MDR Tracking Number: M5-05-0825-01

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. This dispute was received on 11-09-04.

The IRO reviewed physical therapy evaluation, therapeutic exercises, electrical stimulation unattended, functional capacity evaluations and work hardening program rendered from 01-29-04 through 05-18-04 that were denied based upon "V".

The Medical Review Division has reviewed the enclosed IRO decision and determined that **the requestor did not prevail** on the **majority** of issues of medical necessity. The IRO agrees with the previous determination that the physical therapy evaluation, therapeutic exercises, electrical stimulation unattended and work hardening program **were not** medically necessary. The IRO determined that the functional capacity evaluations **were** medically necessary. Therefore, the requestor is not entitled to reimbursement of the IRO fee.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

ORDER

Pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay for the unpaid medical fees in accordance with Medicare program reimbursement methodologies effective 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 Decision is applicable for dates of service 03-03-04, 04-13-04 and 05-04-04 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 Findings and Decision and Order are hereby issued this 30th day of December 2004.

Debra L. Hewitt
Medical Dispute Resolution Officer
Medical Review Division

Enclosure: IRO Decision

MEDICAL REVIEW OF TEXAS

[IRO #5259]
3402 Vanshire Drive Austin, Texas 78738
Phone: 512-402-1400 FAX: 512-402-1012

NOTICE OF INDEPENDENT REVIEW DETERMINATION

TWCC Case Number:	
MDR Tracking Number:	M5-05-0825-01
Name of Patient:	
Name of URA/Payer:	Rehab 2112
Name of Provider: (ER, Hospital, or Other Facility)	Rehab 2112
Name of Physician: (Treating or Requesting)	Shane Marcum

December 28, 2004

An independent review of the above-referenced case has been completed by a chiropractic doctor. The appropriateness of setting and medical necessity of proposed or rendered services is determined by the application of medical screening criteria published by Texas Medical Foundation, or by the application of medical screening criteria and protocols formally established by practicing physicians. All available clinical information, the medical necessity guidelines and the special circumstances of said case was considered in making the determination.

The independent review determination and reasons for the determination, including the clinical basis for the determination, is as follows:

See Attached Physician Determination

Medical Review of Texas (MRT) hereby certifies that the reviewing physician is on Texas Workers' Compensation Commission Approved Doctor List (ADL). Additionally, said physician has certified that no known conflicts of interest exist between him and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for determination prior to referral to MRT.

Sincerely,

Michael S. Lifshen, MD
Medical Director

cc: Texas Workers Compensation Commission

CLINICAL HISTORY

Documents Reviewed Included the Following:

1. Notification of IRO Assignment, Table of Disputed Services, Carrier EOBs
2. From Respondent: MDR Response – Retrospective Medical Necessity Dispute letter, copy of carrier peer review
3. From Requestor: MDR Request, 11/05/04
4. Office visit notes from initial encounter, post-injury, 12/16/03
5. Initial patient intake paperwork from treating doctor of chiropractic and rehabilitation center, including personal information, patient health history and consultation
6. Daily notes from treating doctor, 12/20/03 through 09/17/04
7. "Musculoskeletal Examination" Forms, 12/19/03, 01/05/04, 01/22/04, and 02/23/04
8. "Diagnosis & Treatment Sheets" from treating doctor, entries 03/11/04 through 09/07/04
9. Radiographic reports thoracic and spines of studies performed on 12/19/03, dated 01/06/04

10. MRI report lumbar spine, 12/19/03
11. Medical consultation narrative, 01/13/04
12. Psychological consultation narrative report, 06/08/04
13. TWCC designated doctor report and narrative, 07/29/04
14. Carrier-selected Required Medical Examination with functional capacity evaluation and report, 05/07/04
15. Employee's Notice of Injury or Occupational Disease,
16. Office notes from referral orthopedist
17. "WC/WH Program Daily Notes" from Requestor, including "Visit Log Reports" and strength exercise sheets, and "Case Management Summaries," multiple dates
18. Lift test report, 05/18/04
19. Treating doctor FCEs 03/03/04, 03/18/04, 04/13/04, and 05/04/04

