

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

**SOAH DOCKET NO. 453-05-0989.M5**

MDR Tracking Number: M5-04-3174-01

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 5-21-04.

The Division has reviewed the enclosed IRO decision and determined that **the requestor did not prevail** on the majority of the medical necessity issues. Therefore, the requestor is not entitled to reimbursement of the IRO fee.

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 physical therapy re-evaluation on 10/06/03 and the evaluation and management office visit on 10/23/03 **were found** to be medically necessary. The aquatic therapy, supplies, fluoroscopy, unlisted evaluation/management, group therapy, special reports from 9/08/03 through 10/23/03 **were not found** to be medically necessary. 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 Medicare reimbursement methodologies as set forth in Commission Rule 134.202 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 10/06/03 and 10/23/03 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 13<sup>th</sup> day of September 2004.

Regina L. Cleave  
Medical Dispute Resolution Officer  
Medical Review Division

RLC/rlc

Enclosure: IRO decision



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## NOTICE OF INDEPENDENT REVIEW DECISION

**Date:** August 24, 2004

AMENDED DECISION

**Requester/ Respondent Address :**

TWCC  
7551 Metro Center Drive, Suite 100, MS-48  
Austin, TX 78744-16091

**RE: Injured Worker:**

**MDR Tracking #:** M5-04-3174-01

**IRO Certificate #:** 5242

Forté has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Texas Workers' Compensation Commission (TWCC) has assigned the above referenced case to Forté for independent review in accordance with TWCC Rule §133.308 which allows for medical dispute resolution by an IRO.

Forté has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, relevant medical records, any documents utilized by the parties referenced above in making the adverse determination and any documentation and written information submitted in support of the appeal was reviewed.

The independent review was performed by a Chiropractic reviewer who has an ADL certification. The reviewer has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for a determination prior to the referral to for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to this case.

**Submitted by Requester:**

- 08/19/2003 to 10/16/2003 17-pages Brewer Chiropractic Clinic SOAP notes
- 07/31/03 to 10/20/03 24-pages MEGA REHAB Progress Notes
- 09/10/03, 09/17/03, 09/24/03, and 10/01/03 Lumbar ESI procedure notes A. Speece DO
- 06/02/03 Gary Gotfried, MD needle EMG/NCV study
- 04/14/03 Arlington Medical Imaging-Lumbar MRI
- 12/05/03 Designated Doctor Evaluation (DDE) Mark Price, MD with TWCC-69
- An extensive amount of MEGA REHAB Progress Notes and re-exams in 2004
- 11/04/03 Texas Back Institute notes
- Notes from Christopher Mann, DO
- 10/01/03 Arthur Speece, III DO consultation notes
- TWCC-60 Dispute table with correlated explanation of benefits (EOBs)

- Several TWCC-73's
- 09/23/03 MEGA REHAB re-consideration
- Notes, re-examination, and subsequent evaluations from Stephen Dudas, DC
- Notes from Texas Back Institute-Richard Guyer, MD
- Several Physical Therapy Evaluations dated from 07/21/03 to 05/05/04
- 07/15/2004 Stephen Dudas, DC letter of reconsideration with all info contained within

**Submitted by Respondent:**

- Much of the above.
- 02/05/2004 Texas Back Institute surgical work up notes
- Marvin Van Hal, MD review 08/30/03
- UniMed Direct, LLC authorizations 06/25/03, 11/12/03 and 01/05/04
- 8/23/03 Utilization Review from Corvel
- Multitude of TWCC-73's
- Notes from Christopher Mann, DO
- 09/23/03 MEGA REHAB re-consideration
- 2 TWCC-53's
- James Irvine, DO TWCC-69 and report and notes dated 6/18/03
- 07/03/03 handwritten letter from the claimant
- Several Disability Certificates from Robert Ranelle, DO

**Clinical History**

On \_\_\_\_, \_\_\_\_ (claimant) allegedly injured his lower back, while on the job working as a machine operator pulling on scrap metal or metal drawer. He was seen and treated by Dr. Irvin. Dr. Irvin referred the claimant for MRI and needle EMG/NCV. MRI revealed findings consistent with an L4-L5 disc extrusion with right sided neural foraminal encroachment. Electrodiagnostic testing reportedly revealed findings consistent with a moderate-to-severe L5 radiculopathy. The claimant was returned to restricted work duty in April 2003. He was deemed to be a surgical candidate for laminectomy and discectomy in early June 2003. Claimant felt that he was not ready for surgery at that point in time; therefore, changed treating doctors to Stephen Dugas, DC. Dr. Dugas did not treat the claimant but referred him to Dr. Brewer for chiropractic care to include manipulation. He was also referred to Brittany Pardue, LPT for physical therapy that involved aquatic and land based care. He was subsequently referred to Arthur Speece, III, DO for four lumbar epidural steroid injections performed on 09/10/03, 09/17/03, 09/24/03, and 10/01/03. The claimant again apparently failed conservative care as well as injection therapy. He was reportedly referred for a CT myelogram in December 2003 (not provided for review) for surgical workup. Surgery was authorized in January and performed on 02/25/2004.

