

MDR Tracking Number: M5-04-4078-01

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, 133.307 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 07-28-04.

The IRO reviewed massage therapy, therapeutic exercises, electrical stimulation (unattended), therapeutic activities and ultrasound rendered from 10-23-03 through 04-09-04 that were denied based "V".

The Medical Review Division has reviewed the IRO decision and determined that **the requestor did not prevail** on the issues of medical necessity. Consequently, the requestor is not owed a refund of the paid IRO fee.

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 not the only issue** 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 09-09-04, 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:

DOS	CPT CODE	Billed	Paid	EOB Denial Code	MARS	Reference	Rationale
11-11-03	97110	\$140.00 (4 units)	\$0.00	NO EOB	\$34.41		See rationale below. No reimbursement recommended.
03-17-04	97002	\$90.00 (per table of disputed services)	\$0.00	NO EOB	\$48.60	Rule 133.307(e)(2)(A)(B)	The requestor did not submit proof of submission for the service. No reimbursement recommended.
04-01-04 04-02-04	97124	\$56.00 (1 unit @)	\$0.00	E	\$27.25	Rule 134.202(b)	No TWCC-21 filed. Requestor provided relevant information to

DOS	CPT CODE	Billed	Paid	EOB Denial Code	MARS	Reference	Rationale
		\$28.00 X 2 DOS)					support delivery of service. Reimbursement recommended in the amount of \$27.25 X 2 DOS = \$54.50

DOS	CPT CODE	Billed	Paid	EOB Denial Code	MARS	Reference	Rationale
04-01-04 04-02-04	97110	\$140.00 (2 units @ \$70.00 X 2 DOS)	\$0.00	E	\$34.41	Rule 134.202(b)	No TWCC-21 filed. See rationale below. Reimbursement not recommended.
04-01-04 04-02-04	G0283	\$32.00 (1 unit @ \$16.00 X 2 DOS)	\$0.00	E	\$15.89	Rule 134.202(b)	No TWCC-21 filed. Requestor provided relevant information to support delivery of service. Reimbursement recommended in the amount of \$15.89 X 2 DOS = \$31.78
TOTAL		\$458.00	\$0.00				Requestor is entitled to reimbursement in the amount of \$86.28

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.

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 Decision is applicable for dates of service 04-01-04 and 04-02-04 in this dispute.

This Findings and Decision and Order are hereby issued this 27th day of September 2004.

Debra L. Hewitt
Medical Dispute Resolution Officer
Medical Review Division

DLH/dlh

September 7, 2004

David Martinez
TWCC Medical Dispute Resolution
4000 IH 35 South, MS 48
Austin, TX 78704

Patient:
TWCC #:
MDR Tracking #: M5-04-4078-01
IRO #: 5251

Ziroc 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 Ziroc for independent review in accordance with TWCC Rule 133.308 which allows for medical dispute resolution by an IRO.

Ziroc 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.

The independent review was performed by a matched peer with the treating doctor. This case was reviewed by a licensed Doctor of Chiropractic. The reviewer is on the TWCC Approved Doctor List (ADL). The Ziroc 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 Ziroc for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to the dispute.

RECORDS REVIEWED

Notification of IRO Assignment, Table of Disputed Services, carrier EOBs; statement of position from treating doctor, treating doctor's, narrative examination findings, letters of appeal, and

intake paperwork; evaluation reports, daily progress notes, exercise logs, and discharge summary from PT facility; MRI report of pelvis and left hip and MRI report lumbar spine; electrodiagnostic testing report from neurologist; and, office visit notes from orthopedist for dates of service 05/07/04, 06/04/04, and 06/18/04.

CLINICAL HISTORY

___ is a 23-year-old male oil rig laborer who, on ___, stepped on a board and the board slipped. The patient fell roughly 5 feet, landing onto his back and on a piece of wood. He went on his own to a local hospital on 08/19/03 and x-rays revealed a 7th rib fracture. He then followed-up with his employer's company doctor who dispensed medication and returned him to work. After attempting to work in pain for a couple of days, he then sought care from a doctor of chiropractic and began conservative care with physical therapy. Eventually, the patient also underwent epidural steroid injections.

DISPUTED SERVICES

Under dispute is the medical necessity of Massage therapy (97124), therapeutic exercises (97110), electrical stimulation, unattended (G0283), therapeutic activities (97530), and therapeutic ultrasound (97035) for dates of service 10/23/03 through 04/09/04.

