

MDR Tracking Number: M5-05-0567-01

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 10-19-04.

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 \$460** 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 and neuromuscular reeducation from 1-7-04 through 3-11-04 **were found** to be medically necessary. The aquatic therapy, gait training and massage therapy from 1-7-04 through 3-11-04 **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 as outlined above:

- 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.

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 Findings and Decision and Order is hereby issued this 5<sup>th</sup> day of January, 2005.

Donna Auby  
Medical Dispute Resolution Officer  
Medical Review Division

**Date:** December 21, 2004

**To The Attention Of:**

Rosalinda Lopez  
TWCC  
7551 Metro Center Drive, Suite 100, MS-48  
Austin, TX 78744-16091

**RE: Injured Worker:**

**MDR Tracking #:**

M5-05-0567-01

**IRO Certificate #:**

5242

Forté has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Texas Workers' Compensation Commission (TWCC) has assigned the above referenced case to Forté for independent review in accordance with TWCC Rule §133.308 which allows for medical dispute resolution by an IRO.

Forté has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, relevant medical records, any documents utilized by the parties referenced above in making the adverse determination and any documentation and written information submitted in support of the appeal was reviewed.

The independent review was performed by a Chiropractic reviewer who has an ADL certification. The reviewer has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for a determination prior to the referral to for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to this case.

**Submitted by Requester:**

- Letter of reconsideration from the provider dated 6/18/04 regarding the disputed dates of service
- Table of disputed dates of service which run from 1/7/04 through 3/11/04
- FCE reports of 12/8/03 and 1/20/04. An FCE was also performed on 4/13/04; however, I was not provided with that
- Report of medical evaluation dated 2/26/04 from Dr. A, M.D. which was a designated doctor evaluation
- Report of medical evaluation from Dr. A dated 7/14/04
- Retrospective chiropractic peer review report of 12/28/03 from Dr. B
- Electrodiagnostic report of 12/11/03
- MRI report of the lumbar spine dated 12/4/03
- Initial evaluation report from the treating chiropractor dated 11/10/03
- Several visit reports from Dr. M, M.D. dated 11/11/03, 12/2/03 and 1/23/04
- Letter of appeal regarding work conditioning dated 3/10/04 from the treating physician, Dr. Al, D.C.
- Several daily treatment notes and training logs dated 1/14/04 through 3/11/04
- Daily chiropractic treatment notes from 11/10/03 through 1/12/04
- Aquatic therapy notes from 12/8/03 through 1/12/04

**Submitted by Respondent:**

- Note from a claims account specialist dated 12/2/04 regarding the claimant's treatment and work conditioning program
- Medical record review from Dr. C, M.D. dated 5/13/04 at which point he felt that treatment was no longer reasonable or medically necessary beyond 12/31/03
- 2/28/03 chiropractic peer review from Dr. B

- Report of medical evaluation from Dr. A dated 7/14/04 revealing the claimant to be at MMI as of 4/13/04 with 5% whole body impairment rating

### **Clinical History**

According to the documentation submitted for review, the claimant was reportedly on his first day of work and lifting an armoire up some stairs with the help of a coworker when he twisted his back and this caused him to drop the armoire. The claimant was taken by private vehicle to a bus stop where he could go home. The claimant was noted to be about 5'7" tall and weigh 270 pounds. He was 51 years of age at the time of the accident. He began chiropractic care on or about 11/10/03 and was treated with various passive and active modality treatments and returned to work sometime in April 2004 with a 5% whole body impairment rating. The claimant demonstrated that he was only capable of sedentary level work or abilities during the FCEs of December 2003 and January 2004. An FCE in April 2004 reportedly showed him to be capable of light to medium duty levels. He was required to function at the very heavy duty levels as a mover. The MRI report was reviewed showing a fairly sizable disc bulge at the L5/S1 level as well as at the L4/5 level. The claimant demonstrated positive electrodiagnostic/EMG evidence of L5/S1 radiculopathy bilaterally. The claimant had mainly right sided lower extremity symptoms when he presented to the chiropractor; however, when the claimant saw Dr. M, his complaints in the lower extremity were mainly on the left side. At any rate, his overall clinical signs and symptoms seemed to correlate pretty well with the lumbar MRI and electrodiagnostic studies.

### **Requested Service(s)**

97113, aquatic therapy; 97124, massage therapy; 97112, neuromuscular re-education; 97110, therapeutic exercises; and 97116, gait training for dates of service 1/7/04 through 3/11/04.

### **Decision**

I agree with the carrier and find that the services to include 97113, 97116 and 97124 were not medically necessary during the disputed dates of service. I disagree with the carrier and find that services rendered to include codes 97110 and 97112 were medically necessary.

### **Rationale/Basis for Decision**

The documentation revealed that, at the time of the disputed dates of service, the claimant had been under chiropractic care for about 8 weeks. Therefore, the institution of massage and other passive modality treatments would not be considered appropriate at that time and especially during the disputed dates of service. This would include the massage therapy code of 97124. The claimant also engaged in some gait training activities of 97116 and these, in my opinion, would not be considered appropriate given the nature and extent of the injury. The 97113 code was the aquatic therapy code and it is my opinion that the claimant demonstrated full capability of participating in a land based program during the disputed dates of service and, therefore, the aquatic therapy would not be considered medically necessary especially in conjunction with active land based activities. The documentation also revealed that an aquatic program was begun on 12/8/03 and the continuation of

an aquatic program through the disputed dates of service would not be considered medically necessary because the claimant's pain levels were down to a 4-5/10 pain level as of at least 1/7/04 which was the first disputed date of service. The claimant did demonstrate that he could handle a land based exercise program, therefore, the active codes which were billed during the disputed dates of service to include 97110 and 97112 should be considered medically necessary.

The MRI findings probably pre-existed the injury given his body habitus and age; however, he certainly aggravated this problem on his first day of work. It is my opinion in light of the MRI findings and electrodiagnostic tests which correlated quite well with the clinical signs and symptoms, that more rehabilitation was needed in this particular situation than what would normally be required given a lumbar sprain/strain injury. In the end, the claimant was returned to work and more aggressive and perhaps costly options were avoided. By and large I would say that the end results represented a fairly successful outcome. It is my opinion that the claimant probably could not have tolerated a work conditioning program or work hardening program during the disputed dates of service and the active services which ensued from 1/7/04 through 3/11/04 prepared him for a work conditioning program. These services in my opinion were medically necessary as billed at the 97110 and 97112 codes only.

In accordance with Commission Rule 102.4(h), I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to TWCC via facsimile or U.S. Postal Service from the office of the IRO on this 21 day of December 2004.

Signature of IRO Employee: