

MDR Tracking Number: M5-04-3221-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution- General, 133.307 titled Medical Dispute Resolution of a Medical Fee Dispute, 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 May 25, 2004.

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

The following items **were found** medically necessary:

- Office visits (99213) on 09-08-03, 09-09-03, 11-13-03, and 12-04-03;
- 2 units of manual therapy (97140) per date of encounter for a maximum of 3 encounters per week from 09-04-03 thru 10-04-03 and 12-15-03 thru 01-15-04; two encounters per week from 10-04-03 thru 10-21-03 and 03-17-04;
- 2 units of 97140 on 11-13-03 and 12-04-03.

The following services **were not found** medically necessary:

- Office visits (99213) on 11-06-03, 01-15-04, 01-19-04, 01-26-04, 01-28-04, and 02-17-04;
- Office visits (99214) on 09-15-03, 09-16-03, 09-18-03, 09-22-03, 09-23-03, 09-25-03, 09-29-03, 09-30-04, 10-02-03, 10-16-03, 10-20-03, 10-21-03, 12-15-03, 12-16-03, 12-18-03, 12-19-03, 01-05-04, 01-06-04, 01-07-04, 01-08-04, 01-12-04, 01-22-04, 02-09-04, 02-19-04, 02-23-04, 02-26-04, 03-08-04, and 03-17-04;
- 1 unit of therapeutic exercises (97110) on 10-09-03, 10-13-03, 10-15-03, 11-05-03, 11-06-03, 11-10-03, 11-12-03, 11-13-03, and 11-19-03;
- 3 units of 97140 on 09-15-03, 10-21-03, 12-19-03, and 01-08-04;
- 1 unit of 97140 on 09-16-03, 09-18-03, 09-22-03, 09-23-03, 09-25-03, 09-29-03, 09-30-03, 10-02-03, 10-16-03, 10-20-03, 12-15-03, 12-16-03, 12-18-03, 01-05-04, 01-06-04, 01-07-04, 01-12-04, 01-15-04, 01-19-04, 01-22-04, 01-26-04, 01-28-04, 02-09-04, 02-17-04, 02-19-04, 02-26-04, and 03-08-04;
- Manual traction (97122);
- Neuromuscular re-education (97112);
- Group activities (97530);
- Massage (97124);
- Unlisted therapeutic procedure (97139);

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division.

On July 13, 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.

The following table identifies the disputed services and Medical Review Division's rationale:

DOS	CPT CODE	Billed	Paid	EOB Denial Code	MARS (Max. Allowable Reimbursement)	Reference	Rationale
10-23-03	76800	\$200.00	\$0.00	No EOB	\$126.25	Medicare Fee Schedule, Rule 133.307(e)(2)(B)	The requestor did not provide convincing evidence of carrier receipt of providers request for EOB's, therefore, no reimbursement is recommended.
10-23-03	76880	\$150.00	\$0.00	No EOB	\$95.75	Medicare Fee Schedule, Rule 133.307(e)(2)(B)	The requestor did not provide convincing evidence of carrier receipt of providers request for EOB's, therefore, no reimbursement is recommended.
10-23-03	99213	\$75.00	\$0.00	No EOB	\$59.00	Medicare Fee Schedule, Rule 133.307(e)(2)(B)	The requestor did not provide convincing evidence of carrier receipt of providers request for EOB's, therefore, no reimbursement is recommended.
10-27-03	97110	\$140.00	\$0.00	No EOB	\$32.64 x 4 = \$130.56	Medicare Fee Schedule, Rule 133.307(e)(2)(B)	The requestor did not provide convincing evidence of carrier receipt of providers request for EOB's, therefore, no reimbursement is recommended.
10-27-03	97530	\$140.00	\$0.00	No EOB	\$32.96 x 4 = \$131.84	Medicare Fee Schedule, Rule 133.307(e)(2)(B)	The requestor did not provide convincing evidence of carrier receipt of providers request for EOB's, therefore, no reimbursement is recommended.
10-29-03	97110	\$140.00	\$0.00	No EOB	\$32.64 x 4 = \$130.56	Medicare Fee Schedule, Rule 133.307(e)(2)(B)	The requestor did not provide convincing evidence of carrier receipt of providers request for EOB's, therefore, no reimbursement is recommended.

