

MDR Tracking Number: M5-04-4277-01

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 and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division (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 August 18, 2004.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor prevailed** on the majority of the 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 \$650.00** 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.

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 (99212); therapeutic exercises (97110), manual therapy (97140), neuromuscular re-education (97112), electrical stimulation (97032), and ultrasound therapy (97035) rendered from 9/25/03 through 1/13/04 were **not found to be medically necessary**. The office visits (99212); therapeutic exercises (97110), manual therapy (97140), neuromuscular re-education (97112), electrical stimulation (97032), and ultrasound therapy (97035) rendered from 8/19/03 through 9/23/03 **were found to be medically necessary**.

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 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 rendered 8/19/03 through 9/23/03 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 22nd day of October 2004.

Margaret Q. Ojeda
Medical Dispute Resolution Officer
Medical Review Division

MQO/mqo

Date: October 18, 2004

RE:

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IRO Certificate #: 5242

_____ has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Texas Workers' Compensation Commission (TWCC) has assigned the above referenced case to _____ for independent review in accordance with TWCC Rule §133.308 which allows for medical dispute resolution by an IRO.

_____ has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, relevant medical records, any documents utilized by the parties referenced above in making the adverse determination and any documentation and written information submitted in support of the appeal was reviewed.

The independent review was performed by a Chiropractic reviewer who has an ADL certification. The reviewer has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for a determination prior to the referral to for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to this case.

Submitted by Requester:

- 9/17/04 note from _____ stating that there were no daily chiropractic notes for dates of service 10/23/03 and 10/30/03 due to a computer problem.
- 4/14/03 note from _____ revealing a diagnosis of back strain and back/buttock contusion.
- Follow up note from _____, undated.
- MRI report of 5/7/03 of the lumbar spine, revealing a disc bulge at L5-S1 and a relatively large disc herniation at L4-5
- Prescription from _____ dated 6/23/03 for the claimant to see _____ for pain consultation.
- 7/7/03 note from _____, pre-authorization for epidural steroid injection.
- Epidural steroid injection operative report of 7/9/03, 8/13/03
- Pre-authorization for approval of the 2nd epidural steroid injection, 8/12/03.
- Electrodiagnostic study of 9/12/03 revealing the claimant to have electrodiagnostic evidence of right L4-5 radiculopathy.
- TWCC-14 report, request for Designated Doctor Evaluation.
- Designated Doctor report and report of medical evaluation from _____, dated 9/29/03 stating that the claimant was at maximum medical improvement on that date with 10% whole body impairment rating.

- 10/8/03 note from _____, neurosurgical evaluation.
- Addendum from _____ dated 10/29/03 suggesting a chronic pain management program.
- Request to change treating physicians to _____. It should be noted that _____ was in the same practice as _____, however _____ was called away on military duty so _____ took over.
- 1/8/04 note from _____ who recommended a lumbar discography evaluation as well as a post discogram CT scan.
- New patient evaluation from _____ dated 1/8/04.
- The discogram appeared to be initially denied through the pre-authorization process however it did occur eventually.
- Mental Health evaluation report of 4/11/03 from _____
- Lumbar discogram, post discogram CT scan report of 2/11/04, revealing a rather large herniation at the L4-5 level with a positive discogram at the L4-5 and L5-S1 levels.
- Multiple TWCC-73 reports from _____ and _____, dated 4/15/03, 4/28/03, 5/30/03, 6/30/03, 8/1/03, 8/27/03, 9/25/03, 12/15/03, 1/13/04.
- Multiple physical therapy evaluations from _____, with the initial evaluation of 7/11/03 as well as follow up evaluations of 9/10/03, 11/3/03, 12/15/03 and 2/6/04.
- Several follow ups from _____ dated 8/19/03, 12/22/03, 1/13/04, 2/12/04, 8/3/04.
- Several evaluations and follow up evaluations from _____ dated 4/15/03. This was the first evaluation followed by subsequent medical reports of 8/27/03 and 9/25/03.
- Several follow ups and initial exam from _____, dated 6/25/03, 8/7/03, 10/23/03.
- Multiple chiropractic daily and physical therapy notes from 8/19/03 – 1/13/04 for approximately 22 visits. The daily notes from dates of service from 10/23/03 and 10/30/03 were missing due to a computer error.

Submitted by Respondent:

- Notice of IRO information.
- Lumbar discogram, post discogram CT report of 2/11/04.
- Medical record review of 12/5/03 from _____
- Medical record review report of 12/7/03 from _____, physical medicine and rehab specialist.
- The Designated Doctor report from _____, dated 9/29/03.
- Medical record review of 8/8/03 from _____, and addendum dated 8/18/03.
- MRI report of the lumbar spine dated 5/7/03.

