

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 08-19-04.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor prevailed** on the **majority** of 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 \$460.00** 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 and therapeutic exercises **were** found to be medically necessary. The manual therapy techniques, massage therapy and ultrasound were found to be **not** medically necessary. The respondent raised no other reasons for denying reimbursement for the above listed services.

This Findings and Decision is hereby issued this 7<sup>th</sup> day of January 2005.

Debra L. Hewitt  
Medical Dispute Resolution Officer  
Medical Review Division

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 effective 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 09-08-03 through 11-12-03 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 7<sup>th</sup> day of January 2005.

Roy Lewis, Supervisor  
Medical Dispute Resolution  
Medical Review Division

RL/dlh

Enclosure: IRO decision

September 1, 2005

REGINA CLEAVE  
TEXAS WORKERS COMP. COMISSION  
AUSTIN, TX 78744-1609

CLAIMANT:  
EMPLOYEE:  
POLICY: M5-04-4293-01 5278  
CLIENT TRACKING NUMBER: M5-04-4293-01

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Medical Review Institute of America (MRIOA) 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 MRIOA for independent review in accordance with TWCC Rule 133 which provides for medical dispute resolution by an IRO.

MRIOA 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 MRIOA for independent review.

**Records Received:**

Records Received from the Insurance Carrier

- 1 page handwritten form for dates 1/03 through 12/03
- 4 page report from Brian August MD dated 5/9/03
- 3 page chiropractic peer review dated 10/16/02
- 3 page peer review dated 8/7/03
- 9 pages of records from Robert Sackheim, MD dated 6/23/00, 7/5/00, 7/17/00, 8/3/00, 8/7/00
- 1 page report from James Ghadially, MD dated 2/2/01
- 2 page report from Dr. Ghadially dated 2/14/01
- 2 page report from Jerry Keepers, MD dated 2/19/01
- 1 page report from Dr. Keepers dated 2/23/01
- 1 page post-discogram CT report dated 3/12/01
- 3 page discogram report dated 3/12/01
- 2 page report from Dr. Keepers dated 3/28/01
- 1 page report from Dr. Keepers dated 4/17/01

- 1 page lumbar MRI report dated 5/2/01
- 2 page discogram report dated 2/25/02
- 3 page report from Dai Nguyen DC dated 5/29/02
- 14 pages of chiropractic records from Dai Nguyen, DC dated 5/29/02, 5/30/02, 5/31/02, 6/3/02, 6/12/02, 6/17/02, 6/21/02, 6/25/02, 6/28/02, 7/2/02, 7/5/02, 7/9/02, 7/12/02, 7/15/02
- 1 page psychiatric discharge summary dated 11/13/92
- 4 page psychiatric assessment dated 10/14/92
- 1 page lumbar MRI report dated 10/19/02
- 1 page cervical MRI report dated 10/21/92
- 2 page report from Guy Fogel, MD dated 11/7/02
- 2 page report from Son Nguyen, MD dated 11/11/02
- 2 page report from Son Nguyen, MD dated 12/31/02
- 1 page report from Dr. Tynan dated 1/29/03
- 1 page biofreeze prescription dated 1/29/03
- 2 page report from Son Nguyen, MD dated 2/3/03
- 2 page report from Son Nguyen, MD dated 3/3/03
- 1 page report from Guy Fogel, MD dated 3/27/03
- 2 page report from Son Nguyen, MD dated 3/31/03
- 1 page report from Dr. Tynan dated 4/9/03
- 2 page report from Son Nguyen, MD dated 4/23/03
- 2 page report from Son Nguyen, MD dated 5/14/03
- 2 page report from Son Nguyen, MD dated 6/16/03
- 1 page report from Dr. Tynan dated 6/16/03
- 2 page report from Son Nguyen, MD dated 7/11/03
- 1 page operative report dated 5/21/93
- 1 page report from Dr. Mims dated 1/12/93
- 2 page report from Judy Hargadine, MD dated 3/16/93
- 2 page report from Dr. Ghadially dated 8/5/96
- 2 page report from Dr. Ghadially dated 1/13/99
- 3 page report from Pawan Grover, MD

### **Information Received from Texas Worker's Compensation**

- 1 page notification of IRO assignment dated 9/16/04
- 1 page Texas Worker's Compensation Commission request for review 9/16/04
- 2 page medical dispute resolution request/response form dated 8/19/04
- 7 page table of disputed services for dates of service 9/8/03 through 11/12/03
- 15 pages of EOB forms for dates of service 9/8/03 through 11/12/03

