

MDR Tracking Number: M5-04-4278-01

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 assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. The dispute was received on 8-18-04.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor prevailed** on 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.

The IRO has determined that the manual therapy, therapeutic exercises, office visits, and ultrasound services that were denied with “V” and rendered from 8/04/03 through 9/30/03 were medically necessary. The respondent raised no other reasons for denying reimbursement for the above listed service.

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 September 22, 2004, 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.

**CPT code 99212** for date of service 9/15/03: Review of the requester's and respondent's documentation revealed that neither party submitted copies of EOB's, however, review of the reconsideration HCFA and certified mail receipt reflected proof of billing in accordance with Rule 133.308 (f)(3). The disputed service will be reviewed according to the fee guidelines. Rule 134.202 (d) states:

- (d) In all cases, reimbursement shall be the least of the:
- (1) MAR amount as established by this rule;
  - (2) Health care provider's usual and customary charge; or
  - (3) Health care provider's workers' compensation negotiated and/or contracted amount that applies to the billed service.

Although the MAR is \$46.41, the requestor billed \$44. Therefore, **reimbursement is recommended** in the amount of \$44.

**CPT code 97140** for date of service 9/15/03: Review of the requester's and respondent's documentation revealed that neither party submitted copies of EOB's, however, review of the reconsideration HCFA and certified mail receipt reflected proof of billing in accordance with Rule 133.308 (f)(3). The disputed service will be reviewed according to the fee guidelines. **Reimbursement is recommended** in the amount of \$67.80 (for 2 units).

**CPT code 97035** for date of service 9/15/03: Review of the requester's and respondent's documentation revealed that neither party submitted copies of EOB's, however, review of the reconsideration HCFA and certified mail receipt reflected proof of billing in accordance with Rule 133.308 (f)(3). The disputed service will be reviewed according to the fee guidelines. **Reimbursement is recommended** in the amount of \$31.12 (for 2 units).

**CPT code 97110** for dates of service 9/5/03 and 9/15/03: 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 has reviewed the matters in light all of the Commission requirements for proper documentation. The MDR declines to order payment because the SOAP notes do not clearly delineate exclusive one-on-one treatment nor did the requestor identify the severity of the injury to warrant exclusive one-to-one therapy. **Additional reimbursement not recommended.**

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 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 Order is applicable to dates of service 8/04/03 through 9/30/03 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 Decision and Order is hereby issued this 20<sup>th</sup> day of October 2004.

Regina L. Cleave  
Medical Dispute Resolution Officer  
Medical Review Division

RLC/rlc

**MEDICAL REVIEW OF TEXAS**  
[IRO #5259]  
**3402 Vanshire Drive                      Austin, Texas 78738**  
**Phone: 512-402-1400                      FAX: 512-402-1012**

**NOTICE OF INDEPENDENT REVIEW DETERMINATION**

|                                                        |               |
|--------------------------------------------------------|---------------|
| TWCC Case Number:                                      |               |
| MDR Tracking Number:                                   | M5-04-4278-01 |
| Name of Patient:                                       |               |
| Name of URA/Payer:                                     |               |
| Name of Provider:<br>(ER, Hospital, or Other Facility) |               |
| Name of Physician:<br>(Treating or Requesting)         |               |

October 14, 2004

An independent review of the above-referenced case has been completed by a chiropractic doctor. The appropriateness of setting and medical necessity of proposed or rendered services is determined by the application of medical screening criteria published by Texas Medical Foundation, or by the application of medical screening criteria and protocols formally established by practicing physicians. All available clinical information, the medical necessity guidelines and the special circumstances of said case was considered in making the determination.

The independent review determination and reasons for the determination, including the clinical basis for the determination, is as follows:

See Attached Physician Determination

Medical Review of Texas (MRT) hereby certifies that the reviewing physician is on Texas Workers' Compensation Commission Approved Doctor List (ADL). Additionally, said physician has certified that no known conflicts of interest exist between him and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for determination prior to referral to MRT.