20. Copies of numerous TWCC-73s, multiple dates

Patient is a 38-year-old female pizza maker for
who, on ____, was lifting and lowering trays, and when she bent over to put a tray on the bottom rung of the stack, she felt acute onset of back pain with the inability to stand back upright. She was seen by the company doctor later that same day, and he ordered x-rays and released her back to work with medication. She attempted to work for a short period of time, but quit due to severe pain. She presented herself to a doctor of chiropractic on 12/19/03 who ordered more x-rays, an MRI, and several medical referrals and consultations, and began chiropractic treatment including physical therapy and rehabilitation. She eventually received injections, and was referred to a work hardening program.

REQUESTED SERVICE(S)

Physical therapy evaluation (97001), therapeutic exercises (97110), electrical stimulation, unattended (G0283), Functional Capacity Evaluations (97750-FC) and work hardening program (97545-WH-CA & 97546-WH-CA) for dates of service 01/29/04 through 05/18/04.

DECISION

The FCEs on 03/03/04, 04/13/04 and 05/04/04 are approved. All remaining services and procedures are denied.

RATIONALE/BASIS FOR DECISION

In this case, the medical records adequately documented that a compensable injury to the lower back occurred and that an appropriate course of chiropractic and physical therapy ensued prior to the disputed treatments. Therefore, it was both medically necessary and appropriate to measure the efficaciousness of the treatment rendered as it progressed through periodic functional capacity evaluations.

However, in terms of the therapeutic exercises (97110), the records reflected that the patient had been engaged in active physical therapy since 01/07/04, a full three weeks by the time the dates in dispute began (01/29/04). Yet, there was no documentation submitted to justify or support the necessity of a continued supervised program. Services that do not require "hands-on care" or supervision of a health care provider are not considered medically necessary services *even if* the services were performed by a health care provider. A home exercise program is also preferable because the patient can perform their exercises on a daily basis. Performance of supervised activities that could have been performed as a home exercise program are not indicated, and any gains obtained in this time period would have likely been achieved through performance of a home program.

Insofar as the unattended electrical stimulation (G0283) performed on date of service 02/26/04 was concerned, the medical records submitted for that date failed to document a flare-up or specific aggravation that would otherwise support the medical necessity of this service being provided at that point during the patient's care.

Regarding the physical therapy evaluation (97001) and the work hardening services (97545-WH-CA & 97546-WH-CA), the records show that the treating doctor of chiropractic was already performing successful physical therapy and rehabilitation on this patient before this referral was initiated. In fact, by the first

reexamination on 01/05/04, the records show that the patient's lumbar range of motion was full and without restriction, and the performance of these movements produced only slight pain. Further, only Ely's and Milgram's tests were still positive at that point. Then, on reexamination dated 01/22/04, range of motion was again full, the patient was without pain on either left or right lumbar rotation, and was without pain on either left or right lumbar lateral bending. Only slight pain was produced on lumbar flexion and extension. Ely's test was still positive, but all remaining provocative testing was within normal limits. In addition, the records state that the subjective complaints were down from a "7-10 out of a possible 10" recorded on 12/19/03 to a "3-5 out of a possible 10" recorded on 01/22/04. Therefore, since the treating doctor was having documented success with the care that he was providing, the justification for medical necessity of an additional physical therapy evaluation at that point was not supported.

Furthermore, and specifically in terms of the work hardening program, the medical necessity of the entire program was not supported. For the reasons stated above, the patient was already progressing successfully with the conventional program and would likely have continued to do so. In addition, the records failed to adequately document that the other requirements for entry into a work hardening program (for example, the psychological components) had been met, and the TWCC Medical Fee Guidelines are clear that strength deficits alone do not fulfill the requirements for entry into a work hardening program.