

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

SOAH DOCKET NO. 453-05-2760.M5

MDR Tracking Number: M5-04-3892-01

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. This dispute was received on 7-13-04.

The Medical Review Division has reviewed the enclosed IRO decision and determined that **the requestor did not prevail** on the issues of medical necessity. The IRO agrees with the previous determination that office visits (levels II, III, and IV), electrical stimulation, unattended, ultrasound, myofascial release, hot-cold pack therapy, manual therapy, therapeutic exercises, and electrical stimulation, attended from 7-2-03 through 1-30-04 were not medically necessary. Therefore, the requestor is not entitled to a reimbursement of the paid IRO fee.

Based on review of the disputed issues within the request, the Medical Review Division has determined that medical necessity fees were not the only fees involved in the medical dispute to be resolved. This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division.

On 8-9-04, 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 carrier denied CPT Codes 99214, 97035, 97110, 97140, 97032, and 99212 for dates of service 8-4-03 through 11-26-03 with an R denial code. A contested case hearing was held on 1-16-04 which ruled that the injured worker did sustain a compensable injury on 10-6-01. In accordance with Rule 133.307 (g)(3)(A-F), the requestor submitted relevant information to support delivery of service,

therefore reimbursement is ordered for these services **as outlined below**. Reimbursement shall be per Rule 134.202(d), reimbursement shall be the least of the (1) MAR amount as established by this rule or, (2) the health care provider's usual and customary charge). In accordance with 134.202(b): for billing, reporting, and reimbursement of professional medical services, Texas Workers' Compensation system participants shall apply the Medicare program reimbursement methodologies.

CPT Code 99214 - recommend reimbursement of **\$203.48**. (\$101.74 x 2)

CPT Code 97035 - recommend reimbursement of **\$186.72**. (\$15.56 x 12)

Regarding CPT Code 97110 for dates of service 8-4-03 through 11-26-03 which was denied with an R by the carrier: Recent review of disputes involving CPT Code 97110

by the Medical Dispute Resolution section indicate overall deficiencies in the adequacy of the documentation of this Code both with respect to the medical necessity of one-on-one therapy and documentation reflecting that these individual services were provided as billed. Moreover, the disputes indicate confusion regarding what constitutes "one-on-one." Therefore, consistent with the general obligation set forth in Section 413.016 of the Labor Code, the Medical Review Division has reviewed the matters in light all of the Commission requirements for proper documentation. The MRD declines to order payment because the SOAP notes do not clearly delineate exclusive one-on-one treatment nor did the requestor identify the severity of the injury to warrant exclusive one-to-one therapy. Reimbursement not recommended.

CPT Code 97140 - recommend reimbursement of **\$813.60**. (\$33.90 x 24)

CPT Code 99212 - recommend reimbursement of **\$440.00**. (\$44.00 x 10)

CPT Code 97032 - recommend reimbursement of **\$440.00**. (\$20.68 x 7)

Pursuant to 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) for dates of service through July 31, 2003;
- 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.

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 22nd day of October 2004.

Donna Auby
Medical Dispute Resolution Officer
Medical Review Division

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

TWCC Case Number:	
MDR Tracking Number:	M5-04-3892-01
Name of Patient:	
Name of URA/Payer:	
Name of Provider: (ER, Hospital, or Other Facility)	
Name of Physician: (Treating or Requesting)	

August 24, 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,

CLINICAL HISTORY

Documents Reviewed Included the Following:

1. Notification of IRO Assignment, Table of Disputed Services, Carrier EOBs
2. Statement of position from Real Health Care, submitted by ____
3. TWCC Appeals Panel Decision (Appeal No. 040277) and Decision and Order, Docket No. HE-02133048-01-CC-HE41
4. Operative report from lumbar epidurogram and fluoroscopically guided right L5 selective nerve root block dated 02/25/02 and 04/01/02 from Dr. N, M.D.

