

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 8-17-04.

In accordance with Rule 133.308 (e), requests for medical dispute resolution are considered timely if it is filed with the division no later than one (1) year after the dates of service in dispute. The Commission received the medical dispute resolution request on 8-17-04, therefore the following dates of service are not timely and are not eligible for this review: 8-1-03 through 8-13-03.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor prevailed** on the majority of 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 office visits from 8-20-03 through 10-29-03 were **found** to be medically necessary. The manual therapy technique, FCE, unusual travel, hot-cold pack and chiropractic manipulation **were not** found to be medically necessary. The respondent raised no other reasons for denying reimbursement for the above listed services.

Pursuant to 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay for the unpaid medical fees; in accordance with Medicare program reimbursement methodologies for dates of service after August 1, 2003 per Commission Rule 134.202(c); 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 8-20-03 through 10-27-03 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 Findings and Decision and Order is hereby issued this 29th day of October, 2004.

Donna Auby
Medical Dispute Resolution Officer
Medical Review Division

DA/da

Enclosure: IRO decision

September 23, 2004

DONNA AUBY
TEXAS WORKERS COMP. COMMISSION
AUSTIN, TX 78744-1609

CLAIMANT:
EMPLOYEE:
POLICY: M5-04-4257-01
CLIENT TRACKING NUMBER: M5-04-4257-01

Medical Review Institute of America (MRloA) has been certified by the Texas Department of Insurance as an Independent Review Organization (IRO). The Texas Workers Compensation Commission has assigned the above mentioned case to MRloA for independent review in accordance with TWCC Rule 133 which provides for medical dispute resolution by an IRO.

MRloA has performed an independent review of the case in question 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. Itemization of this information will follow.

The independent review was performed by a peer of the treating provider for this patient. The reviewer in this case is on the TWCC approved doctor list (ADL). The reviewer has signed a statement indicating they have no known conflicts of interest existing between themselves and the treating doctors/providers for the patient in question or any of the doctors/providers who reviewed the case prior to the referral to MRloA for independent review.

Records Received:

Records from TWCC:

Notification of IRO Assignment documentation - 9 pages

Records from provider:

Letter To Whom It May Concern from Angela Upchurch DC (WAC), dated 9/2/03 - 1 page

Letter to Royal Sun Alliance from Kimberly Darwin (WAC), dated 6/25/04 - 1 page

WAC Physical Performance Evaluation, Larry Elwell DC, dated 9/8/03 - 7 pages

Medical Consultation, Crawford Sloan MD, dated 1/10/03 - 3 pages

WAC Clinic Daily Notes - 13 pages

Medical records - 23 pages

TWCC-73 Work Status Report, dated 1/10/03 - 1 page

TWCC-73 Work Status Report, dated 2/4/03 - 1 page

TWCC-73 Work Status Report, dated 3/4/03 - 1 page

TWCC-73 Work Status Report, dated 4/2/03 - 1 page

Lumbar MRI report, dated 1/30/03 - 2 pages

Upper extremity EMG/NCV study, dated 2/10/03 - 1 page

Lower extremity EMG/NCV study, dated 2/10/03 - 1 page

Report of Medical Evaluation, Howard Bernstein MD, dated 6/17/03 - 2 pages

Initial consult report, Larry Kjeldgaard DO, dated 2/20/03 - 3 pages

Supplemental Information on Charlotte Wiley including: Review of Medical History, Physical Examination, Impairment Rating Calculation and Detail, Testing and Measurements – 85 pages

Summary of Treatment/Case History:

The patient, a 37-year-old female, complained of back pain, neck pain, left elbow pain and anterior chest pain and headaches after falling on a newly waxed floor at work on _____. She went to Ted Krejci DC for evaluation and treatment and she was scheduled for physical medicine treatments 5 times per week for 6–8 weeks. She was referred to Crawford Sloan MD on 1/10/03 for evaluation and treatment. Range of motion evaluation of the cervical, thoracic, and lumbar regions was normal and the neurological examination was unremarkable. She was diagnosed with a cervical strain/sprain, lumbar sprain/strain, cervical disc herniation, and lumbar disc herniation. Medications were prescribed.

She underwent a lumbar MRI study on 1/30/03 that revealed a posterior central annular tear at L4–5, a symmetrical 2 mm bulge at L4–5, and minimal facet arthrosis. A cervical MRI study done on 1/30/03 revealed 2–3 mm uncovertebral joint marginal osteophytes at C5–6 and C6–7 that did not contact the nerve roots or spinal cord. Disc spaces were minimally reduced.

The TWCC–73 Work Status Report from the chiropractor dated 2/4/03 indicated that the patient was to receive treatments four times per week for another six weeks and she was to remain off work for another six weeks.

The patient underwent upper and lower extremity NCV/EMG evaluations on 2/10/03 and the studies were normal.

