

MDR Tracking Number: M5-04-3991-01

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 7-22-04.

The IRO reviewed office visits, manual therapy, therapeutic exercises, mechanical traction, neuromuscular re-education, therapeutic activities, range of motion measurements, and manual muscle testing.

The Medical Review Division has reviewed the IRO decision and determined that the **requestor prevailed** on the majority of the medical necessity issues. The IRO concluded that the neuromuscular re-education, therapeutic activities, and therapeutic exercises on 1-21-04, 1-26-04, 1-28-04, 1-30-04, 2-4-04, 2-6-04, 2-12-04, 2-13-04, and 2-17-04 and the manual muscle testing and range of motion measurement from 2-4-04 to 2-17-04 and the office visit on 2-4-04 were medically necessary. The IRO agreed with the previous determination that the manual traction, manual therapy, therapeutic exercises, and office visit on 1-5-04 and the office visits on 1-21-04, 1-26-04, 1-28-04, and 1-30-04 were not medically necessary. 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.

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 10-12-04, 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 following table identifies the disputed services and Medical Review Division's rationale: For code 97110, see RATIONALE below table.

All services listed on the table below had no EOBs submitted by either party. Per Rule 133.307(e)(2)(B), the requestor shall include a copy of each EOB, or if no EOB was received, convincing evidence of carrier receipt of that request. Requestor submitted convincing evidence of carrier receipt of request for reconsideration. Per Rule 133.307(e)(3)(B), the carrier is

required to provide any missing information including absent EOBs not submitted by the requestor. The carrier's initial response to the medical dispute did not include the missing EOBs; therefore, in accordance with Rule 134.202, recommend reimbursement for the following.

DOS	CPT CODE	Billed	Paid	MARS (Max. Allowable Reimbursement)
12/24/03	99213 97140 97110 97012	\$66.19 \$34.05 \$136.20 \$17.15	\$0.00	\$52.95 x 125% = \$66.19; recommend \$66.19 \$27.24 x 125% = \$34.05; recommend \$34.05 See below \$15.12 x 125% = \$18.90; requestor is seeking \$17.15. Recommend \$17.15.
12/26/03	99213 97140 97110 97012	\$66.19 \$34.05 \$136.20 \$17.15	\$0.00	\$52.95 x 125% = \$66.19; recommend \$66.19 \$27.24 x 125% = \$34.05; recommend \$34.05 See below \$15.12 x 125% = \$18.90; requestor is seeking \$17.15. Recommend \$17.15.
12/29/03	99212 97140 97110 97012	\$47.23 \$34.05 \$136.20 \$17.15	\$0.00	\$52.95 x 125% = \$66.19; recommend \$66.19 \$27.24 x 125% = \$34.05; recommend \$34.05 See below \$15.12 x 125% = \$18.90; requestor is seeking \$17.15. Recommend \$17.15.
1/26/04	95831	\$30.56	\$0.00	\$31.51 x 125% = \$39.39; requestor is seeking \$30.56. Recommend \$30.56.
3/26/04	97545-WH-CA  97546-WH-CA	\$128.00 – 2 hrs  \$384.00 – 6 hrs	\$0.00	\$64.00 x 2 hrs = \$128.00  \$64.00 x 6 hrs = \$384.00

RATIONALE: Recent review of disputes involving CPT code 97110 by the Medical Dispute Resolution section as well as analysis from recent decisions of the State Office of Administrative Hearings 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 (MRD) has reviewed the matters in light of the Commission requirements for proper documentation. The MRD declines to order payment for code 97110 because the daily notes did not clearly delineate the severity of the injury that would warrant exclusive one-to-one treatment.

The above Findings and Decision is hereby issued this 5th day of November 2004.

Dee Z. Torres  
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) 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 12-24-03 through 3-26-04 in this dispute.

This Order is hereby issued this 5th day of November 2004.

Roy Lewis, Supervisor  
Medical Dispute Resolution  
Medical Review Division

## AMENDED REPORT

October 12, 2004

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

Patient:  
TWCC #:  
MDR Tracking #: M5-04-3991-01  
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

\_\_\_ was injured on the job on \_\_\_. He initially saw the company doctor and changed doctors to Dr. P, D.C. on November 19, 2003. Dr. P performed an evaluation and began passive and active therapies. \_\_\_ had an MRI at Baylor Medical Center of Irving that demonstrated a radial tear at L4-5 and L5-S1. A CPT was performed on 12/05/2003 that demonstrated some subjective hypo-aesthetic conditions in the lower extremities, clinical correlation is not made. ROM and Muscle Test are performed on 12/01/2003 that demonstrates near normal ROM and Muscle Strength is normal with pain as a 3/10.

A re-examination performed on 1/19/2004 realized little improvement and treatment plan was changed to more aggressive therapy. \_\_\_ was referred to Dr. K for medication and recommendations were for caudal ESI's. He saw Dr. W, M.D. on 1/19/2004, who also recommended caudal ESI's. These began on 2/02/2004 with therapies to follow. The lumbar pain decreased to a 3/10 from a 4/10.

A Peer Review was performed on 6/28/2004 by Dr. T, D.C. who recommended care after 1/13/2004 is no longer appropriate including therapy and work hardening. The carrier has subsequently denied all services for the dates of 12/24/03, 12/26/03, 12/29/03, 1/5/04, 1/19/04, 1/21/04, 1/26/04, 1/28/04, 1/30/04, 2/4/04, 2/6/04, 2/12/04, 2/13/04, 2/17/04 and 3/26/04.

### DISPUTED SERVICES

The items in dispute are the retrospective medical necessity of level II & III office visits, manual therapy technique, therapeutic exercises, mechanical traction, neuromuscular reeducation, therapeutic activities, range of motion measurements and manual muscle testing from 1/5/2004 through 2/17/2004.

### DECISION and BASIS FOR THE DECISION

For the date of service on 1/5/04 the treatment including 97012, 97140, 97110 and office visit 99212 are not considered reasonable or necessary. If office visits are being performed on each day and evaluation is occurring without patient improvement in condition, standard utilization guidelines including Mercy Conference and Rand Consensus Panel do not permit continuation of care beyond 4 weeks without a change in treatment protocol.

Dr. P re-evaluated \_\_\_ on 1/19/2004 and subsequently changed the treatment plan. Standard guidelines suggest that a trial of two weeks be considered appropriate to allow \_\_\_ an opportunity to improve with the revised treatment plan. The reviewer states that the treatment including 97112, 97530 and 97110 is reasonable and necessary and in compliance with the guidelines on 1/21/04, 1/26/04, 1/28/04 and 1/30/04. The medical necessity for office visits

(99212) is not documented in the office notes; therefore, they are not indicated on these same dates of service.

Standard treatment protocols indicate that 6 visits of therapy are indicated with improvement as a result of the ESI. \_\_\_ had a decrease in subjective pain levels. The reviewer states the therapies 97112, 97530 and 97110 performed on 2/4/04, 2/6/04, 2/12/04, 2/13/04 and 2/17/04 are reasonable and necessary for these dates of service while the office visit for 2/4/04 is considered medically reasonable and necessary for evaluation post injection. Therefore, the charges 95851 and 95831 during these dates can be considered reasonable to monitor progress post injection as per CCI edits.

The reviewer notes all other services under dispute (which have not been previously stated to be medically necessary) are found to be not reasonable or medically necessary.

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,