### **Information Received from Requestor Marie C. Bielamowicz-Tynan, DC**

- 1 page MRIOA Retrospective Review Information Request dated 9/17/04
- 2 page report from Marie Tynan, DC dated 9/20/04
- 23 pages of HCFA-1500 forms from Dr. Tynan for dates 9/8/03 through 11/12/03

- 1 page report from Dr. Tynan dated 9/8/03
- 1 page TWCC-73 Work Status Report from Dr. Tynan dated 9/8/03
- 22 pages of daily rehabilitation notes dated 9/10/03 through 11/12/03
- 1 page TENS prescription dated 9/26/03
- 3 page letter from Dr. Tynan dated 2/13/04
- 1 page report from Dr. Tynan dated 6/16/03
- 2 page report from Dr. Tynan dated 7/29/03
- 1 page report from Dr. Tynan dated 9/8/03
- 2 page report from Dr. Tynan dated 10/23/03
- 1 page report from Dr. Tynan dated 11/21/03
- 1 page report from Dr. Tynan dated 2/13/04
- 1 page letter from Son Nguyen, MD dated 6/13/04
- 3 page letter from Thomas Hardy dated 2/13/04
- 3 page chiropractic modality review dated 8/7/03

### **Summary of Treatment/Case History:**

The patient was injured in a motor vehicle accident on \_\_\_ when his truck was hit by a car coming from behind at 60 mph. His care post-injury in \_\_\_ consisted of physical therapy (ultrasound, electrical stimulation, and heat), medications, MRI studies, and a psychiatric hospitalization in 10/92.

A cervical MRI study done on 10/21/92 revealed no evidence of nerve root compression, spinal cord compression, or disc herniation. Evidence of cervical spondylosis in the lower cervical spine was noted. A lumbar MRI done on 10/19/02 revealed a minimal posterior bulge of the L4 disc and a small right posterior herniation of the L5-S1 disc. The patient was discharged from the psychiatric unit on 11/13/92 with the diagnoses of post-traumatic stress disorder, bipolar affective disorder, alcohol abuse, and herniated discs at L5-S1 and L4-5, and cervical spondylosis.

The patient saw two neurosurgeons in 1993 and the report from Judy Hargadine, MD indicated the patient had persistent low back pain with right leg pain, and he had tried three months of physical therapy, a TENS unit, and medications. He was diagnosed with right S1 radiculopathy secondary to an L5-S1 disc herniation, and surgery was recommended. The patient underwent a right L5 hemilaminectomy, facetectomy, and foraminotomy with Thomas Mims, MD on 5/21/93.

The patient was evaluated by James Ghadially, MD on 8/5/96, and the report indicated he was status-post shoulder arthroscopy and he was diagnosed with a disc re-herniation at L5-S1. The patient had fallen because his right leg gave away and he was ambulating with a cane.

The 1/13/99 report from Dr. Ghadially indicated that the patient continued to ambulate with a cane and he continued to complain of lower back pain and lower extremity radiating pain.

The patient was treated on numerous occasions in 2000 by Robert Sackheim, MD, and the 6/23/00 report from Dr. Sackheim indicated the patient was requesting refills of his medications and he was prescribed Oxycontin, Wellbutrin, Neurontin, and multiple sessions of trigger point injections, a back brace, lumbar cushion, and cervical pillow. The patient's Oxycontin was discontinued in 8/00, and he was prescribed Methadone, which was subsequently discontinued one week later.

The patient was re-examined by Dr. Ghadially on 2/2/01, and he continued to complain of unremitting lower back pain and his Oxycontin dosage was increased. He was also referred to a psychiatrist/pain management physician for management. The 2/14/01 report from Dr. Ghadially indicated that a morphine pump had been requested for the patient, and he complained of pain ranging from 6-10/10.

The patient was evaluated by Jerry Keepers, MD on 2/23/01 and he was prescribed Xanax, Phenergan, and Oxycontin. He was also issued a neuromuscular stimulator.

The patient underwent a lumbar discogram on 3/12/01, and the study reported the presence of abnormal discs at L3-4, L4-5, and L5-S1. A post-discogram CT scan indicated that the L3-4 and L5-S1 discs had abnormal appearance with marked degeneration and multiple annular tears. The patient underwent a lumbar MRI study on 5/2/01 that revealed spur formation, Schmorl's nodes, desiccated discs and bulging discs at L3-4, L4-5, and L5-S1.

The patient underwent intradiscal electrothermal lesioning (IDET) at the L3-4 and L4-5 level on 2/25/02 with Son Nguyen, MD.

