

THIS DECISION HAS BEEN APPEALED. THE FOLLOWING
IS THE RELATED SOAH DECISION NUMBER:

SOAH DOCKET NO. 453-05-3338.M5

MDR Tracking Number: M5-05-0045-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution-General, 133.307 titled Medical Dispute Resolution of a Medical Fee Dispute, 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. This dispute was received on August 30, 2004.

The Division has reviewed the enclosed IRO decision and determined that **the requestor did not prevail** on the majority of the issues of medical necessity. The chiropractic manipulative therapies, 1-2 spinal areas (98940) and the therapeutic exercises that were denied with U and/or V from 09-29-03 through 06-03-04 were medically necessary. The IRO agrees with the previous determination that the chiropractic manipulative therapy (98941), manual therapy techniques, neuromuscular re-education, electrical stimulation, attended, and mechanical traction from 10-29-03 through 06-03-04 were not medically necessary. Therefore, the requestor is not entitled to reimbursement of the IRO fee.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division.

On 09-28-04, 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.

The following table identifies the disputed services and Medical Review Division's rationale:

DOS	CPT CODE	Billed	Paid	EOB Denial Code	MAR\$ (Max. Allowable Reimbursement)	Reference	Rationale
09-29-03	98941 97032 97012 97140-59 99205	\$60.00 \$23.00 \$23.00 \$90.00 \$137.00	\$0.00	No EOB's	\$45.74 \$20.85 \$18.90 \$34.05 \$216.80	Medicare Fee Schedule Rule 134.202(d)	Requestor submitted convincing evidence of carrier receipt of the providers' request for EOB's. This date of service will be reviewed in accordance with Rule 134.202 effective 8-1-03. Since the carrier did not provide a valid basis for the denial of this service, reimbursement is recommended in the amount of \$256.54.

10-09-03	98941 97032 97012 97140-59	\$60.00 \$23.00 \$23.00 \$90.00	\$0.00	No EOB's	\$45.74 \$20.85 \$18.90 \$34.05	Medicare Fee Schedule	<p>Requestor submitted convincing evidence of carrier receipt of the providers' request for EOB's. Date of service 10-09-03 will be reviewed in accordance with Rule 134.202 effective 8-1-03. Since the carrier did not provide a valid basis for the denial of service for CPT code 98941 and 97032, reimbursement is recommended in the amount of \$66.59.</p> <p>The requestor did not submit a copy of the recon HCFA's in accordance with Rule 133.307 (e)(2)(A) for CPT codes 97012 and 97140-59. Therefore, no reimbursement recommended.</p>
10-22-03	98941 97032 97012 97140-59	\$60.00 \$23.00 \$23.00 \$90.00	\$0.00	No EOB's	\$45.74 \$20.85 \$18.90 \$34.05	Medicare Fee Schedule	<p>Requestor submitted convincing evidence of carrier receipt of the providers' request for EOB's. Date of service 10-22-03 will be reviewed in accordance with Rule 134.202 effective 8-1-03. Since the carrier did not provide a valid basis for the denial of service for CPT code 98941, 97032, and 97012 reimbursement is recommended in the amount of \$85.49.</p> <p>The requestor did not submit a copy of the recon HCFA's in accordance with Rule 133.307 (e)(2)(A) for CPT code 97140-59. Therefore, no reimbursement recommended.</p>
11-05-03	98941 97032 97012 97140-59	\$60.00 \$23.00 \$23.00 \$90.00	\$0.00	No EOB's	\$45.74 \$20.85 \$18.90 \$34.05 x2	Medicare Fee Schedule	<p>Requestor submitted convincing evidence of carrier receipt of the providers' request for EOB's. Date of service 11-05-03 will be reviewed in accordance with Rule 134.202 effective 8-1-03. Since the carrier did not provide a valid basis for the denial of service for CPT codes 98941, 97032, 97012 and 97140-59, reimbursement is recommended in the amount of \$153.59.</p>

