the patient's ability to return to work and increase functionality as per TLC §408.021. The patient progressed during the rehabilitative treatment that was involved. The reviewer states the joint mobilization and myofascial release were not medically warranted as they represent non-active care and are not warranted at the current stage of tissue repair (chronic). This case was well documented with proper descriptions of the injury, patient's response to treatment and the doctor's changes of the treatment plan due to the patient's responses. These decisions were made according to TWCC payment policies, accepted clinical protocols and the Evidence Based Medical Guidelines by Cochrane.

#### References:

Tulder MW van, Malmivaara A et al. Exercise therapy for low back pain (Cochrane review) CD ROM: The Cochrane Library, Issue 1, 2001. Oxford

Waling K Sundelin G, Ahlgren C, Jarvohlm B Perceived pain before and after three exercise programs- a clinical trial of women with work related trapezius myalgia. Pain 2000; 85:201-7

Taimela S, Takala EP, et al. Active treatment of chronic neck pain: a prospective randomized intervention. Spine 2000;25:1021-7

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,

Wendy Perelli, CEO

CC: Specialty IRO Medical Director