

MDR Tracking Number: M5-05-0085-01

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, 133.307 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 09-03-04.

Dates of services 01-02-04 through 06-04-04 were withdrawn by the Requestor on 10-06-04 and will not be part of the review.

The IRO reviewed DME items (L3908,E0745), manipulations (90940, 98941, 98943), traction (97012), exercises (97110), electrical stimulation (G0283), home management (97535), ROM testing (95851), muscle testing (95832), FCE (97750), physical performance testing (97750), TENS supply (A4595), educational supplies (99071), education services (99078-22) and data analysis (99090) rendered from 11-03-03 through 12-31-03 that were denied based upon "U".

The IRO determined that two (2) units of 97110 per date of service as well as all other services in dispute **were** medically necessary. Services billed in excess of two (2) units per date of service for code 97110 **were not** found to be medically necessary. The total amount recommended for reimbursement for the medical necessity issues is **\$3,721.03**.

The Medical Review Division has reviewed the IRO decision and determined that the **requestor prevailed** on the **majority** of 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 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 11-17-04, 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.

HCPCS code L0972 is listed on the table of disputed services for date of service 11-03-03 as being billed for the amount of \$125.00. Per Rule 133.307(e)(2)(A) no HCFA was submitted for review, therefore no reimbursement is recommended.

CPT code 72110-WP date of service 11-13-03 denied with denial code "MD" (valid modifier is required for this service. Per Rule 134.202(9)(R) WP is valid. Reimbursement per Rule 134.202(c)(1) is \$66.08 (\$52.86 X 125). The requestor listed \$66.07 in dispute, therefore the recommended reimbursement is **\$66.07**.

CPT code 72120-WP date of service 11-13-03 denied with denial code "MD" (valid modifier is required for this service. Per Rule 134.202(9)(R) WP is valid. Reimbursement per Rule 134.202(c)(1) is \$59.54 (\$47.62 X 125%). The requestor listed \$59.53 in dispute, therefore the recommended reimbursement is **\$59.53**.

CPT code 72052-WP date of service 11-13-03 denied with denial code "MD" (valid modifier is required for this service. Per Rule 134.202(9)(R) WP is valid. Reimbursement per Rule 134.202(c)(1) is recommended in the amount of **\$78.60 (\$62.88 X 125%)**.

CPT code G0283 date of service 11-17-03 denied with denial code "F/01" (the charge for the procedure exceeds the amount indicated in the fee schedule). The carrier has made a payment of \$15.56. Per Rule 134.202(c)(1) the amount of reimbursement is \$16.46 (\$13.17 X 125%). Additional reimbursement is recommended in the amount of **\$0.90 (\$16.46 minus carrier payment of \$15.56)**.

This Findings and Decision is hereby issued this 15th day of April 2005.

Debra L. Hewitt
Medical Dispute Resolution Officer
Medical Review Division

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 from 11-03-03 through 12-31-03 totaling \$3,926.13 in accordance with the 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 hereby issued this 15th day of April 2005.

Margaret Q. Ojeda, Manager
Medical Necessity Team
Medical Review Division

MQO/dlh

Enclosure: IRO Decision

November 8, 2004

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

Patient:
TWCC #:
MDR Tracking #:
IRO #:

M5-05-0085-01
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

Available documentation received and included for review consisted of records from Dr. Barbara Nedry (DC) including treatment notes, rehab notes, office visits, and ROM / strength studies. Also reviewed were consultation records from Drs. Bonnen, Fogel, Collins (MD). MRI studies of the brain, cervical and lumbar spine areas, EMG and ROM / muscle testing reports were also available for review.

CLINICAL HISTORY

___ is a gentleman who sustained injuries to his back, neck, head, shoulder, wrist and knee following a fall off a nine-foot scaffold on ____. He sought care with a chiropractor, Dr. Barbara Nedry, and her impression was lumbar and cervical radiculitis, muscle fibrosis, head contusion, left knee sprain/strain, nerve injury to shoulder and bilateral wrist sprain/strain. A conservative treatment régime was instituted including manipulation (spine and extremity), traction, electrical stimulation and exercises. The exercises consisted of three units of cardiovascular and one unit of a mixture of weights/Swiss ball/wobble board.

