

MDR Tracking Number: M5-04-4233-01

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. The disputed dates of service 7-28-03 through 8-15-03 are untimely and ineligible for review per TWCC Rule 133.308 (e)(1) which states that a request for medical dispute resolution shall be considered timely if it is received by the Commission no later than one year after the dates of service in dispute. This dispute was received on 8-16-04.

The IRO reviewed therapeutic exercises, office visits, ROM, neuromuscular re-education, massage, manual therapy, and muscle testing on 8-18-03 through 3-4-04.

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.

This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division. On 9-14-04, 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.

Code 99213 was billed for date of service 10-3-03. Neither party submitted an EOB. 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 did not submit convincing evidence of carrier receipt of request. 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 EOB for this date of service. Therefore, no review and no reimbursement recommended.

Code 99080-73 was billed for date of service 3-4-04 and denied as "V – unnecessary medical"; however, per Rule 129.5, the TWCC-73 is a required report and is not subject to an IRO review. The Medical Review Division has jurisdiction in this matter; therefore, recommend reimbursement of \$15.00.

ORDER

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 Medicare program reimbursement methodologies for dates of service on or after August 1, 2003 per Commission Rule 134.202 (c);
- In accordance with TWCC reimbursement methodologies regarding Work Status Reports for dates of service on or after August 1, 2003 per Commission Rule 134.202 (e)(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 to date of service 3-4-04 as outlined above 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 16th day of November 2004.

Dee Z. Torres
Medical Dispute Resolution Officer
Medical Review Division

November 2, 2004

Texas Workers' Compensation Commission
Medical Dispute Resolution
Fax: (512) 804-4868

Re: Medical Dispute Resolution
MDR #: M5-04-4233-01
TWCC#:
Injured Employee:
DOI:
SS#:
IRO Certificate No.: 5055

Dear

___ has performed an independent review of the medical records of the above-named case to determine medical necessity. In performing this review, ___ reviewed relevant medical records, any documents provided by the parties referenced above, and any documentation and written information submitted in support of the dispute.

I am ___ and I certify that the reviewing healthcare professional in this case has certified to our organization that there are no known conflicts of interest that exist between him and any of the treating physicians or other health care providers or any of the physicians or other health care providers who reviewed this case for determination prior to referral to the Independent Review Organization.

Information and medical records pertinent to this medical dispute were requested from the Requestor and every named provider of care, as well as from the Respondent. The independent review was performed by a matched peer with the treating health care provider. This case was reviewed by a physician who is certified in chiropractic and is currently on the TWCC Approved Doctor List.

REVIEWER'S REPORT

Information Provided for Review:

TWCC-60, Table of Disputed Services, EOB's

Information provided by Requestor:

- Correspondence
- Office visit 03/27/03
- Physical therapy notes 03/27/03 – 03/04/04
- FCE's 05/07/03 – 09/16/03
- Radiology reports 04/15/03 – 01/09/04

Information provided by Respondent:

- Correspondence
- Independent medical case review 04/16/04
- Retrospective peer review 04/27/04
- Impairment rating 03/31/04
- Designated doctor evaluation & re-evaluation 07/09/03 & 12/03/03
- Peer review report 06/13/03

Information provided by Neurologist:

- Office visits 08/01/03 – 09/13/04
- Nerve conduction test 08/01/03

Information provided by Orthopedic Surgeon:

- Office visit 11/25/03

Information provided by Orthopedic Surgeon:

- Office visits 07/23/03 – 10/27/03

Information provided by Pain Mgmt. Specialist:

- Office visits 04/10/03 – 11/13/04
- Procedure notes 05/21/03 – 06/11/03

Clinical History:

Patient underwent physical medicine treatments after injuring her neck, low back and right shoulder while at work on ____.

Disputed Services:

Therapeutic exercises, office visits, ROM measurements, neuromuscular re-education, massage therapy, manual therapy and limb muscle testing-manual during the period of 08/18/03 thru 03/04/04.

Decision:

The reviewer agrees with the determination of the insurance carrier and is of the opinion that the treatment and services in dispute as stated above were not medically necessary in this case.