**Requested Service(s)**

Aquatic therapy (97113): 09/08/2003, 09/11/2003, 09/15/2003, 09/22/2003, 09/29/2003, and 10/06/2003  
 Supplies (99070-ST): 09/10/2003, and 09/17/2003, 09/24/2003

Fluoroscopy (76000-27): 09/10/2003, and 09/24/2003  
Unlisted evaluation/management (99499-RR): 09/10/2003, 09/17/2003, and 09/24/2003  
Group therapy (97150): 10/13/2003, 10/15/2003, 10/17/2003, and 10/20/2003  
Special Report (99080): 10/23/2003  
Physical therapy re-evaluation (97002): 10/06/2003  
Level-4 evaluation/management (99214): 10/23/2003

### **Decision**

Documentation provided for review supports the medical necessity for the 10/06/2003 physical therapy re-evaluation (97002) and 10/23/2003 evaluation and management (99214). I do not feel that the documentation submitted for review supports the medical necessity for all other services rendered listed above.

### **Rationale/Basis for Decision**

The claimant has shown little to no quantifiable objective or subjective improvement that would support the medical necessity for continued aquatic therapy 97113 from 09/08/2003 to 10/06/2003 and CPT code 97150 (aquatic group therapy billed in place of 97113) 10/13/2003, 10/15/2003, 10/17/2003, and 10/20/2003. This is supported by the lack of improvement in comparison of the 07/24/2003 evaluation to the 08/22/2003 following 9-sessions of care. The claimant's was deemed a surgical candidate in June 2003, subsequently sought an alternative course conservative management and failed to respond. On 07/24/2003 the claimant's pain level was rated at 9/10 and on 08/22/2003 was rated at 8/10. Lumbar range of motion reported on 7/24/03 revealed 40° flexion, 8° extension, and 15° side bending,. The 08/22/2003 reported lumbar ROM was 38° flexion, 15 ° extensions, 20 ° right sides bending, and 13 ° extensions. Additionally nearly all of the 4-week goals listed in the 07/24/2003 were not satisfied. On 10/06/2003 the claimant rated his pain levels at 7-8/10, while lumbar range of motion revealed 42° flexion, 15 ° extensions, 20 ° right sides bending, and 15° left side bending. The above does not reflect significant quantifiable objective functional improvement in the claimant's condition. Continuation of physical therapy without quantifiable objective documentation of effectiveness is not cost-effective. Objective clinical documentation must be clear and concise, range of motion (ROM) measurements in degrees, and manual muscle testing (MMT) should be documented. Generalized statements that ROM, and/or strength are improving is not objective evidence of progress. Subjective complaints must coincide with objective documentation, for an example visual analog scale (VAS) pain scale reduction (numerical listing) with ROM parameters increasing in degrees.

I have not been provided a letter of medical necessity that would support or provide any clarification for CPT billing code 99070-ST billed on 09/10/03, 09/17/03, and 09/24/03. This is a "supplies and materials" code, and the claimant is being charged over \$700 on each of these dates, apparently in conjunction with an epidural steroid injection (ESI). It would be an excessive charge for supplies necessary to perform an ESI, and these supplies would not be part of those things needed under the chiropractic scope of practice. I have not been provided any documentation regarding the 09/10/2003 and 09/24/2003 Fluoroscopy CPT Code 76000-27. The modifier "27" is not listed in the CPT code book. The claimant did in fact undergo epidural

steroid injections on these dates of service. Assumably the disputed bills are for the facility and technical components for epidural steroid injections. Additionally I have not been provided any supporting documentation for the unlisted evaluation code 99499-RR on 09/10/03, 09/17/03, and 09/24/2003. This is recovery room modifier assumably for post lumbar epidural steroid injections. Invasive procedures, such as injection therapy, are out of the scope of practice for a chiropractor. Post-anesthesia care is not under the scope of practice of a chiropractor.

In accordance with Commission Rule 102.4(h), I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to TWCC via facsimile or U.S. Postal Service from the office of the IRO on this 24<sup>th</sup> day of August 2004.

Signature of IRO Employee:

Printed Name of IRO Employee: Debbie Raine