DECISION

The reviewer agrees with the prior adverse determination.

BASIS FOR THE DECISION

Expectation of improvement in a patient's condition should be established based on success of treatment. Continued treatment is expected to improve the patient's condition and initiate restoration of function. If treatment does not produce the expected positive results, it is not reasonable to continue that course of treatment. With documentation of improvement in the patient's condition and restoration of function, continued treatment may be reasonable and necessary to effect additional gains. In this case, there is no documentation of objective or functional improvement in this patient's condition and no evidence of a change of treatment plan to justify additional treatment in the absence of positive response to prior treatment. In fact, the opposite is true since the claimant's pain was 6/10 at the initiation of treatment on 08/27/03, but had increased to 7/10 on 10/20/03 at the initiation of the treatment in dispute. Further, AROM stayed exactly the same between the 2 reevaluations performed on 09/18/03 and then again on 10/16/03, with both visits recording lumbar flexion at 52 degrees, lumbar extension at 10 degrees, and both right and left lateral flexion at 15 degrees.

Furthermore, the 1996 TWCC Medical Fee Guideline provides Medicine Ground Rules on page 31. Section I, A identifies the criteria that must be met for physical medicine treatment to qualify for reimbursement: (1) the patient's condition shall have the potential for restoration of function and (2) the treatment shall be specific to the injury and provide for the potential improvement of the patient's condition. Potential for restoration of function is identified by progressive return to function. Without demonstration of objective progress, ongoing treatment cannot be reasonably expected to restore this patient's function and thus can only be deemed medically unnecessary.

Also, the *Guidelines for Chiropractic Quality Assurance and Practice Parameters*¹ Chapter 8 under “Failure to Meet Treatment/Care Objectives” state, “After a maximum of two trial therapy series of manual procedures lasting up to two weeks each (four weeks total) without significant documented improvement, manual procedures may no longer be appropriate and alternative care should be considered.” The treatment dates within the dispute time frame fall well beyond this accepted practice standard.

According to the Medicare Guidelines, if a patient’s expected restoration potential is insignificant in relation to the extent and duration of the physical medicine services required to achieve such potential, the services are not considered reasonable or necessary. Moreover, the records fail to substantiate that the aforementioned services fulfilled the requirements of Texas Labor Code 408.021 since the patient obtained no relief, promotion of recovery was not accomplished and there was no enhancement of the employee’s ability to return to employment.

And finally, the medical records submitted fail to document that chiropractic spinal adjustments were performed at any time. According to the AHCPR² guidelines, spinal manipulation was the only recommended treatment that could relieve symptoms, increase function and hasten recovery for adults suffering from acute low back pain. Based on those findings, this reviewer has difficulty understanding why a doctor of chiropractic would withhold this recommended treatment while performing a host of other non-recommended therapies. Therefore, since the treating doctor never attempted a proper regimen of this recommended form of treatment, the treatment from 10/23/03 to 11/17/03 was medically unnecessary.

Insofar as the post-epidural steroid injection rehabilitation was concerned, the documentation submitted failed to establish the necessity that these services needed to be performed in a one-on-one supervised, clinical setting. Rather, the records reflected that the patient had been very compliant with his home exercise program and would have been the most cost effective and efficient manner to provide this service. Any gains obtained in this time period would have likely been achieved through performance of a home program.

Ziroc has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. Ziroc has made no determinations regarding benefits available under the injured employee’s policy

As an officer of ZRC Services, Inc, dba Ziroc, I certify that there is no known conflict between the reviewer, Ziroc and/or any officer/employee of the IRO with any person or entity that is a party to the dispute.

Ziroc is forwarding this finding by US Postal Service to the TWCC.

Sincerely,

¹ Haldeman, S; Chapman-Smith, D; Petersen, D *Guidelines for Chiropractic Quality Assurance and Practice Parameters*, Aspen Publishers, Inc.

² Bigos S., Bowyer O., Braen G., et al. Acute Low Back Problems in Adults. Clinical Practice Guideline No. 14. AHCPR Publication No. 95-0642. Rockville, MD: Agency for Health Care Policy and Research, Public Health Service, U.S. Department of Health and Human Services. December, 1994.