The patient went to Dai Nguyen, DC for evaluation and treatment on 5/29/02, and he complained of low back pain and leg pain related to his work-related injury. His past treatments included physical therapy, active rehabilitation, work hardening program, pain medications, pain management procedures such as lumbar ESIs, lumbar median branch blocks, and a lumbar IDET procedure. He rated his pain at 8/10, and the examination revealed paraspinal muscle spasms and reduced lumbar ranges of motion. A course of lumbar physical therapy for management of his condition post-IDET was initiated, and the patient was treated on the following dates with office visits, electrical stimulation, neuromuscular reeducation, myofascial release, deep tissue massage, whirlpool, mechanical traction, and therapeutic exercises:

May 02: 29, 30, 31

Jun 02: 3, 12, 17, 21, 25, 28

Jul 02: 2, 5, 9, 12, 15

A chiropractic peer review on 10/16/02 recommended 12-18 visits for post-IDET rehabilitation.

The patient was evaluated by Guy Fogel, MD on 11/7/02, and the report indicated the patient had been in a wheelchair for six weeks and he could not walk any distance at all. A new MRI study revealed a 5 mm posterior bulge in a superimposed 7 mm right paracentric herniation that compressed the dural sac at the L3-4 level, and there was a 4 mm posterior protrusion at L4-5. The patient was diagnosed with severe lumbar stenosis, three level radiculopathy, failed IDET procedure and post-laminectomy syndrome at L5-S1. A lumbar fusion surgery was recommended.

The patient was re-examined by Son Nguyen, MD on 11/11/02, and he complained of bilateral leg pain and low back pain rated at 9/10. His symptoms were unchanged on the 12/31/02 re-evaluation. The patient was re-examined by the chiropractor (Marie Bielowicz-Tynan, DC) on 1/29/03, and her report indicated the patient was still using his wheelchair and he was standing behind his chair to push it for exercise.

The 2/3/03 report from Son Nguyen, MD indicated the patient continued to complain of low back and leg pain and he postponed his upcoming surgery to 3/3/03. He was subsequently re-evaluated on 3/3/03, and there was no change in his condition. He continued to complain of pain rated at 9/10.

The 3/27/03 report from Guy Fogel, MD indicated that the patient reported his psychiatrist recommended waiting another three months before considering lumbar fusion. The patient was not able to walk and was still using his wheelchair.

The patient was re-examined by Dr. Bielowicz-Tynan on 4/9/03 and he was still awaiting therapy. He was prescribed Biofreeze for home use.

The patient was re-examined by Son Nguyen, MD on 4/23/03, 5/14/03, and 6/16/03 and he continued to take Oxycontin, Duragesic patch, Soma, Phenergan, Xanax, Celexa, Restril, Mobic, and Emilose. No change was noted in his condition.

The patient was re-examined by the chiropractor on 6/16/03, and he was to begin some rehabilitation the following week at a frequency of three times per week.

The 7/11/03 report from Dr. Nguyen indicated that the patient had needed to use his wheelchair for several months because he could not walk, and surgery was postponed due to reactionary depression.

The patient was re-examined by the chiropractor on 7/29/03, and he progressed from using his wheelchair 90% of the day to 50% of the day and he had doubled his repetitions. He still walked with a cane.

A chiropractic peer review dated 8/7/03 indicated that 13 visits from 1/29/03 to 7/29/03 were medically necessary, and no additional therapy beyond 7/29/03 was indicated for preoperative treatment prior to the patient's planned lumbar fusion.

The patient was re-examined by the chiropractor on 9/8/03 and he was now able to continue with his physical therapy. He still ambulated with a cane and used his wheelchair. He was treated on the following dates with brief office visits (#99211), therapeutic exercises, manual therapy techniques, ultrasound, and massage:

Sep 03: 8, 10, 12, 15, 17, 19, 22, 24, 26, 30

Oct 03: 3, 7, 8, 14, 16, 17, 20, 21, 27

Nov 03: 4, 7, 12

The patient was re-examined on 10/23/03, and the report indicated he was getting stronger, he was only using the cane 50% of the time, and he had not used the wheelchair in a month. Lumbar ranges of motion had slightly increased.

He was re-evaluated by the chiropractor on 11/21/03, and the report indicated his physical performance was improving. No changes were noted in the patient's lumbar ranges of motion. The report also indicated that physical therapy was being discontinued, and the patient was to make a decision regarding surgery.