She was referred to Larry Kjeldgaard DO for an orthopedic evaluation on 2/20/03 and she complained of neck pain, left shoulder pain, left hip pain, and leg pain. The exam revealed mild posterior muscle spasms in the cervical region and Spurling's test was negative. The neurological examination was unremarkable and straight leg raising was 0–80 degrees bilaterally. She was diagnosed with cervical spondylosis, cervical sprain/strain, lumbar segmental dysfunction, lumbar sprain, cervical and lumbar myofascitis, and L4–5 annular tear.

The TWCC–73 Work Status Report from the chiropractor dated 3/4/03 indicated that the patient was to receive treatments three times per week for another four weeks and she was to remain off work for another 4 weeks.

The patient's lumbar and cervical MRI studies were reviewed by Ronald Gensburg MD on 3/20/03 and he indicated the patient's lumbar spine was essentially normal and there was no evidence of disc pathology at L4–5. The cervical films revealed long-standing degenerative changes at C4–5 and C5–6.

The patient underwent a lumbar ESI on 3/25/03 and the TWCC–73 Work Status Report from the chiropractor dated 4/2/03 indicated the patient was to receive physical medicine treatments 1 time per week for the next four weeks and she was to undergo a work hardening program.

The patient changed treating doctors and began treatments with Angela Upchurch DC on 4/3/03.

The patient underwent a designated doctor evaluation on 6/17/03 and she was certified at maximum medical improvement with 10% permanent impairment as of 6/17/03. The examination revealed

reduced ranges of motion in the lumbar region with pain and normal straight leg raising in the seated position and straight leg raising was 45 degrees in the supine position. Full ranges of motion were noted in the hips and knees and the neurological examination was unremarkable.

The chiropractor indicated the patient required further care on 6/25/03 and the patient was referred to Benjamin Cunningham MD for an orthopedic exam on 7/18/03. She complained of head pain and numbness and tingling in the fingers, toes, and elbow on the left, a swollen left hip, and lower back pain. She complained of leg weakness and the examination revealed good ranges of motion in flexion, extension, lateral bending and rotation of the cervical region and the patient exhibited global reduction in sensation in the left upper extremity with normal muscle strength and reflexes. The lumbar examination revealed negative straight leg raising and negative orthopedic testing of the lumbar spine and sacroiliac joints. Sensation was reduced in the entire left lower extremity and reflexes and muscle strength were normal. She was diagnosed with cervical strain and low back strain, as well as unilateral body diminished sensation and weakness. A brain MRI was requested and it was performed on 8/15/03. The study was normal.

The medical records reviewed included progress notes for the following dates of service:

Aug 03: 1, 6, 13, 20, 27

Sep 03: 4, 10, 22

Oct 03: 2, 6, 13, 20, 27

Dr. Upchurch wrote a letter of objection to a peer review that was performed on 4/23/03 on 9/2/03 and a re-evaluation was performed on 9/8/03. The patient complained of neck and low back pain rated at 9/10 and she reported her pain was relieved by medications and passive modalities.

The medical records reviewed included functional capacity evaluations conducted on the following dates: 1/10/03, 1/14/03, 1/27/03, 2/4/03, 2/12/03, 2/18/03, 3/5/03, 3/19/03, and 3/25/03.

Questions for Review:

1. Please review for medical necessity only. Items in dispute are: office visit, #97140 - manual therapy technique, #97750 - FCE, #99082 - unusual travel, #97010 - hot/cold pack, and #98940 - chiropractic manipulation.

Explanation of Findings:

1. Please review for medical necessity only. Items in dispute are: office visit, #97140 - manual therapy technique, #97750 - FCE, #99082 - unusual travel, #97010 - hot/cold pack, and #98940 - chiropractic manipulation.

The charges for #97750-FCE done on 9/8/03 and on 10/29/03 were not medically necessary based on the records reviewed. The documentation reviewed included functional capacity evaluations conducted on the following dates: 1/10/03, 1/14/03, 1/27/03, 2/4/03, 2/12/03, 2/18/03, 3/5/03, 3/19/03, and 3/25/03. No documentation was submitted for the 9/8/03 and the 10/29/03 FCE. Therefore, the studies in dispute were not medically necessary.

The charges for unusual travel (#99082) were not medically necessary. The medical records reviewed contained no documentation that would support the charges for unusual travel in this case.

The spinal manipulation procedures (#98940) performed on 8/6/03 and 10/6/03 were not medically necessary. The manual therapy procedures (#97140) performed on 8/1/03, 8/6/03, 8/20/03, 10/2/03, and 10/6/03 were not medically necessary. The patient had a protracted course of chiropractic treatment and manual therapy treatment well in excess of accepted parameters for treatment with manipulation and demonstrated no evidence of improvement with the procedures used. An adequate trial of care is defined as a course of two weeks each of different types of manual procedures (4 weeks total), after which, in the absence of documented improvement, manual procedures are no longer indicated (Haldeman, S., Chapman-Smith, D., and Petersen, D., *Guidelines for Chiropractic Quality Assurance and Practice Parameters*, Aspen, Gaithersburg, Maryland, 1993.) The patient had a protracted course of care in excess of the parameters delineated by the above-mentioned treatment guideline and did not demonstrate a favorable response to treatment.