11-18-03	98941 97032 97140-59 97012	\$60.00 \$23.00 \$90.00 \$23.00	\$0.00	No EOB's	\$45.74 \$20.85 \$34.05 x2 \$18.90	Medicare Fee Schedule	Requestor submitted convincing evidence of carrier receipt of the providers' request for EOB's. Date of service 11-05-03 will be reviewed in accordance with Rule 134.202 effective 8-1-03. Since the carrier did not provide a valid basis for the denial of service for CPT codes 98941, 97032, and 97140-59, reimbursement is recommended in the amount of \$134.69. The requestor did not submit a copy of the recon HCFA's in accordance with Rule 133.307 (e)(2)(A) for CPT code 97012. Therefore, no reimbursement recommended.
02-13-04	97140-59	\$90.00	\$0.00	No EOB	\$34.05	Medicare Fee Schedule	The requestor did not submit a copy of the recon HCFA in accordance with Rule 133.307 (e)(2)(A) for CPT code 97140-59. Therefore, no reimbursement recommended.
03-11--04	98940	\$38.00	\$0.00	No EOB	\$33.61	Medicare Fee Schedule	The requestor did not submit a copy of the recon HCFA in accordance with Rule 133.307 (e)(2)(A) for CPT code 98940. Therefore, no reimbursement recommended.
03-30-04	98940 97112	\$38.00 \$114.00	\$0.00	No EOB	\$33.61 \$37.05	Medicare Fee Schedule	The requestor did not submit a copy of the recon HCFA in accordance with Rule 133.307 (e)(2)(A) for CPT codes 98940 and 97112. Therefore, no reimbursement recommended.
04-06-04	98940 97110 97112	\$38.00 \$114.00 \$114.00	\$0.00	No EOB	\$33.61 \$36.99 \$37.05	Medicare Fee Schedule	The requestor did not submit a copy of the recon HCFA in accordance with Rule 133.307 (e)(2)(A) for CPT codes 98940, 97110 and 97112. Therefore, no reimbursement recommended.
04-15-04	98940 97112	\$114.00 \$114.00	\$0.00	No EOB	\$33.61 \$37.05	Medicare Fee Schedule	The requestor did not submit a copy of the recon HCFA in accordance with Rule 133.307 (e)(2)(A) for CPT codes 98940 and 97112. Therefore, no reimbursement recommended.
04-22-04	98940 97112	\$114.00 \$114.00	\$0.00	No EOB	\$33.61 \$37.05	Medicare Fee Schedule	The requestor did not submit a copy of the recon HCFA in accordance with Rule 133.307 (e)(2)(A) for CPT codes 98940 and 97112. Therefore, no reimbursement recommended.
04-30-04	98940 97112	\$114.00 \$114.00	\$0.00	No EOB	\$33.61 \$37.05	Medicare Fee Schedule	The requestor did not submit a copy of the recon HCFA in accordance with Rule 133.307 (e)(2)(A) for CPT codes 98940 and 97112. Therefore, no reimbursement recommended.

05-07-04	98940 97112	\$114.00 \$114.00	\$0.00	No EOB	\$33.61 \$37.05	Medicare Fee Schedule	The requestor did not submit a copy of the recon HCFA in accordance with Rule 133.307 (e)(2)(A) for CPT codes 98940 and 97112. Therefore, no reimbursement recommended.
05-14-04	97110 97112	\$76.00 \$76.00	\$73.98 \$68.24	F	\$36.99 \$37.05	Medicare Fee Schedule	The requestor did not submit a copy of the recon HCFA in accordance with Rule 133.307 (e)(2)(A) for CPT code 97112. Therefore, no reimbursement recommended. See rationale below for CPT code 97110.
05-21-04	98940 97140-59 97032 97012 97110	\$38.00 \$90.00 \$23.00 \$23.00 \$76.00	\$33.61 \$0.00 \$20.20 \$19.21 \$73.98	F N F F F	\$33.61 \$34.13 x2 \$20.20 \$19.21 \$36.99 x2	Medicare Fee Schedule	According to the requestor's Table of Disputed Services, the provider has received payment for CPT codes 98940, 97032, 97012 and 97110 from the carrier. The carrier paid the MAR in accordance with Rule 134.202 effective 08-01-03. Therefore no additional reimbursement is recommended. The requestor submitted relevant additional documentation that meets the documentation criteria and supports service billed. Therefore, CPT code 97140-59 will be reviewed in accordance with 134.202 effective 08-01-03. Recommend reimbursement of \$68.26
06-01-04	98940 97110 97112	\$38.00 \$114.00 \$114.00	\$0.00	No EOB	\$33.61 \$36.99 \$37.05	Medicare Fee Schedule	The requestor did not submit a copy of the recon HCFA in accordance with Rule 133.307 (e)(2)(A) for CPT codes 98940, 97110 and 97112. Therefore, no reimbursement recommended.
06-03-04	97110 97112	\$114.00 \$114.00	\$0.00	No EOB	\$36.99 \$37.05	Medicare Fee Schedule	The requestor did not submit a copy of the recon HCFA in accordance with Rule 133.307 (e)(2)(A) for CPT codes 97110 and 97112. Therefore, no reimbursement recommended.
TOTAL		\$3471.00					The requestor is entitled to reimbursement of \$765.16.