10-29-03	97530	\$140.00	\$0.00	No EOB	\$32.96 x 4 =\$131.84	Medicare Fee Schedule, Rule 133.307(e)(2)(B)	The requestor did not provide convincing evidence of carrier receipt of providers request for EOB's, therefore, no reimbursement is recommended.
10-30-03	97110	\$140.00	\$0.00	No EOB	\$32.64 x 4 =\$130.56	Medicare Fee Schedule, Rule 133.307(e)(2)(B)	The requestor did not provide convincing evidence of carrier receipt of providers request for EOB's, therefore, no reimbursement is recommended.
10-30-03	97530	\$140.00	\$0.00	No EOB	\$32.96 x 4 =\$131.84	Medicare Fee Schedule, Rule 133.307(e)(2)(B)	The requestor did not provide convincing evidence of carrier receipt of providers request for EOB's, therefore, no reimbursement is recommended.
12-18-03	97112 x 3	\$105.00	\$0.00	No EOB	\$33.41 x 3 =\$100.23	Medicare Fee Schedule, Rule 133.307(e)(2)(B)	The requestor did not provide convincing evidence of carrier receipt of providers request for EOB's, therefore, no reimbursement is recommended.
12-22-03	97112	\$105.00	\$0.00	E	\$33.91 x 3 =\$100.23	Medicare Fee Schedule, Rule 134.202(d)	According to TWCC system, the carrier has withdrawn their dispute concerning compensability issues. Therefore, 97112 will be reviewed in accordance with the Medicare Fee Schedule. Recommend reimbursement of \$100.23
12-22-03	97124	\$70.00	\$0.00	E	\$25.70 x 2 =\$51.40	Medicare Fee Schedule, Rule 134.202(d)	According to TWCC system, the carrier has withdrawn their dispute concerning compensability issues. Therefore, 97124 will be reviewed in accordance with the Medicare Fee Schedule. Recommend reimbursement of \$51.40.
12-22-03	97140	\$135.00	\$0.00	E	\$93.00	Medicare Fee Schedule, Rule 134.202(d)	According to TWCC system, the carrier has withdrawn their dispute concerning compensability issues. Therefore, 97140 will be reviewed in accordance with the Medicare Fee Schedule. Recommend reimbursement of \$93.00.
12-22-03	99214	\$90.00	\$0.00	E	\$92.30	Medicare Fee Schedule Rule 134.202(d)	According to TWCC system, the carrier has withdrawn their dispute concerning compensability issues. Therefore, 99214 will be reviewed in accordance with the Medicare Fee Schedule. Recommend reimbursement of \$90.00.
01-05-04	97112	\$105.00	\$0.00	F	\$39.30 x =\$102.90	Medicare Fee Schedule, Rule 134.202(d)	Requestor submitted relevant information to support services rendered. Therefore, this review will be reviewed according to the Medicare Fee Schedule. Recommend reimbursement of \$102.90.

01-07-04	97112	\$105.00	\$0.00	No EOB	\$34.30 x 3 =\$102.90	Medicare Fee Schedule	The requestor did not provide convincing evidence of carrier receipt of providers request for EOB's, therefore, no reimbursement is recommended.
01-08-04	99214	\$90.00	\$0.00	No EOB	\$96.91	Medicare Fee Schedule	The requestor did not provide convincing evidence of carrier receipt of providers request for EOB's, therefore, no reimbursement is recommended.
02-23-04	97140	\$135.00	\$0.00	No EOB	\$31.73 x 3=\$95.19	Medicare Fee Schedule	The requestor did not provide convincing evidence of carrier receipt of providers request for EOB's, therefore, no reimbursement is recommended. The requestor did not provide convincing evidence of carrier receipt of providers request for EOB's, therefore, no reimbursement is recommended.
TOTAL							The requestor is entitled to reimbursement of \$437.53.