The patient was re-examined by the chiropractor on 2/13/04, and he complained of increased back pain and lumbar ranges of motion were reduced. The psychiatrist recommended postponement of surgery due to the patient's psychological state being unstable.

#### **Questions for Review:**

The dates of service in question are 9/8/03 through 11/12/03. Items in dispute: office visits (#99211, #99214), therapeutic exercises (#97110), manual therapy techniques (#97140), massage therapy (#97124), and ultrasound (#97035). Services denied by the carrier for medical necessity for V codes.

1. Please review and advise if services in question are medically necessary.

#### **Explanation of Findings:**

1. Please review and advise if services in question are medically necessary.

Office visits (#99211 and #99214) and therapeutic exercises were medically necessary in this case.

Manual therapy techniques (#97140), massage therapy (#97124), and ultrasound (#97035) were not medically necessary. Haldeman, et al, indicate that it is beneficial to proceed to the rehabilitation phase of care as rapidly as possible to minimize dependence on passive forms of treatment/care, and that reaching the rehabilitation phase as rapidly as possible and minimizing dependence on passive treatment usually leads to the optimum result (Haldeman, S., Chapman-Smith, D., and Petersen, D., Guidelines for Chiropractic Quality Assurance and Practice Parameters, Aspen, Gaithersburg, Maryland, 1993).

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).

Van der Windt, et al, conducted a review to evaluate the effectiveness of ultrasound therapy in the treatment of musculoskeletal disorders. Thirty-eight studies were included in the review, evaluating the effects of ultrasound therapy for lateral epicondylitis, shoulder pain, degenerative rheumatic disorders, ankle distortions, temporomandibular pain or myofascial pain and a variety of other disorders. In 11 out of 13 placebo-controlled trials with validity scores of at least five out of ten points, no evidence of clinically

important or statistically significant results was found. The authors conclude that, as of yet, there seems to be little evidence to support the use of ultrasound therapy in the treatment of musculoskeletal disorders. The large majority of 13 randomized placebo-controlled trials with adequate methods did not support the existence of clinically important or statistically significant differences in favor of ultrasound therapy (Van der Windt DA, et al, "Ultrasound therapy for musculoskeletal disorders: a systematic review", Pain. 1999 Jun;81(3):257-71).

Robertson and Baker noted that therapeutic ultrasound is one of the most widely and frequently used electrophysical agents. Despite over 60 years of clinical use, the effectiveness of ultrasound for treating people with pain, musculoskeletal injuries, and soft tissue lesions remains questionable. The authors conducted a systematic review of randomized controlled trials (RCTs) in which ultrasound was used to treat people with those conditions. The authors concluded that there was little evidence that active therapeutic ultrasound is more effective than placebo ultrasound for treating people with pain or a range of musculoskeletal injuries or for promoting soft tissue healing. The few studies deemed to have adequate methods examined a wide range of patient problems. The dosages used in these studies varied considerably, often for no discernable reason (Robertson VJ, Baker KG, "A review of therapeutic ultrasound: effectiveness studies", Phys Ther. 2001 Jul;81(7):1339-50).

**Conclusion/Partial Decision to Certify:**

Office visits (#99211 and #99214) and therapeutic exercises (#97110) were medically necessary in this case.

Manual therapy techniques (#97140), massage therapy (#97124), and ultrasound (#97035) were not medically necessary.

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

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

**References Used in Support of Decision:**

Robertson VJ, Baker KG, "A review of therapeutic ultrasound: effectiveness studies", Phys Ther. 2001 Jul;81(7):1339-50

Van der Windt DA, et al, "Ultrasound therapy for musculoskeletal disorders: a systematic review", Pain. 1999 Jun;81(3):257-71

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

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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.

This review was provided by a Doctor of Chiropractic who is also a member of the American Chiropractic Academy of Neurology. This reviewer also holds a certification in Acupuncture. This reviewer has fulfilled both academic and clinical appointments and currently serves as an assistant professor at a state college, is in private practice and is a director of chiropractic services. This reviewer has previously served as a director, dean, instructor, assistant professor, and teaching assistant at a state college and was responsible for course studies consisting of clinical neurology, pediatric and geriatric diagnosis, palpation, adjusting, physical therapy, case management, and chiropractic principles. This reviewer is responsible for multiple postgraduate seminars on various topics relating to chiropractics and has authored numerous publications. This reviewer has participated in numerous related professional activities including work groups, committees, consulting, national healthcare advisory committees, seminars, National Chiropractic Coalition, media appearances, and industrial consulting. This reviewer has been in practice since 1986.

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