Rationale for CPT code 97110- Recent review of disputes involving CPT Code 97110 by the Medical Dispute Resolution section 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 MRD 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.

ORDER

Pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay for the unpaid medical fees in accordance with the fair and reasonable rate as set forth in Commission Rule 133.1(a)(8) and in accordance with Medicare program reimbursement methodologies for dates of service after August 1, 2003 per Commission Rule 134.202 (b); 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 02-05-04 through 06-03-04 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 10th day of November 2004.

Patricia Rodriguez
Medical Dispute Resolution Officer
Medical Review Division

PR/pr

Enclosure: IRO Decision

October 6, 2004

PATRICIA RODRIGUEZ
TEXAS WORKERS COMP. COMMISSION
AUSTIN, TX 78744-1609

CLAIMANT:
EMPLOYEE:
POLICY: M5-05-0045-01 /
CLIENT TRACKING NUMBER: M5-05-0045-01

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:

1. Notification of IRO Assignment, 9/28/04
2. Letter from TWCC to Medical Review Inst. of America, 9/28/04
3. Records from TWCC
 - Medical Dispute Resolution Request/Response form
 - Table of Disputed Services
 - Carrier EOBs x18
4. Letter from Laurence Smith, CCSP, FIACT, 9/30/04
5. Retrospective Review (M5) Information Request, 9/29/04
6. TWCC-69 Report of Medical Evaluation form
7. Letter from Praful Bole, MD, 5/13/04
8. Supplemental Information, Review of Medical history & Physical Exam, Prafull Bole, MD, 5/13/04
9. History and Physical, Richard Guyer, MD, Texas Back Institute, 7/21/04
10. Follow-up Progress notes, Richard Guyer, MD, 7/22/04, 7/26/04
11. Letter from Paul Vaughan, MD, 12/18/03
12. Follow-up Office note, Paul Vaughan, MD, 2/17/04
13. Progress note by Sid Bernstein, DO, Texas Back Institute, 8/10/04
14. Report of lumbar MRI of lumbar spine from Texas Imaging and Diagnostic Center, 6/04/03
15. Report of lumbar myelogram and post-mylogram CT from Texas Imaging and Diagnostic Center, 6/25/03
16. ER records fro Presbyterian Healthcare System, 7/16/04
17. Intake paperwork and daily records from initial doctor of chiropractic, Cornerstone Clinics, 9/29/03 - 7/26/04
18. Report of lumbar MRI from Presbyterian Hospital of Plano dated 07/16/04
19. Functional Capacity Evaluation dated 06/16/04
20. Two (2) different carrier peer reviews, one with a date of 9/17/03, the other dated 6/23/04
21. Intake paperwork, Presbyterian Hospital pf Plano
22. Patient History, Shippy Chiropractic, 4/8/03, with plan of care
23. Office Care note, Dr. Shippy
24. Daily treatment notes, 4/8/03 through 9/8/03
25. Single page summary of position from requesting treating doctor of chiropractic, 6/12/03
26. Designated doctor report dated 05/13/04
27. Note to Dr. Laurence Smith from the patient, 7/19/04

Summary of Treatment/Case History:

Patient is a 49-year-old male attendant representative's assistant for _____ who, on ____, carried several boxes weighing between 50 and 100 pounds while twisting, and felt sharp lower back pain, and pain and numbness into his left leg. His pains eventually progressed to include his perineum, left medial thigh, and testicle. He was subsequently treated with chiropractic care, physical therapy, and medications. Although surgery has been recommended by several of his doctors, the patient has not yet opted to do so.

Questions for Review:

1. Were the chiropractic manipulative therapies (#98940 and #98941), manual therapy techniques (#97140-59), therapeutic exercises (#97110), neuromuscular reeducation procedures (#97112), electrical stimulation, attended (#97032), and mechanical traction procedures (#97012) performed from 10/29/03 through 6/03/04 medically necessary to treat this patient's condition?

