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

SOAH DOCKET NO. 453-05-0621.M5

MDR Tracking Number: M5-04-3926-01

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 7-16-04.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor prevailed** on 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** 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.

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 work hardening program (initial and additional hours) rendered from 4/05/04 through 5/05/04 was found to be medically necessary. The respondent raised no other reasons for denying reimbursement for the above listed service.

This Findings and Decision is hereby issued this 2nd day of September 2004.

Regina L. Cleave
Medical Dispute Resolution Officer
Medical Review Division

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 outlined above as follows:

- in accordance with TWCC reimbursement methodologies for Return To Work Rehabilitation Programs for dates of service after August 1, 2003 per Commission Rule 134.202 (e)(5);

- 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 4/05/04 through 5/05/04 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 2nd day of September 2004.

Roy Lewis, Supervisor
Medical Dispute Resolution
Medical Review Division

08/21/2004

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

Patient:
TWCC #:
MDR Tracking #: M5-04-3926-01
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 injured at work on ___. The patient measures 5'7" and weighs 178 lbs. according to the records. He presented to the office of Dr. R, DC on or about 9/26/03. He has been treated with physical therapy, epidural steroid injections and work hardening services. An MRI dated 11/4/03 indicated a broad based protrusion with annular tearing at L3/4 and an annular fissure at L4/5. Uday Doctor, MD performed three ESI's with moderate success in the short term for pain followed by post-injection therapy. A series of peer reviews were performed by Dr. S, DC and Dr. T, DC. An FCE was performed on 4/2/04 indicating the patient does not material handling qualifications and PDL requirements of his job. The patient began a work hardening program with Work Perfect Houston on 4/5/04. This program was discontinued due to non-improvement and a lack of patient compliance. The patient was examined by Dr. F, MD for a designated doctor appointment and impaired with a 5% IR on 4/8/04. The patient continued to complain of pain and discomfort; therefore, he was referred for surgical consultation with Dr. N, MD who opined that no surgical intervention was necessary.

Records were reviewed from the treating doctor, requestor and the respondent. Records reviewed include but are not limited to the following: Letter from ___, RN, 3/9/04 modality review by Dr. T, 1/22/04 modality review by Dr. S, reconsideration by Dr. T 7/14/04, 6/22/04 request for reconsideration by Dr. R,. MRI 11/4/03, Notes and examinations from Dr. Doctor, DD exam by Dr. F, FCE and work hardening notes from Work Perfect Houston (WPH), notes from ___, PT, Behavioral Medicine Notes by Dr. H, Ph. D., weekly conference reports by WPH, 7/23/04 request for recon by WPH, 7/15/04 rebuttal by Dr. R, lumbar CT report 5/27/04,

DISPUTED SERVICES

Disputed services include a work hardening program (WH 97545-WH-CA and each additional hour) as denied by the carrier with "V" codes.

DECISION

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

BASIS FOR THE DECISION

The reviewer notes that the patient was placed at MMI on 4/8/04 by Dr. F. However, the reviewer notes that Dr. F did not perform an FCE nor did she have the FCE in her possession to determine the patient's functional ability. The reviewer notes that the FCE of 4/2/04 provides the medical necessity for the return to work program with a psychological component. The patient is deconditioned according to the FCE and it is noted that he spends up to 17 hours per day either sitting or sleeping. This is not compatible with a normally functioning worker. The patient fails to improve within a reasonable time due to both organic and nonorganic reasons in the reviewer's opinion. Psychological notes from Dr. H, Ph. D. indicate that the patient has a need to understand his present condition. Secondly, he appears to be focused on his pain and

does not have the ability to understand his pain and move beyond it. The reviewer notes that Dr. R deferred the program due to noncompliance and nonimprovement on 5/6/04.

References:

Van Tulder MW, et al Exercise therapy for low back pain. The Cochrane Database of Systematic Reviews, Cochrane Library number: CD000335. In: The Cochrane Library Issue 2, 2002.

Hilde G, Bo K. Effect of exercise in the treatment of chronic low back pain: a systematic review, emphasizing type and dose of exercise. Physical therapy Reviews 1998; 3:107-117.

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,