

MDR Tracking Number: M5-04-4299-01

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 20, 2004.

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 \$460.00** 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, neuromuscular re-education, therapeutic exercises, therapeutic activities, manual therapy technique, unlisted therapeutic procedure and electrical stimulation rendered on 9/23/03 through 11/19/03 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 to dates of service 9/23/03 through 11/19/03 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 22<sup>nd</sup> day of October 2004.

Margaret Q. Ojeda  
Medical Dispute Resolution Officer  
Medical Review Division

MQO/mqo

October 13, 2004

David Martinez  
TWCC Medical Dispute Resolution  
4000 IH 35 South, MS 48  
Austin, TX 78704

Patient:  
TWCC #:  
MDR Tracking #: M5-04-4299-01  
IRO #: 5251

Ziroc has been certified by the Texas Department of Insurance as an Independent Review Organization. The Texas Worker's Compensation Commission has assigned this case to Ziroc for independent review in accordance with TWCC Rule 133.308 which allows for medical dispute resolution by an IRO.

Ziroc has performed an independent review of the care rendered 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.

The independent review was performed by a matched peer with the treating doctor. This case was reviewed by a licensed Doctor of Chiropractic. The reviewer is on the TWCC Approved Doctor List (ADL). The Ziroc health care professional has signed a certification statement stating that no known conflicts of interest exist between the reviewer and any of the treating doctors or providers or any of the doctors or providers who reviewed the case for a determination prior to the referral to Ziroc for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to the dispute.

#### RECORDS REVIEWED

Dispute Resolution Request Forms/Documentation, Office notes of Dr. M, D.C. 9/2/03 – 11/19/03, office notes of Dr. P, M.D. dated 10/2/03 - 11/3/03, DDE Impairment Ratings of 6/22/03, 10/29/03 & 8/12/04, Insurer's records including their position on request for dispute resolution and their basis of determination in the form of a review by Dr. O, D.C.

#### CLINICAL HISTORY

\_\_\_ was injured on the job when she suffered blunt trauma to the left elbow. She subsequently developed pain and paresthesias in the left upper extremity, initially distal to the site of injury, and then radiating proximally, as well. She received physical therapy treatments from the company doctor and an injection from an Orthopedic Surgeon, but did not get the relief she

needed and sought a change of doctor. She received conservative care from Dr. M, DC along with Orthopedic referrals from him, in which further rehabilitative care was recommended. Eventually, surgical procedures were recommended, however, patient was unable to get her asthma under control so that she could undergo the procedure.

#### DISPUTED SERVICES

Under dispute is the medical necessity of office visits, neuromuscular re-education, therapeutic exercises, therapeutic activities, manual therapy technique, unlisted therapeutic procedure and electric stimulation from 09/23/03 through 11/19/03.

#### DECISION

The reviewer disagrees with the prior adverse determination.

#### BASIS FOR THE DECISION

This patient received care from the company doctor and the Orthopedist to whom she was referred. She was dissatisfied with the care and felt that she received no relief from that treatment. She changed to another doctor, who put her into a home exercise program, which appeared to aggravate her symptoms. She was referred to an Orthopedist, who administered injection and recommended rehabilitative care program. The rehabilitation was documented and the patient's pain ratings did diminish, however, did return at a later date, possibly as a result of the injection losing effectiveness.

Conservative measures should always be performed before a more invasive treatment. The patient is entitled to all medical care that is appropriate to alleviate the effects of the injury. The treatment is not always a total success and the patient may have to go on to more invasive procedures, as was recommended in this case, but that does not, however, mean that the conservative approach was not necessary just because the patient's response was not entirely favorable. This treatment was recommended not only by the treating doctor, but also by the Orthopedist, as the best chance for material recovery without a more invasive protocol. In the end, the patient was recommended for a surgical procedure which was precluded by a prior medical condition which was never controlled enough to allow the surgery. This treatment was reasonable and necessary in its' entirety and should, therefore, be allowed.

Ziroc has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. Ziroc has made no determinations regarding benefits available under the injured employee's policy

As an officer of ZRC Services, Inc, dba Ziroc, I certify that there is no known conflict between the reviewer, Ziroc and/or any officer/employee of the IRO with any person or entity that is a party to the dispute.

Ziroc is forwarding this finding by US Postal Service to the TWCC.

Sincerely,