The patient was supplied with a wrist splint, elastic bank support and a tens unit.

Diagnostic assessments included MRI's of the brain, lumbar and cervical spine in November 2003. The brain was essentially normal, the lumbar spine showed a left paracentral disc herniation L5/S1 as well as degenerative lumbar discs; the cervical spine study revealed a 2 mm right neural foraminal protrusion at C3/C4 encroaching upon the exiting right C4 nerve root. EMG/NCV electrodiagnostics were performed 11/21/03, with an impression of abnormal study, most consistent with an acute lumbar radiculopathy primarily affecting the left S1 nerve root and to a lesser extent the left L5 nerve root. There was no evidence of cervical radiculopathy/plexopathy.

The patient was seen by an upper extremity orthopedist on 6/8/03 who diagnosed a left thumb radial collateral ligament injury, along with right wrist pain with no obvious mechanical findings.

Recommendation was for a thumb spica. The patient was also referred for orthopedic (spine) second opinion purposes to Guy Fogal, M.D. his impression included lumbar disc herniations at L4/5 and L5/S1 with left lumbar radiculopathy, cervicalgia and bilateral cervical radiculopathy. He proposed lumbar laminectomy with discectomy at L4-5 and L5/S1. The patient was also seen in January of 2004 for a second opinion neurological consult by James Bonnen, M.D. who noted that the chiropractic management had somewhat improved this patient's pain. His assessment was back pain.

DISPUTED SERVICES

Medical necessity of DME items (L3908, L1499), manipulations (98941), traction (97012), exercises (97110), electrical stimulation (G.0283), manual therapy (98943), home management (97535).

Dates in dispute are listed on the TWCC 'Notification of IRO Assignment' as 11/03/03-06/04/04. However a letter dated 10/5/04 from Linda Townsend-Mizell provides an updated 'table of disputed services', including dates of service from 11/3/03-12/31/03 only. Her letter requests withdrawal from dispute of all dates of service from 01/05/04-06/04/04.

DECISION

The reviewer finds that there is medical necessity established for only 2 (two) units of 97110 (exercises) per date of service.

The reviewer finds that medical necessity has been established for all other services in dispute.

BASIS FOR THE 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.

This case has obviously been a complicated one to manage, with multiple injuries to address, the documentation supports that the patient suffered with ongoing objective signs of significant difficulty, supported by opinions from a number of Independent physicians. For the time period in dispute (11/03/03-12/31/03), the care provided by Dr. Nedry falls within accepted clinical standards and guidelines, and appeared to satisfy the above-mentioned requirements for medical necessity.

The guidelines are generally in agreement that initial trial period of manual therapy (passive care) consists of up to two weeks at a visit frequency of 3-5 visits per week (as appropriate), with appropriate tapering of care and transition to a more active mode of care, eliminating passive modalities, followed by a re-evaluation. If, at that time, there is not a significant documented improvement, a second course of two weeks of care, utilizing different types of manual procedures is appropriate. In the absence of documented improvement, manual procedures are no longer indicated after four weeks. If a patient does not have signs of objective improvement in any two successive two-week periods, referral is indicated. Contemporary treatment guidelines

generally agree with the Mercy document that all episodes of symptoms that remain unchanged for 2-3 weeks should be evaluated for risk factors of pending chronicity, with treatment plans altered to de-emphasize passive care and refocus on active care approaches.

In the situation, there is sufficient evidence to show that this case showed significant factors for complexity requiring extended trial periods of care. Functional improvement was obtained and demonstrated with treatment.

The durable medical equipment supplied was pertinent to the presenting problems and improvement with the DME was documented in the records.

However, the exercise therapy, as documented and billed, does not satisfy the requirements for "one-on-one" care. A full 45 minutes was devoted to rehabilitation in the form of treadmill, bicycle and stair step. The medical necessity for 45 minutes of such exercise is not established.

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,

Nan Cunningham
President/CEO

CC: Ziroc Medical Director

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