Explanation of Findings:

In this case, there is adequate documentation that a significant compensable injury occurred in the lower back that would necessitate prolonged and ongoing chiropractic manipulative therapy. In addition, the designated doctor examination performed on 05/13/04 opined that the patient was not yet MMI, that he was "weak," and specifically recommended "that the examinee be sent to a Work Hardening Program." Further, the results of the functional capacity evaluation performed on 06/16/04 determined that the patient was deconditioned and in need of strengthening rehabilitation. Because of these documented findings, the therapeutic exercises were also medically necessary.

However, according to the records, the diagnosis supported only one compensable area of injury, namely the lumbar spine. Therefore, the medical necessity of spinal chiropractic manipulative therapies to 3-4 regions (#98941) was not supported.

The *Guidelines for Chiropractic Quality Assurance and Practice Parameters* Chapter 8 under "Failure to Meet Treatment/Care Objectives" states, "After a maximum of two trial therapy series of manual procedures lasting up to two weeks each (four weeks total) without significant documented improvement, manual procedures may no longer be appropriate and alternative care should be considered." However, insofar as the mechanical traction (#97012), manual therapy techniques (#97140-59), and attended electrical stimulation procedures (#97032) were concerned, there was no documentation whatsoever to justify continued use (after four weeks). In fact, the daily records submitted were absent any objective means to monitor patient response to care throughout the date range in dispute (e.g., specific range of motion measurements, reexamination findings, or even a pain scale rating). Therefore, there was no basis for continued application of these treatments, rendering their medical necessity unsupported.

In terms of the neuromuscular reeducation (#97112), there was nothing in either the diagnosis or the specific examination findings that warranted this procedure. In fact, the referring orthopedic specialist that examined this patient on 12/18/03 found "motor examination of the lower extremities is normal" and "He has perineal sensation, and he does have equal reflexes bilaterally." These notations were made well

before this procedure was initiated (02/04/04, according to the records). Other narratives repeatedly document that the patient could “ambulate without assistance.” Since the records failed to specifically document any proprioceptive or other specific neuromuscular pathology that would otherwise warrant such a procedure, its medical necessity was also unsupported.

Conclusion – Partial Decision to Certify:

1. Were the chiropractic manipulative therapies (#98940 and #98941), manual therapy techniques (#97140–59), therapeutic exercises (#97110), neuromuscular reeducation procedures (#97112), electrical stimulation, attended (#97032), and mechanical traction procedures (#97012) performed from 10/29/03 through 6/03/04 medically necessary to treat this patient’s condition?

The chiropractic manipulative therapies, 1–2 spinal areas (#98940) and the therapeutic exercises (#97110) are certified as medically necessary to treat this patient’s condition. All remaining services and procedures within the date range in dispute are not certified.

References Used in Support of Decision:

Haldeman, S; Chapman–Smith, D; Petersen, D *Guidelines for Chiropractic Quality Assurance and Practice Parameters*, Aspen Publishers, Inc.

This review was provided by a Chiropractor who was certified by the National Board of Chiropractic Examiners. This reviewer is a member of the American Chiropractic Association and the U.S. Veterans Administration Chiropractic Advisory Committee. This reviewer is a fellow of the Federation of Chiropractic Licensing Boards and the International College of Chiropractors. This reviewer has been in active practice since 1985.

MRloA 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.

It is the policy of Medical Review Institute of America to keep the names of its reviewing physicians confidential. Accordingly, the identity of the reviewing physician will only be released as required by state or federal regulations. If release of the review to a third party, including an insured and/or provider, is necessary, all applicable state and federal regulations must be followed.

Medical Review Institute of America retains qualified independent physician reviewers and clinical advisors who perform peer case reviews as requested by MRloA clients. These physician reviewers and clinical advisors are independent contractors who are credentialed in accordance with their particular specialties, the standards of the American Accreditation Health Care Commission (URAC), and/or other state and federal regulatory requirements.

The written opinions provided by MRloA represent the opinions of the physician reviewers and clinical advisors who reviewed the case. These case review opinions are provided in good faith, based on the

medical records and information submitted to MRloA for review, the published scientific medical literature, and other relevant information such as that available through federal agencies, institutes and professional associations. Medical Review Institute of America assumes no liability for the opinions of its contracted physicians and/or clinician advisors. The health plan, organization or other party authorizing this case review agrees to hold MRloA harmless for any and all claims which may arise as a result of this case review. The health plan, organization or other third party requesting or authorizing this review is responsible for policy interpretation and for the final determination made regarding coverage and/or eligibility for this case.

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