This Findings and Decision is hereby issued this 15<sup>th</sup> day of February 2005.

Patricia Rodriguez  
Medical Dispute Resolution Officer  
Medical Review Division

### ORDER

Pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay for the unpaid medical fees in accordance with the fair and reasonable rate as set forth in Commission Rule 133.1(a)(8) and in accordance with Medicare program reimbursement methodologies for dates of service after August 1, 2003 per Commission Rule 134.202 (c); 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 for dates of service 09-04-03 through 03-17-04 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 15<sup>th</sup> day of February 2005.

Marjorie C. Clark, Manager  
Medical Dispute Resolution  
Medical Review Division  
MCC/pr  
Enclosure: IRO Decision

# MEDICAL REVIEW OF TEXAS

[IRO #5259]

3402 Vanshire Drive

Austin, Texas 78738

Phone: 512-402-1400

FAX: 512-402-1012

## NOTICE OF INDEPENDENT REVIEW DETERMINATION

**REVISED 2/11/05**

TWCC Case Number:	
MDR Tracking Number:	M5-04-3221-01
Name of Patient:	
Name of URA/Payer:	Abilene Healthcare and Injury Center
Name of Provider: (ER, Hospital, or Other Facility)	Abilene Healthcare and Injury Center
Name of Physician: (Treating or Requesting)	G. Hal Lewis, DC

August 10, 2004

An independent review of the above-referenced case has been completed by a chiropractic doctor. The appropriateness of setting and medical necessity of proposed or rendered services is determined by the application of medical screening criteria published by Texas Medical Foundation, or by the application of medical screening criteria and protocols formally established by practicing physicians. All available clinical information, the medical necessity guidelines and the special circumstances of said case was considered in making the determination.

The independent review determination and reasons for the determination, including the clinical basis for the determination, is as follows:

See Attached Physician Determination

Medical Review of Texas (MRT) hereby certifies that the reviewing physician is on Texas Workers' Compensation Commission Approved Doctor List (ADL). Additionally, said physician has certified that no known conflicts of interest exist between him and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for determination prior to referral to MRT.

Sincerely,

Michael S. Lifshen, MD  
Medical Director

cc: Rosalinda Lopez, Texas Workers Compensation Commission

CLINICAL HISTORY

Available documentation received and included for review involved an approximately 3-inch stack of records from Drs. Lewis (DC), McDonough (MD) and Dozier (MD) including treatment notes, rehab notes, office visits and consultations, MRI reports and surgical reports.

Available record review reveals the following:

Mr. Rogers, a 50-year-old male, sustained injuries to his lower back while working in the oil fields in \_\_\_\_\_. He was treated by Drs. Calvo and Kalafut (records unavailable). He continued with chronic low back pain with lateralizing pain to the right leg and presented on 9/4/03 to Dr. Lewis, a chiropractor. He was subsequently treated a total of 64 times with multiple applications of primary manual therapies, with an attempt at exercises.

Lumbar ESI was performed on 10/30/03, as a follow-up to a previous injection on 4/7/03. This was performed by Dr. Dozier, who indicated that the patient did very well following injections.

MRI was obtained on 12/23/03, the most significant finding of this included loss of disc height at L4/L5 with a prominent disc protrusion centrally and to the right, effacing the thecal sac and filling the right neuroforamen. The protruded portion of the disc measured 7.5-8 millimeters. At L5/S1 there was advanced degeneration of the disc with a minor central bulge.

The patient was then sent to Dr. McDonough, an orthopedist who noted that the chiropractic treatment provided good short-term improvement but that the symptoms had recently begun to worsen. He felt that the patients disc problems at L4-5 and L5-S1 with a source of his complaints and that he was a surgical candidate. Discogram was ordered and he eventually proceeded to surgery on 3/30/04.

REQUESTED SERVICE(S)

Medical necessity of 97112, 97140, 99213, 99214, 97122, 97124, 97110, 97530 and 97139 for dates of service: 09/04/03-10/21/03; 11/05/03-12/19/03 and 01/05/04 - 3/17/04.

DECISION

There is establishment of medical necessity for some of the services provided.

