

MDR Tracking Number: M5-05-0309-01

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 9-21-04.

The IRO reviewed therapeutic exercises, therapeutic activities, chiropractic manipulations, office visit, and supplies.

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.

Per Rule 133.308(f)(2), the requestor shall submit written notices of adverse determinations (both initial and reconsideration) of retrospective necessity disputes, if in the possession of the requestor. The requestor did not submit reconsideration EOBs.

Per Rule 133.308 (f)(3), the requestor shall submit documentation of the request for and response to reconsideration, or, if the respondent failed to respond to a request for reconsideration, convincing evidence of carrier receipt of that request. The respondent certified that it did not receive a request for reconsideration for the majority of the disputed dates of service as required by Rule 133.304(k-m) prior to requestor coming to MDR. The documentation submitted by the requestor did not include convincing evidence of carrier receipt of request for reconsideration.

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 outlined above as follows:

- In accordance with Medicare program reimbursement methodologies for dates of service on or after 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 4-2-04 through 8-9-04 as outlined above 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 March 2005.

Dee Z. Torres
Medical Dispute Resolution Officer
Medical Review Division

Enclosure: IRO Decision

November 26, 2004

NOTICE OF INDEPENDENT REVIEW DECISION

RE: MDR Tracking #: M5-05-0309-01
TWCC #:
Injured Employee:
Requestor:
Respondent:
----- Case #:

----- has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The ----- IRO Certificate Number is 5348. Texas Worker's Compensation Commission (TWCC) Rule §133.308 allows for a claimant or provider to request an independent review of a Carrier's adverse medical necessity determination. TWCC assigned the above-reference case to ----- for independent review in accordance with this Rule.

----- has performed an independent review of the proposed care to determine whether or not the adverse determination was appropriate. Relevant medical records, documentation provided by the parties referenced above and other documentation and written information submitted regarding this appeal was reviewed during the performance of this independent review.

This case was reviewed by a practicing chiropractor on the ----- external review panel who is familiar with the with the condition and treatment options at issue in this appeal. The reviewer has met the requirements for the ADL of TWCC or has been approved as an exception to the ADL requirement. The ----- chiropractor reviewer signed a statement certifying that no known conflicts of interest exist between this chiropractor and any of the treating physicians or providers or any of the physicians or providers who reviewed this case for a determination prior to the referral to ----- for independent review. In addition, the ----- chiropractor reviewer certified that the review was performed without bias for or against any party in this case.

Clinical History

This case concerns a 47 year-old male who sustained a work related injury on ----- . The patient reported that while at work he injured his back when he attempted to transfer a student from a

water bed to a wheelchair. An MRI of the lumbar spine performed on 2/13/04 revealed a 4mm central disc protrusion, a 3mm central bulge of the disc with slight impression on dura at L4-5, and at L5-S1 there was a 3mm central bulge of the disc with no substantial impression on dura and no impression on the origin of the nerve roots. The diagnoses for this patient have included lumbar neuritis, muscle spasms, lumbar strain grade II, and sacroiliac sprain, grade I. Treatment for this patient's condition has included passive physical medicine modalities consisting of electrical muscle stimulation, moist heat, and manual manipulation.

Requested Services

Therapeutic activities, manipulations, office visits and supplies from 4/2/04 through 8/9/04.

Documents and/or information used by the reviewer to reach a decision:

Documents Submitted by Requestor:

1. Initial Medical Report 2/9/04
2. Progress Report 3/22/04
3. Office Notes 3/2-04 – 5/11/04
4. Medical Necessity Report 6/24/04

Documents Submitted by Respondent:

1. Medical Records Review 5/24/04, 7/13/04
2. Medical Evaluation 8/18/04

Decision

The Carrier's determination that these services were not medically necessary for the treatment of this patient's condition is overturned.

Rationale/Basis for Decision

The ----- chiropractor reviewer noted that this case concerns a 47 year-old male who sustained a work related injury to his back on -----. The ----- chiropractor reviewer also noted that treatment for this patient's condition consisted of passive physical medicine modalities consisting of electrical muscle stimulation, moist heat, and manual manipulation. The ----- chiropractor reviewer explained that the expectation of improvement in a patient's condition should be established based on success of treatment. The ----- chiropractor reviewer indicated that continued treatment is expected to improve the patient's condition and initiate restoration of function. The ----- chiropractor reviewer explained that if the treatment rendered does not produce the expected positive results, it is not reasonable to continue that course of treatment. The ----- chiropractor reviewer also explained that with documented improvement of the patient's condition and restoration of treatment, continued treatment could be reasonable and necessary. The ----- chiropractor reviewer noted that the treating doctor's note of 3/22/04 reported documented objective and functional improvement. The ----- chiropractor reviewer indicated that 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. (Haldeman, S; Chapman-Smith; Petersen, D: Guidelines for Chiropractic Quality Assurance and Practice Parameters, Aspen Publishers, Inc.). The ----- chiropractor reviewer also indicated that if manipulation does not bring improvement in three to four weeks, it should be discontinued and the patient reevaluated. (ACOEM Occupational Medicine Practice Guidelines: Evaluation and Management of Common Health Problems and Functional Recovery in Workers, 2nd Edition, pg. 299). The ----- chiropractor reviewer explained that the patient demonstrated significant, documented improvement requiring continued treatment. The ----- chiropractor reviewer further indicated that spinal manipulation is the only recommended treatment that can relieve symptoms, increase function and hasten recovery for adults suffering from acute low back pain. (Bigos S., Bowyer O., Braen G., et al. Acute Low Back Problems in Adults. Clinical Practice Guideline No. 14. AHCPR Publication No. 95-0642. Rockville, MD: Agency for Health Care Policy and Research, Public Health Service, U.S. Department of Health and Human Services. December, 1994). The ----- chiropractor reviewer explained that based on this patient's positive response this treatment, the continued treatment this patient received was both medically necessary and reasonable. Therefore, the ----- chiropractor consultant concluded that the therapeutic activities, manipulations, office visits and supplies from 4/2/04 through 8/9/04 were medically necessary to treat this patient's condition.

Sincerely,

State Appeals Department