Sincerely,

#### CLINICAL HISTORY

Available documentation received and included for review consists of initial report and subsequent treatment notes from Dr. R (DC), MRI of the thoracic spine, read by Dr. P M.D. medical report by Dr. M, M.D., Dr. K, MD, Dr. D, MD and Dr. G, M.D; operative report, Dr. E, M.D..

\_\_\_ was injured while lifting some wet carpet from a motel. He was in a flexed position pulling upwards, when he had some pops in his lower back, with the immediate onset of low back pain. He was seen in the emergency room the following morning and given some pain medication. He then presented on 6/3/03 to Dr. R, a chiropractor. Initial assessment was of lumbosacral, thoracic and cervical sprain/strain injury. A conservative treatment régime was initiated with some reported benefit. Patient was then referred for orthopedic consult to Dr. M. Subjective reports of improvement by the patient were confirmed, but with continuing functional deficit. MRI was requested, along with recommendations for continuing his off work status and further treatment with Dr. R. MRI revealed cervical disc disease, C5/6 with HNP encroachment anterior cord, multilevel thoracic mild non-compressive disc disease with a single level of thoracic foramina encroachment at T9/T10 on the right. There was also moderate ventral dural sac effacement at T7/T8 without cord encroachment. The patient was next seen by Dr. K, M.D. on 11/4/03 for carrier-requested RME purposes, including a functional capacity evaluation. Again the patient was determined not to be at MMI, MRI was recommended and return to light duty based on the FCE, limiting lifting above 35 lbs. and avoiding bending/stooping. The patient was then seen for Designated Doctor purposes by Dr. G on 12/30/03. He felt the patient was not yet at MMI and required further treatment. The patient was then seen by Dr. E and underwent ESI's in January 2004, concurrently receiving manual therapy and exercises with Dr. R. The patient was finally seen again by Dr. G on 8/14/04,

he determined the patient was at MMI with a five% whole person impairment comprised of DRE category II, thoracic spine.

#### REQUESTED SERVICE(S)

Medical necessity of manual therapy 97140, therapeutic exercises 97110, office visits 99212/99214, ultrasound 97035. Dates of service 8/4/03-9/30/03.

#### DECISION

Approved. There is establishment of medical necessity for all disputed services

#### RATIONALE/BASIS FOR DECISION

*The standard of medical necessity in Workers Comp, according to the Texas labor code 408.021 (entitlement to medical benefits) is that an employee who sustained a compensable injury is entitled to all healthcare reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to healthcare 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 patient sustained a lower back injury with positive objective signs on MRI. A period of conservative care was instituted with initial fair response, with appropriate referral for second opinion following a tapering of improvement. The patient demonstrating increased functional gains along with a reduced pain level during the period of time in dispute.

In conclusion, appropriate treatment interventions were implemented, with positive effects. As such the care rendered satisfied the above standard of medical necessity.

The above analysis is based solely upon the medical records/tests submitted. It is assumed that the material provided is correct and complete in nature. If more information becomes available at a later date, an additional report may be requested. Such and may or may not change the opinions rendered in this evaluation.

Opinions are based upon a reasonable degree of medical/chiropractic probability and are totally independent of the requesting client.

**References:**

Hansen DT: Topics in Clinical Chiropractic, 1994, volume one, No. 4, December 1994, pp. 1-8 with the article "Back to Basics: Determining how much care to give and reporting patient progress".

Haldeman S., Chapman-Smith D, Peterson DM., eds. Guidelines for Chiropractic Quality Assurance and Practice Parameters, Aspen: Giathersburg, MD, 1993;

Souza T: Differential Diagnosis for a Chiropractor: Protocols and Algorithms, 1997; chapter 1, pp. 3-25.

Liebenson C. Commentary: Rehabilitation and chiropractic practice. JMPT 1996; 19(2):134140