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

SOAH DOCKET NO. 453-05-4779.M5

MDR Tracking Number: M5-05-0502-01

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 assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. The dispute was received on 10-12-04.

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 $650.00** 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 therapeutic exercises on 11-17-03, 11-18-03, 11-19-03, 11-24-03, 11-26-03, 12-01-03, 12-03-03, 12-09-03, 12-10-03 the hot/cold pack therapy on 11-18-03, the occupational therapy evaluation on 11-17-03, the occupational therapy evaluation on 12-11-02 and the exercise equipment on 11-18-03 was **found** to be medically necessary. The therapeutic exercises on 11-25-03 and 12-04-03 and the hot-cold pack therapy on 11-24-03, 11-25-03, and 11-26-03 **were not** found to be medically necessary. The respondent raised no other reasons for denying reimbursement for the above listed services.

Pursuant to 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay for the unpaid medical fees from 11-17-03 through 12-11-03 as outlined above in this dispute:

- in accordance with Medicare program reimbursement methodologies for dates of service after August 1, 2003 per Commission Rule 134.202 (c) and 134.202(c)(6);
- plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this order.

This Findings and Decision is hereby issued this 8th day of February 2005.

Donna Auby
Medical Dispute Resolution Officer
Medical Review Division

DA/da

Enclosure: IRO decision

Specialty Independent Review Organization, Inc.

February 4, 2005

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

Patient:
TWCC #:
MDR Tracking #: M5-05-0502-01
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 Doctor of Osteopathy with a specialty in Orthopedics. 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

This 38-year old male was injured on ___ while employed as a warehouse worker at the . He was picking up an approximately 50 pound load and placing it into the back of a truck, resulting in pain to the right shoulder. He has been off work from the date of injury through 10/16/2003. Following the injury the patient was seen at MedAlert and X-rays were taken. He was prescribed pain medicines and NSAIDs.

The weakness and pain continued resulting in a surgery on 06/10/2003 for an open repair of the torn right rotator cuff. Following the surgery the patient had physical therapy from 07/07 to 08/28/2003. Then he was seen by an occupational therapist for continued rehabilitation.

An independent medical evaluation by Dr. Ciepiela dated 10/15/2003 reported impingement and rotator cuff test negative, tenderness right deltoid, and the scare has healed well. The doctor recommended a strengthening exercise program. Dr. Prager saw the patient on 01/16/2003 and likewise recommended strengthening exercises. The physical examination of the right shoulder was flexion 170, abduction 160, external rotation 90, internal rotation 70, and strength 4/5. The patient was instructed to return to work with work restrictions of no overhead lifting over 5 pounds. The patient was seen monthly by Dr. Prager and on 12/11/2003 the patient was released to return to work on 12/15/2003. The last visit with Dr. Prager was 01/08/2004. At that time the patient is 7 months post right rotator cuff repair, patient is working full time without problems, range of motion is not restricted in any plane, and the strength is +5. At that time Dr. Prager discontinued the exercise program.

The occupational therapy exercises from 11/17/20023 to 12/11/2003 consisted of 3-10 repetitions of the following exercises:

- Chest Press, Chest Fly, Biceps Curl
- Side lying external rotation, Seeded external rotation, Standing external rotation, and internal rotation
- Horizontal row, Frontal Raise, Lateral Raise
- Overhead Press, Side lying posterior shoulder
- Hydrofitness chest press, Shoulder press
- Nautilus – Chest, Shoulder, Empty can, Lateral pulls
- Box lifting chest to shoulder, Floor to waist

Records Reviewed:

- Benefit explanation – 11/17/2003 through 02/04/2004
- Records from doctor/facility:
  - Orthopedic Institute of Texas – Dispute Letters: No date, 4/20/04, and 9/10/04
- B. Prager, MD – Reports: 12/16/2003 through 01/08/2004
- M. Ciepiela, MD – Report: 10/15/2003
- D. Stewart, OTR – 11/17/2003 through 12/11/2003

DISPUTED SERVICES

The items in dispute are the retrospective medical necessity of 97110-therapeutic exercises; 97010-hot/cold pack therapy, 97003/97004-occupational therapy evaluations and A9300-exercise equipment from 11-17-2003 through 12-11-2003.

DECISION

The reviewer disagrees with the previous adverse determination regarding 97110 therapeutic exercises on 11/17, 11/18, 11/19, 11/24, 11/26, 12/01, 12/03, 12/09, 12/10/2003; 97010 hot/cold pack therapy on 11/18/2003; 97003 occupational therapy evaluation on 11/17/2003; 97004 occupational therapy evaluation on 12/11 and A9300 exercise equipment on 11/18.

The reviewer agrees with the previous adverse determination regarding 97110 therapeutic exercises on 11/25/2003 & 12/04/2003 and 97010 hot/cold pack therapy on 11/24/2003, 11/25/2003, 11/26/2003.

BASIS FOR THE DECISION

The duties of this 38-year old manual laborer requires repetitive lifting. The therapeutic exercises and equipment used by the occupational therapist could not have been done at home. The rehabilitative program of the rotator cuff repair was very appropriate. 97110 therapeutic exercises of 11/25 and 12/04 are denied because one should not exercise daily. It takes the body 24-48 hours to regenerate after exercising. These two days of denial are between the 11/24 and 11/26. The denied date of 12/04 is one day following the exercises of 12/03.

97010 hot/cold pack therapy is approved for the first day of workout on 11/18. The days of 11/24, 11/25, and 11/26 are denied. The use of ice packs can be applied at home every 1-2 hours for 10-15 minutes to control pain or swelling.

97003 and 97004 occupational therapy evaluations are approved for the initial visit of 11/17. It is important to have occupational therapy instructions on the proper technique and the proper use of the exercise equipment. Understanding the progressive resistant exercise program and advancing through the various machines resulting in the final use of Nautilus, requires formal instruction by a qualified occupational therapist. The final evaluation by occupational therapy of 12/11 is important for the evaluation of the progress the patient has made in the rehabilitative program and consideration for possible release.

A9300 exercise equipment is approved. The equipment to be used is impractical for home use because there are multiple stations/machines. The exercises progressed from isotonic to isokinetic for power, strength, and endurance. Nautilus is considered one of the best isokinetic exercise companies on the market.

Prosser, R. – REHABILITATION OF THE HAND AND UPPER LIMB
Braddom, R. – PHYSICAL MEDICINE & REHABILITATION, 2nd Edition
Brotzman & Wilk – CLINICAL ORTHOPEDIC REHABILITATION, 2nd Edition
Andrews, J – PHYSICAL REHABILITATION OF THE INJURED ATHLETE, 3rd Edition
Campbell's OPERATIVE ORTHOPEDICS, 10th Edition

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