

THIS DECISION HAS BEEN APPEALED. THE  
FOLLOWING IS THE RELATED SOAH DECISION NUMBER:  
SOAH DOCKET NO. 453-05-1112.M5

MDR Tracking Number: M5-04-4096-01

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 07-30-04.

The IRO reviewed office visits, therapeutic procedures, therapeutic activities, functional capacity evaluation, work hardening (initial) and work hardening—each additional hour rendered from 08-12-03 through 03-24-04 that were denied based upon “V”.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor did not prevail** on the **majority** of issues of medical necessity. The IRO reviewer determined that office visits (99213) on dates of service 8/12/03, 8/15/03, 8/18/03, 8/20/03, 8/22/03, 8/26/03, 8/28/03, 8/29/03, 9/9/03 and 9/11/03 as well as therapeutic exercises (97110) on dates of service 8/12/03, 8/15/03, 8/18/03, 8/20/03, 8/22/03, 8/26/03, 8/28/03, 8/29/03 and 9/9/03, therapeutic activities (97530) on dates of service 8/18/03, 8/20/03, 8/22/03, 8/26/03, 8/28/03, 8/29/03 and 9/9/03 along with functional capacity examination (97750-FC) on date of service 9/10/03 and office visits (99211) on dates of service 9/15/03, 12/9/03, 1/12/04, 2/9/04 and 3/8/04 **were** medically necessary. The IRO reviewer determined all remaining services **were not** medically necessary. 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 08-26-04, 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.

Neither the requestor nor the respondent submitted explanation of benefits for CPT codes 97265, 97250 and 97122 on dates of service 08-12-03 and 08-15-03 and CPT codes 97545 and 97546 on date of service 10-23-03. CPT codes 97265, 97250 and 97122 for dates of service 08-12-03 and 08-15-03 were invalid for these dates of service in accordance with the Medical Fee Guideline effective 8-1-03; therefore no reimbursement is recommended. Reimbursement in the amount of

\$128.00 and 384.00 for a total fee reimbursement of **\$512.00** for CPT codes 97545 and 97546 respectively is recommended per the Medical Fee Guideline effective 08-01-03.

This Findings and Decision is hereby issued this 23<sup>rd</sup> day of September 2004.

Debra L. Hewitt  
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 Decision is applicable for dates of service 08-12-03 through 03-08-04 in this dispute.

This Order is hereby issued this 23<sup>rd</sup> day of September 2004.

Roy Lewis, Supervisor  
Medical Dispute Resolution  
Medical Review Division

RL/dlh

09/16/2004

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

Patient:  
TWCC #:  
MDR Tracking #: M5-04-4096-01  
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 \_\_\_ while he was employed for \_\_\_. He was injured while performing lifting tasks. He measures 5'8" and weighs 198 lbs. according to the records. An MRI was performed on 7/9/03 indicating a 4mm right paracentral herniation at L4/5 with facet arthrosis and a 2mm paracentral herniation at L5/S1 with mild facet arthrosis. Neurodiagnostic testing was found to be negative. ESI's (x2) were performed by Dr. C, MD and found to have little reduction of pain. Re-evaluations were performed through treatment by Dr. P, DC. Active therapies were begun and terminated in a work hardening program. Dr. C indicated that he would recommend an IDET procedure. This was denied by the insurance company via peer review. Dr. K, DC, performed peer reviews on 8/14/03 and 10/14/03. A designated doctor, Dr. B, MD, performed an examination and determined MMI on 12/1/03 with a 5% IR. Letters of clarification were written by Dr. B due to requests by Dr. P. Dr. H MD performed a peer review on 2/12/04 indicating that a surgical procedure was not necessary.

Records were received from the treating doctor/requestor and the respondent. Records reviewed include but are not limited to the following: TWCC intake information of MDR, 9/3/04 letter from \_\_\_, peer reviews from Dr. K, DC dated 8/13/03 and 10/14/03, DD report Dr. B, MD 12/1/03, peer review by Dr. H, MD, 7/28/04 letter from Dr. P, Carf accreditation letter, Mr. W's intake information (Spanish and its English counterpart (blank), MRI report of 7/9/03, Neurodiagnostic testing dated 10/13/03, notes from Texas Bone and Joint Center (Dr. C), Ergos Evaluation summaries 9/10/03, 10/29/03, 12/2/03, group notes from \_\_\_, LPC and \_\_\_ LPC, and SOAP notes from 8/12/03 through 3/24/04 from Central Dallas Rehab.

### DISPUTED SERVICES

Disputed services include office visits, therapeutic procedures (97110), Therapeutic activities (97530), Functional Capacity Evaluation (97750-FC), 97545-WH-CA work hardening (initial) and 97546 (work hardening-each additional hour) from 8/12/03 through 3/24/04.

### DECISION

The reviewer disagrees with the previous adverse determination regarding the following services: **99213** (8/12/03, 8/15/03, 8/18/03, 8/20/03, 8/22/03, 8/26/03, 8/28/03, 8/29/03, 9/9/03,

9/11/03), **97110** (8/12/03, 8/15/03, 8/18/03, 8/20/03, 8/22/03, 8/26/03, 8/28/03, 8/29/03, 9/9/03), **97530** (8/18/03, 8/20/03, 8/22/03, 8/26/03, 8/28/03, 8/29/03, 9/9/03), **97750-FC** (9/10/03), **99211** (9/15/03, 12/9/03, 1/12/04, 2/9/04 and 3/8/04).

The reviewer agrees with the previous adverse determination regarding all remaining services.

### BASIS FOR THE DECISION

The reviewer indicates that the allowed therapeutic procedures are allowed based upon the diagnosis of a lumbar disc injury. The designated doctor allowed for a category II lumbosacral impairment with a 5% IR. This is not an impairment for a sprain/strain injury as stated in Dr. K's report. Dr. K indicated that the majority of treatments would be necessary through 9/1/03 in his report. The diagnostic testing is clear as to the nature of the injury. There appears to be a question of diagnostic quality of one portion of the examination; however, multiple doctors have indicated that it is a disc injury. The normal treatment protocols for a minor disc injury include four to twelve weeks of treatment according to the Medical Disability Advisor by Dr. R, MD. The functional testing is necessary to determine patient improvement and increased functionality as per TLC 408.021. The patient's pain scales began to elevate on 8/18/03 wherein, they stayed at a 6/10 for the remainder of treatment. The designated doctor noted that the patient had 'positive findings of exaggeration of symptoms.' This is a possible cause of the elevation of symptoms.

The facility is CORF accredited; therefore, they are not required to perform preauthorization for a work hardening program. However, the available notes do not indicate a reason to perform a multi-disciplinary program. There is no mention in Dr. P's notes of a psychological indication for a multidisciplinary program. Therefore, a lesser program would likely be appropriate according to TWCC and Medicare Guidelines. The approved office visits are medically indicated/necessary due to the appropriate office visit on a monthly basis to ensure the patient is stable and has returned to work without major incident.

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,