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

SOAH DOCKET NO. 453-05-4167.M5

MDR Tracking Number: M5-05-0179-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June17, 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. This dispute was received on 9-13-04.

The IRO reviewed therapeutic exercises, supplies, manipulations, manual therapy, therapeutic activities, neuromuscular re-education, attended/manual electrical stimulation and ultrasound rendered from 10-27-03 through1-30-04 that were denied based upon "U".

The Medical Review Division has reviewed the IRO decision and determined that **the requestor did not prevail** on the issues of medical necessity. Consequently, the requestor is not owed a refund of the paid IRO fee.

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.

On January 7, 2005, 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.

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

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

DOS	CPT CODE	Billed	Paid	EOB Denial Code	MAR$ (Maximum Allowable Reimbursement)	Reference	Rationale
10-27-03 10-28-03 10-29-03 10-30-03 10-31-03 11-3-03 11-4-03 11-5-03	97110 (4)	$147.96	$71.80	F	$35.90 X 4 = $147.963	Rule 134.202	See Rationale below

11-6-03 11-7-03 11-10-03 11-12-03							
11-17-03 12-5-03 12-12-03 12-19-03 12-28-03 1-12-04	99080	$15.00	$0.00	F, N	$15.00	Rule 129.5(d) Rule 133.307(g)(3)(B)	Documentation to support billed service was not submitted, no reimbursement is recommended.
11-25-03 12-5-03 12-19-03 1-12-04 1-14-04	97035	$15.84	$0.00	F, N	$15.56		
12-10-03 12-15-03 12-23-03 1-21-04	97032	$20.20	$0.00	F, N	$20.20		
1-12-04	99070	$15.00	$0.00	F, N	DOP		
1-30-04	E0745	$111.89	$0.00	F, N			

Rationale for 97110:

Recent review of disputes involving one-on-one 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 therapy notes for these dates of service do not support any clinical (mental or physical) reason as to why the patient could not have performed these exercises in a group setting, with supervision, as opposed to one-to-one therapy. The Requestor has failed to submit documentation to support reimbursement in accordance with the 1996 MFG and 133.307(g)(3). Therefore, reimbursement is not recommended.

This Decision is hereby issued this 14th day of January 2005.

Elizabeth Pickle
Medical Dispute Resolution Officer
Medical Review Division

Enclosure: IRO Decision

Amended Report

November 5, 2004

Hilda Baker
TWCC Medical Dispute Resolution
7551 Metro Center Suite 100
Austin, TX 78744

Patient:
TWCC #:
MDR Tracking #: M5-05-0179-01
IRO #: 5284

Specialty IRO 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 Specialty IRO for independent review in accordance with TWCC Rule 133.308, which allows for medical dispute resolution by an IRO.

Specialty IRO 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.

This case was reviewed by a licensed Chiropractor who is board certified in rehabilitation. The reviewer is on the TWCC ADL. The Specialty IRO 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 Specialty IRO for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to the dispute.

CLINICAL HISTORY

___ was injured on ___ when he reportedly fell a distance of approximately 15 feet to the ground from a scaffold. He states he landed on his left upper extremity. Following the accident he was transported to Baylor Medical Center at Garland. He was placed in a soft cast at the ER. He presented to the office of Patrick Davis, DC on 9/16/04 and an xray examination was performed. Dr. Davis felt that there was a possible fracture of the left elbow region. CT scan was performed on 10/1/03, which indicated a comminuted fracture of the radial head and fracture of the coronoid process. The patient was referred for orthopedic consultation with John Wey, MD and E. Olayinka Ogunro, MD. On 10/4/03 the patient underwent surgery with Dr. Ogunro consisting

of an open reduction and internal fixation of the left radial head, exploration of the medial aspect of the left elbow to remove bony fragmentation. ___ underwent three months of physical therapeutics. He was evaluated for impairment on 4/5/04 and assigned a 20% WP impairment by Dr. Davis. He was subsequently evaluated by Marvin Van Hal, MD on 4/6/04 for a designated doctor examination and given a 3% WP impairment. A peer review by Robert Honigsfeld, DC was performed on 7/21/04. Dr. Honigsfeld indicates that a home exercise program would have been sufficient to help this patient reach MMI. He further opines that 'it would not be unreasonable to consider 12 sessions or four weeks of post surgical rehab in the clinical setting, to include therapeutic exercises and/or therapeutic activities that are well documented in terms of each activity performed and the length of time at each activity.'

Documentation reviewed was from the respondent, requestor and treating doctor. The documentation reviewed includes but is not limited to the following: initial intake paperwork from TWCC, letter of medical necessity by Dr. Davis, EMG/NCS report by R. Frank Morrison, MD, CT scan of 10/1/03, treatment and examination notes by Dr. Davis from 9/16/3 through 1/30/04, rehabilitation notes by Dr. Davis from 10/27/03 through 1/30/04, operative report of 10/4/03 (this report was in the records from the treating doctor no less than 50 times), multiple TWCC 73's, TWCC 69 with medical evaluation report by Dr. Davis on 4/5/04. Records from the carrier include the following: 10/18/04 "response to 7 day letter" letter, 9/30/04 Flahive, Ogden and Latson summary of carrier's position letter, TWCC 60 and table of disputed services, DD report by Marvin Van Hal, MD of 4/6/04, a single copy of the 10/4/03 operative report and a peer review by Robert Honigsfeld, DC, DABCC of 7/21/04.

DISPUTED SERVICES

Disputed services include the following: therapeutic exercises 97110, supplies 99070, chiropractic manipulations 98943, manual therapy 97140, therapeutic activities 97530, neuromuscular re-education 97112 and attended/manual electrical stimulation 97032 from 10/27/03 through 1/30/04.

DECISION

The reviewer agrees with the previous adverse determination.

BASIS FOR THE DECISION

The reviewer indicates that the documentation of the rehabilitation program from 10/27/03 through 1/30/04 is substandard in nature. The documentation neither indicates the length of time nor the exact exercises performed. The reviewer indicates that post surgical rehabilitation was definitely necessary in this case contrary to Dr. Honingsfeld's opinion; however, the doctor failed to provide adequate documentation to support the treatments that were provided. Furthermore, no functional capacity evaluations or physical performance evaluations were provided to indicate functional improvements of this patient, as is the standard of care. Passive

therapies at this juncture of treatment were not medically justified by the provided treatment notes. The reviewer notes that it is contraindicated to perform manipulation on an extremity that has suffered a fracture. Therefore, this procedure cannot be found to be medically necessary. The reviewer indicates that such decisions are based upon the professionally recognized standards of chiropractic practice in the State of Texas, ACOEM Guidelines, Medical Disability Advisor and the Chiropractic Council of Physiological Therapeutics and Rehabilitation Guidelines.

References:

The Cochrane Database of Systematic Reviews, Cochrane Library number: CD000434; In the Cochrane Library, Issue 2, 2002. Oxford.

Maxey L, Magnusson J. Rehabilitation for the Postsurgical Orthopedic Patient. Mosby, 2001.

Specialty IRO has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. Specialty IRO has made no determinations regarding benefits available under the injured employee's policy. Specialty IRO believes it has made a reasonable attempt to obtain all medical records for this review and afforded the requestor, respondent and treating doctor an opportunity to provide additional information in a convenient and timely manner.

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

Sincerely,

Wendy Perelli, CEO

CC: Specialty IRO Medical Director