Clinical History

It appears the claimant was involved in a work related accident while carrying several 20' steel rods with several co-workers. The claimant reportedly tripped and fell on his left side and onto

his outstretched left arm. The initial complaints were mainly involving the low back and bilateral lower extremities as well as the left arm and shoulder. This appeared to mainly be a low back problem. The claimant has seen several physicians as noted above in the listing of the documentation. The MRI revealed a relatively moderate sized 3½ mm broad based central disc herniation compressing the thecal sac and causing 60% foraminal stenosis bilaterally at the L4-5 level. The L5-S1 level showed a 2 mm disc bulge which was minimally compressive. The

claimant was seeing _____ for 2 epidural steroid injections as well as the usual follow up. The first evidence of physical therapy occurring was 7/11/03 during the initial physical therapy evaluation. It is unclear when exactly physical therapy began. The claimant was also seeing _____ and _____. The claimant has seen _____ who essentially recommended surgery on this claimant. The claimant also saw _____, who felt the claimant was not a surgical candidate because by the time the claimant saw _____ there had not been very much time elapsed from the date of injury and _____ felt that due to this claimant's young age that all reasonable treatment avenues had not yet been exhausted. The claimant was felt to be at maximum medical improvement on 9/29/03 from _____ with a 10% whole body impairment rating. There was no discussion in this report about surgery. There was a note in April 2004 that stated the claimant was not wanting to entertain surgical options. The claimant did not appear to gain much long term benefit from the epidural steroid injections. Physical therapy evaluation follow up notes from July through September 2003 did reveal some improvement objectively in the claimant's status, however the overall improvement overtime were not substantial by any means. The post discogram CT scan revealed there to be a 7-8 mm broad based left pericentral herniation with annular fissuring producing marked left and mild to moderate right lateral recess stenosis. There was a protrusion as well at the L5-S1 level with a 4 mm superimposed right foraminal disc protrusion producing mild foraminal encroachment on the right at the L5-S1 level. A subsequent report from _____ on 2/12/04 revealed the claimant to be having severe low back pain and that he could not weight bear on the left leg. A chronic pain management program was recommended. There was a note in March 2004 which indicated that the claimant had not shown up to see _____ after the post discogram CT scan. I would like to clarify that an 8/3/04 note stated that the claimant was not wanting to pursue surgical options. I earlier stated that this occurred in April and it was not until August in the documentation in that he decided he did not really want to pursue surgery at that time. Several peer reviews were also reviewed and the peer reviewers, in my opinion did not have a firm grasp of the claimant's clinical condition and I do not feel that their opinions were entirely appropriate or accurate based on my review of the overall clinical information.

Requested Service(s)

Office visits (99212), therapeutic exercises (97110), manual therapy (97140), neuromuscular Re-education (97112), electrical stimulation (97032), and ultrasound therapy (97035) for disputed dates of service 8/19/03 through 1/13/04. By my count, this encompassed about 24 visits. A majority of the care, with the exception of the 8/27/03, 8/28/03 and 12/15/03 dates of service consisted of active therapy.

Decision

I agree with the insurance carrier and find that the services rendered from 9/25/03 through 1/13/04 were not medically necessary. I disagree with the insurance carrier and find that the services provided from the beginning of the disputed dates of service of 8/19/03 through 9/23/03 were medically necessary.

In addition to the non medical necessity of the services provided from 9/25/03 onward, many of the office visits rendered from 8/19/03 through 9/23/03 were also not medically necessary. These were billed at the 99212 level. The only medically necessary office visits occurred on 8/19/03, 9/5/03 and 9/22/03. (CPT codes 99212, from 8/19/03 to 9/23/03, other than on 8/19/03, 9/5/03, and 9/22/03 are not medically necessary.)

Rationale/Basis for Decision

It should be noted that as of the 9/25/03 follow up with _____ the claimant was still not doing well at all. There were minimal changes or improvements in the subsequent physical therapy evaluations beyond 9/10/03. The frequency of the treatment also diminished significantly from October 2003 through January 2004 and this frequency of treatment would not be of much therapeutic value to the claimant. It was clear that the claimant was making some objective progression as documented in the physical therapy re-evaluations through 9/10/03 to warrant treatment up through 9/23/03, however as of 9/25/03 he was obviously not getting anywhere and I saw no subsequent change or improvement beyond this date to warrant the ongoing treatment. The claimant also underwent an epidural steroid injection on 8/13/03 so in my opinion physical therapy to accompany and enhance this injection for 2 weeks beyond the injection, or as of 8/27/03 would also be considered medically necessary. It is also my opinion that the physical therapy was begun relatively late, in fact I have no evidence that physical therapy began prior to 7/11/03. Given the claimant's overall relatively severe condition and clinical findings I do feel that the physical therapy through 9/23/03 was reasonable and medically necessary in order to exhaust all reasonable avenues of intervention. The discogram and post discogram CT scan showed relatively severe problems including a relatively large compressive herniation at the L4-L5 level. It should be noted that a severe herniation at this level in an 18 or 19 year old male is extremely rare and I do feel that for this reason good causality has been established. The claimant reported no past medical history of low back problems. Most of the physical therapy in this case was active and would be considered appropriate in order to restore or keep some condition within the claimant. I do feel that the peer reviewers were somewhat incorrect in their assessment of the claimant's clinical status. It should also be mentioned that the claimant was essentially the same clinically or actually a little better as of the 2/6/04 physical therapy re-evaluation and it should be noted that since October 2003 the amount of physical therapy has been minimal, therefore this would further not justify physical therapy beyond 9/23/03. As far as of the office visits are concerned, office visits are only appropriate during the active portion of the physical therapy program once every two weeks in this particular instance. It is not necessary to perform an office visit on each physical therapy visit, as seemed to occur through the entirety of the disputed dates of service. Again, the only medically necessary office

visits during the approved or medically necessary dates of service from 8/19/03 through 9/23/03 were the office visits which occurred at the 99212 level on 8/19/03, 9/5/03 and 9/22/03.