Rationale:

Physical medicine is an accepted part of a rehabilitation program following an injury. However, for medical necessity to be established, there must be an expectation of recovery or improvement within a reasonable and generally predictable time period. In addition, the frequency, type and duration of services must be reasonable and consistent with the standards of the health care community. General expectations include: (A) As time progresses, there should be an increase in the active regimen of care, a decrease in the passive regimen of care and a decline in the frequency of care. (B) Home care programs should be initiated near the beginning of care, include ongoing assessments of compliance and result in fading treatment frequency. (C) Patients should be formally assessed and re-assessed periodically to see if the patient is moving in a positive direction in order for the treatment to continue. (D) Supporting documentation for additional treatment must be furnished when exceptional factors or extenuating circumstances are present. (E) Evidence of objective functional improvement is essential to establish reasonableness and medical necessity of treatment. 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. In this case, there is no documentation of objective or functional improvement in this patient's condition and no evidence that the treatment fulfilled the statutory requirements¹ since the patient obtained no relief, promotion of recovery was not accomplished and there was no enhancement of the employee's ability to retain employment.

Specifically, the patient's pain ratings did not materially improve. Those ratings were 5/10, 6/10 and 5/10 for the cervical spine, lumbar spine and right shoulder respectively on 08/15/03 at the initiation of the disputed treatment and 5/10, 5/10 and 5/10 on 10/13/03 near the termination of the disputed treatment. Moreover, the patient's lumbar extension range of motion; right shoulder extension, adduction and internal rotation range of motion; and cervical spine flexion and left rotation range of motion actually decreased from the time of the 07/28/03 and 08/26/03 examinations to the time of the FCE performed on 09/16/03.

¹ Texas Labor Code 408.021

The *Guidelines for Chiropractic Quality Assurance and Practice Parameters*² Chapter 8 under “Failure to Meet Treatment/Care Objectives” states, “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.” That four-week unsuccessful period ended several months before the disputed treatment in question.

The medical records also fail to document that manipulation was ever performed on any visit. The absence of the manipulation code modifier (-MP) also indicates that chiropractic manipulative therapy was not performed. According to the AHCP³ 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 and several randomized studies^{4 5 6} have proven the effectiveness of spinal manipulation for patients with cervical spine symptoms and conditions. Therefore, since spinal manipulation was not performed and based on CPT⁷, there is no support for the medical necessity for the E/M office visits on most every visit during an established treatment plan.

It is the position of the Texas Chiropractic Association⁸ that it is beneficial to proceed to the rehabilitation phase (if warranted) as rapidly as possible, and to minimize dependency upon passive forms of treatment/care since studies have shown a clear relationship between prolonged restricted activity and the risk of failure in returning to pre-injury status. The TCA Guidelines also state that repeated use of acute care measures alone generally fosters chronicity, physician dependence and over-utilization and the repeated use of passive treatment/care tends to promote physician dependence and chronicity. Therefore, there was no support for the medical necessity of the ongoing passive treatments.

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. On the most basic level, the provider has failed to establish why the services

² Haldeman, S; Chapman-Smith, D; Petersen, D *Guidelines for Chiropractic Quality Assurance and Practice Parameters*, Aspen Publishers, Inc.

³ Bigos S., Bowyer O., Braen G., et al. Acute Low Back Problems in Adults. Clinical Practice Guideline No. 14. AHCP³ 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.

⁴ Hurwitz EL, Morgenstern H, Harber P, Kominski GF, Yu F, Adams AH. A randomized trial of chiropractic manipulation and mobilization for patients with neck pain: clinical outcomes from the UCLA neck-pain study. *Am J Public Health*. 2002 Oct;92(10):1634-41.

⁵ Hoving JL, Koes BW, de Vet HC, van der Windt DA, Assendelft WJ, van Mameren H, Deville WL, Pool JJ, Scholten RJ, Bouter LM. Manual therapy, physical therapy, or continued care by a general practitioner for patients with neck pain. A randomized, controlled trial. *Ann Intern Med*. 2002 May 21;136(10):713-22.

⁶ Gross AR, Hoving JL, Haines TA, Goldsmith CH, Kay T, Aker P, Bronfort G, Cervical overview group. Manipulation and Mobilisation for Mechanical Neck Disorders. *Cochrane Database Syst Rev*. 2004;1:CD004249.

⁷ *CPT 2004: Physician's Current Procedural Terminology, Fourth Edition, Revised*. (American Medical Association, Chicago, IL 1999),

⁸ Quality Assurance Guidelines, Texas Chiropractic Association.

were required to be performed one-on-one when current medical literature states, “...there is no strong evidence for the effectiveness of supervised training as compared home exercises.”⁹

⁹ Ostelo RW, de Vet HC, Waddell G, Kerchhoffs MR, Leffers P, van Tulder M, Rehabilitation following first-time lumbar disc surgery: a systematic review within the framework of the cochrane collaboration. *Spine*. 2003 Feb 1;28(3):209-18.