For the date range 9/4/03 - 10/21/03:

There is medical necessity for office visits at a 99213 level of service for 9/8/03, 9/9/03;

There is medical necessity for maximum of two units of 97140 (manual therapy) per date of encounter, for a maximum of three encounters per week between 09/04/03 and 10/04/03 and two encounters per week between 10/04/03 and 10/21/03;

There is no medical necessity established for codes 97122 (lumbar traction), 97112 (neuromuscular reeducation) or 97124 (massage); and

There is no documentation to support either medical necessity or level of service for any 99214 office visits.

For the date range 10/9/03 - 12/11/03:

There is medical necessity for only three units of therapeutic exercises per encounter date, with a maximum exposure of three encounters per week between 10/09/03 - 11/19/03;

There is medical necessity established for the office visits (99213) on 11/13/03 and 12/04/03;

There is medical necessity for a maximum of 2 units for 97140 (manual therapy) on 11/13/03 and 12/04/03;

There is no medical necessity established for 97530, group activities; and

There is not any medical necessity established for 97139, unlisted procedure.

For the date range 12/15/03 - 03/17/04:

There is medical necessity for a maximum of two units of 97140 (manual therapy) per date of encounter, with a maximum of three encounters per week between 12/15/03 and 01/15/04, and two encounters per week between 01/15/04 and 03/17/04; and

There is no medical necessity for any other services rendered during this time frame.

### RATIONALE/BASIS FOR DECISION

The patient had failed previous treatment interventions, and apparently suffered a worsening of his condition in September 2003. Subsequent MRI in December 2003 provided evidence all of a deterioration in this patient's condition in the form of a frank disc herniation/protrusion.

The patient was treated with multiple applications modalities, mostly manual therapies all of which would seem to be duplicative in nature.

Unfortunately, the records all appear to be of the computerized, "canned" variety. They are repetitious, contain minimally clinically useful information and do not show significant progress / substantive change in treatment. There is no objective benchmarking of patient status in terms of re-evaluations/assessment. Unfortunately this provides precious little clinical insight as to the patient's status, his progression or improvement/response to care.

The documentation also fails to outline exactly what type treatments were administered, aside from simply listing that the treatments were "administered or performed to the lumbar region". There is no rationale or indication as to why massage would be different from manual therapy or exactly what type or form of neuromuscular reeducation was provided. It is hard to understand exactly what type of "manual traction" could be performed to the lumbar spine and how this would also differ from manual therapy. There is absolutely no indication as to the rationale for multiple applications of each modality.

At best, considering the fact of this patient was suffering from increased symptomatology, two units of manual therapy is all that can be supported, provided the documentation at hand.

The same limiting argument is provided for multiple applications of therapeutic activities/group activities. There is no documentation provided as to exactly what type of exercises were performed, also without any exercise logs showing progression or improvement in terms of endurance/repetitions/weight etc. Again, considering this patient's condition, all that can be supported is three units of exercises per encounter date.

There is no rationale as to why a 99214 level of service was required on numerous, almost daily encounters in conjunction with such extensive amounts of therapy. The documentation provided fails to satisfy the requirements for such expanded level of service.

The above analysis is based solely upon the medical records/tests submitted. It is assumed that the material provided is correct and complete in nature. If more information becomes available at a later date, an additional report may be requested. Such and may or may not change the opinions rendered in this evaluation.

Opinions are based upon a reasonable degree of medical/chiropractic probability and are totally independent of the requesting client.

**References:**

Hansen DT: Topics in Clinical Chiropractic, 1994, volume one, No. 4, December 1994, pp. 1-8 with the article "Back to Basics: Determining how much care to give and reporting patient progress".

Haldeman S., Chapman-Smith D, Peterson DM., eds. Guidelines for Chiropractic Quality Assurance and Practice Parameters, Aspen: Giathersburg, MD, 1993;

Souza T: Differential Diagnosis for a Chiropractor: Protocols and Algorithms, 1997; chapter 1, pp. 3-25.

Liebenson C. Commentary: Rehabilitation and chiropractic practice. JMPT 1996; 19(2):134140