5. Report of CT discogram following contract discography dated 05/28/02 by Gulf Coast MRI & Diagnostics, read by Dr. O, M.D.
6. NCV report from Dr. T, M.D. dated 11/14/01
7. Consultation reports from Gulf Coast Orthopaedic and Spine Associates (Dr. G, M.D.) dated 11/20/01, 11/27/01, 12/19/01, 12/21/01, 01/16/02
8. Radiology reports from Doctors Diagnostic Services, P.C. and Gulf Coast Orthopaedic and Spine Associates dated 11/20/01; from Houston Community Hospital (lumbar spine) 05/06/03
9. Consultation reports from Texas Pain Institute (Dr. N, M.D., Dr. V, M.D.)
10. H&P from East Houston Regional Medical Center dated 01/12/02
11. Report lumbar CT scan w/o contrast 01/12/02, MRI reports for cervical and thoracic spines dated 01/14/02
12. Progress Reports and Daily Soap Notes from Real Health Care (Dr. R)
13. Operative report from discogram dated 08/27/02 by Dr. N, M.D.
14. Orthopedic Consultation from Dr. B. dated 02/17/03; operative report from Dr. B, M.D., date 03/28/03; follow up office notes from Dr. B
15. Motor and Sensory conduction studies from EMG Diagnostic Services dated 03/04/03
16. Hospital inpatient records including 2-view chest x-ray report dated 03/28/03
17. Operative report (bilateral lumbar laminectomy and discectomy L4-5 and L5-S1) from Houston Community Hospital (Dr. B, M.D.) dated 03/28/03 and 04/26/03
18. Operative report from Dr. K, M.D., dated 05/08/03
19. Surgical pathology report from Houston Community Hospital dated 03/28/03
20. Reports from pain management specialist Dr. S, M.D., Ph.D.
21. Carrier position submitted by Stone, Loughlin & Swanson, LLP
22. Peer review by Dr. K, M.D., dated 06/27/02
23. Designated doctor reports from Dr. W, M.D.
24. Various TWCC-73 reports

Patient is a 30-year-old female restaurant worker who, on ____, slipped on a wet and greasy floor and fell, landing onto her buttocks and with her right arm outstretched. She sought emergency care from the local hospital and was returned to work, light duty. She then presented herself to a doctor of chiropractic who began conservative chiropractic care, including extensive physical therapy and rehabilitation, and took her off work. Despite this conservative care, she eventually received a series of injections, and when her pain still persisted, she underwent bilateral lumbar laminectomy and discectomy at L4-5 and L5-S1 on 03/28/03. This was followed by more chiropractic care and physical therapy.

REQUESTED SERVICE(S)

Office visits (levels II, III, and IV), electrical stimulation, unattended (97014), ultrasound (97035), myofascial release (97250), hot/cold pack therapy (97010), manual therapy (97140), therapeutic exercise (97110), and electrical stimulation, attended (97032) for dates of service 07/02/03 through 01/30/04.

DECISION

Denied.

RATIONALE/BASIS FOR DECISION

In this case, the documentation and medical records submitted failed to adequately establish that compensable injuries were present following an on-the-job injury. Numerous examiners found symptom magnification on the part of the patient and subjective complaints that were non-organic in nature. However, be this as it may, the patient did eventually undergo an aggressive lumbar surgery and as such, was entitled to post-surgical physical therapy and rehabilitation.

However, the surgical procedure took place on 03/28/03, and – even though 2 subsequent surgeries were performed because there was CSF leakage – this patient could have been transitioned into a home exercise and rehabilitation program by July of 2003. In fact, there is no evidence to support the need for monitored therapy during the time frame in dispute. Services that do not require “hands-on care” or supervision of a health care provider are not considered medically necessary services even if the services are performed by a health care provider, and this patient certainly had been in a supervised program

long enough to know what to safely do without formal supervision by the provider. Moreover, any gains obtained in this time period would likely have been achieved through performance of a home program.

Therapeutic exercises may be performed in a clinic one-on-one, in a clinic in a group, at a gym or at home with the least costly of these options being a home program. A home exercise program is also preferable because the patient can perform them on a daily basis. In this case, the provider failed to establish why the services were required to be performed one-on-one for such a prolonged time frame. Furthermore, even if the extensive one-on-one therapy had been medically necessary, it would not have been needed for the length and duration in this case, and certainly not 4 months after the surgical procedure was performed.