Chiropractic literature clearly demonstrates that the response to manipulation diminishes as the length of the condition increases. McDonald and Bell, in an open controlled pilot trial on nonspecific low back pain patients to assess the effects of spinal manipulation (McDonald, R.S., and Bell, C., "An open controlled assessment of osteopathic manipulation in nonspecific low back pain", *Spine*, 15:364-370, 1990), found that after 4-6 weeks there was no appreciable improvement in the disability index (a measure of activities of daily living interference).

The Texas Workers' Compensation Act indicates that patients are specifically entitled to care that (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment. The care rendered by the chiropractor did not provide any benefits that would qualify as medically necessary care under the Act.

The hot/cold pack prescribed (#97010) was not medically necessary in this case. The Philadelphia Panel found that therapeutic exercises were found to be beneficial for chronic, subacute, and post-surgery low back pain. Continuation of normal activities was the only intervention with beneficial effects for acute low back pain. For several interventions and indications (eg, thermotherapy, therapeutic ultrasound, massage, electrical stimulation), there was a lack of evidence regarding efficacy. (Philadelphia Panel Evidence-Based Guidelines on Selected Rehabilitation Interventions for Low Back Pain. *Phys Ther.* 2001;81:1641-1674).

The Philadelphia Panel indicated that for neck pain, therapeutic exercises were the only intervention with clinically important benefit. There was good agreement with this recommendation from practitioners (93%). For several interventions and indications (eg, thermotherapy, therapeutic ultrasound, massage, electrical stimulation), there was a lack of evidence regarding efficacy. (Philadelphia Panel Evidence-Based Guidelines on Selected Rehabilitation Interventions for Neck Pain. *Phys Ther.* 2001;81:1701-1717.)

Swenson conducted a survey of several therapeutic modalities, including physical modalities, thermal modalities, electrical modalities, exercise therapy, behavioral therapy, education, and laser therapy. Of these, exercise, mobilization, and manipulation have the greatest support in the literature, whereas thermal treatments (including therapeutic ultrasound), and electrical therapies (including TENS) have little evidence of effectiveness and no evidence for more than a transient benefit. There is a need for well-controlled studies of educational programs and behavioral interventions specifically for patients with chronic neck pain, particularly because these interventions are often employed as part of a multimodal treatment program. Low-power laser treatment and magnetic therapy require some well-controlled studies before they can be recommended to neck pain patients or discarded as worthless interventions. Cervical traction and soft collars seem to be generally ineffective for nonspecific neck pain (Swenson RS,

“Therapeutic modalities in the management of nonspecific neck pain”, Phys Med Rehabil Clin N Am. 2003 Aug;14(3):605–27)

The office visits (#99213) billed in this case on a weekly basis from 8/1/03 to 10/27/03 were medically necessary for day to day management of the patient.

Conclusion:

Decision to Certify:

The office visits (#99213) billed in this case on a weekly basis from 8/1/03 to 10/27/03 were medically necessary.

Decision to Not Certify:

The charges for #97750–FCE done on 9/8/03 and on 10/29/03 were not medically necessary based on the records reviewed.

The charges for unusual travel (#99082) were not medically necessary.

The spinal manipulation procedures (#98940) performed on 8/6/03 and 10/6/03 were not medically necessary.

The manual therapy procedures (#97140) performed on 8/1/03, 8/6/03, 8/20/03, 10/2/03, and 10/6/03 were not medically necessary.

The hot/cold pack prescribed (#97010) was not medically necessary in this case.

Applicable Clinical of Scientific Criteria or Guidelines Applied in Arriving at Decision:

Haldeman, S., Chapman–Smith, D., and Petersen, D., Guidelines for Chiropractic Quality Assurance and Practice Parameters, Aspen, Gaithersburg, Maryland, 1993

References Used in Support of Decision:

McDonald, R.S., and Bell, C., “An open controlled assessment of osteopathic manipulation in nonspecific low back pain”, Spine, 15:364–370, 1990

Philadelphia Panel Evidence–Based Guidelines on Selected Rehabilitation Interventions for Low Back Pain. Phys Ther. 2001;81:1641–1674.

Philadelphia Panel Evidence–Based Guidelines on Selected Rehabilitation Interventions for Neck Pain. Phys Ther. 2001;81:1701–1717

Swenson RS, “Therapeutic modalities in the management of nonspecific neck pain”, Phys Med Rehabil Clin N Am. 2003 Aug;14(3):605–2

MRIOA is forwarding this decision by mail, and in the case of time sensitive matters by facsimile, a copy of this finding to the treating provider, payor and/or URA, patient and the TWCC.

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