

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 10-22-04.

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.

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 EMG, motor and sensory nerve conduction studies, and H-reflex study were found to be medically necessary. The respondent raised no other reasons for denying reimbursement for the above listed services.

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 in accordance with the fair and reasonable rate as set forth in Commission Rule 133.1(a)(8) 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 date of service 5-28-04 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 28th day of December 2004.

Dee Z. Torres
Medical Dispute Resolution Officer
Medical Review Division

DZT/dzt

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 #:

M5-05-0606-01

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:

- 10/18/04 2-pages typed letter from ____
- 05/28/04 4-pages of EOB's and 2-pages of corresponding HCFA's
- 09/15/04 1-page typed letter from ____
- 05/28/04 1-page mostly legible hand-written Physician Referral & Medical Necessity Form

Submitted by Respondent:

- 03/11/04 8-pages ____ at Lancaster also work status, referrals, and prescription
- 03/22/04-6/18/04 35-pages of Daily Reports, TWCC-73, prescription, and clinical updates from ____
- 03/25/04 Lumbar MRI Report and prescription
- 04/29/04 Letter by Dr. A, DC
- 05/25/04 Letter by Dr. A, DC regarding EDx and 2nd Opinion Appt with a surgeon
- 05/28/04 6-pages of graphs, prescription form, and electrodiagnostic (EDx) study.
- 06/09/04 aborted (FCE) Functional Capacity Evaluation 2-pages
- Approx 117-pages of Work Hardening Progress Notes, Group Counseling, Team Meetings, Vocational Rehab., and 2-page Intake form.
- 04/22/04 to 07/30/04 7-paged typed ____

Clinical History:

Documentation revealed that ____ (Claimant) allegedly injured his lower back, while on the job on _____. Notes reported that he was lifting and moving heavy bleachers with a crew of helpers. ____ also had complaints of radicular symptomology in his bilateral lower extremities. The claimant was initially evaluated by ____ and provided a 5-day off work status. The claimant then sought treatment with Dr. A utilizing mostly passive chiropractic care. He underwent MRI

on 03/25/04 that revealed L2-3 to L5-S1 disc lesions and desiccations at all levels. At L4/5 disc level there was a 3.5 mm focal posterior disc herniation centered just left of midline with associated annular tearing-moderate central spinal stenosis was noted. The claimant continued with chiropractic care then underwent an epidural steroid injection at L4-5 under the direction of Dr. R. Notes reported that the claimant received some positive benefits. Mr. D was then referred to Dr. C an orthopedic surgeon who felt that the claimant was not a surgical candidate, but felt that a lumbar myelogram was medically necessary to confirm. On 05/17/04 the claimant received a lumbar myelogram; however nothing was provided for review. Notes reported that the claimant followed back up with Dr. C who again stated that the claimant was not a surgical candidate following the myelogram. On 05/28/04 the claimant underwent the in questioned EDx study with needle myography performed by Dr. W, MD. Clinical impression stated that the EDx testing revealed evidence suggestive of a bilateral L4 radiculopathy. Notes reported that Dr. A discussed the EDx results with Dr. C (orthopedic surgeon) who again stated that surgery would most likely have a poor outcome. On 06/08/04 the claimant was referred to ___ for an 8-9 week work hardening program.

Requested Service(s):

95861 – EMG, 95903 – nerve conduction amplitude & latency/velocity study, 95904 – sensory each nerve, 95934 – H-reflex, amplitude and latency study for date of service 5/28/04.

Decision:

The documentation provided for review does support the medical necessity for the above electrodiagnostic testing.

Rationale/Basis for Decision:

The claimant underwent electrodiagnostic testing on 05/28/04. The documentation provided for review does support the medical necessity for the above electrodiagnostic testing. The claimant had objective and subjective clinical findings as well as diagnostic imaging findings that would necessitate the medical necessity for utilization of this procedure. The documentation provided showed clear evidence of continued lower back pain as well as lower extremity symptoms. As noted by the nurse case manager-Puckett and various healthcare providers the claimant’s gait was impacted by radicular symptomology. My opinion is well supported by current evidence based literature, as noted on page 303 of the Occupational Medicine Practice Guidelines-ACOEM Guidelines 2nd Edition, chapter 12. “Electromyography (EMG), including H-reflex tests, may be useful to identify subtle, focal neurological dysfunction(s) in patients with low back symptoms lasting more than three or four weeks.”

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: