

MDR Tracking Number: M5-05-0908-01

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, 133.307 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 11-17-04.

The IRO reviewed level II office visits, therapeutic exercises, manual therapy technique and neuromuscular re-education rendered from 12-31-03 through 02-13-04 that were denied based upon "V".

The IRO determined that code 99212 (office visits) for dates of service 12-31-03, 01-06-04, 01-12-04, 01-29-04, 02-06-04 and 02-13-04 and codes 97110 (therapeutic exercises) and 97112 (neuromuscular re-education) from 12-31-03 through 01-29-04 **were** medically necessary. The IRO determined that code 97140 (manual therapy technique) and all remaining services which were not specifically mentioned above **were not** medically necessary.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor did not prevail** on the **majority** of issues of medical necessity. Consequently, the requestor is not owed a refund of the paid IRO fee.

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 not the only issue** to be resolved. This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division.

On 01-19-05, the Medical Review Division submitted a Notice to requestor to submit additional documentation necessary to support the charges and to challenge the reasons the respondent had denied reimbursement within 14-days of the requestor's receipt of the Notice.

Review of CPT codes 99212, 97110, 97140 and 97112 date of service 01-22-04 revealed that neither party submitted EOBs. Per Rule 133.307(e)(2)(B) the requestor did not provide convincing evidence of carrier receipt of the providers request for EOBs. Per Rule 133.307(e)(2)(A) the requestor did not submit HCFA's as required. No reimbursement recommended.

Review of CPT code 99212 dates of service 02-16-04, 02-18-04, 02-20-04, 02-23-04, 02-24-04, 02-25-04 and 02-27-04 revealed that neither party submitted EOBs. Per Rule 133.307(e)(2)(B) the requestor provided convincing evidence of carrier receipt of the providers request for EOBs.

The MAR per the Medicare Fee Schedule is \$48.03 (\$38.42 X 125%). The requestor only billed \$45.41 for each date of service in dispute. Reimbursement is recommended in the amount of \$317.87 (\$45.41 X 7 DOS).

Review of CPT code 97110 dates of service 02-16-04, 02-18-04, 02-20-04, 02-23-04, 02-24-04, 02-25-04 and 02-27-04 revealed that neither party submitted EOBs. Per Rule 133.307(e)(2)(B) the requestor provided convincing evidence of carrier receipt of the providers request for EOBs, however, recent review of disputes involving CPT code 97110 by the Medical Dispute Resolution section indicate overall deficiencies in the adequacy of the documentation of this Code both with respect to the medical necessity of one-on-one therapy and documentation reflecting that these individual services were provided as billed. Moreover, the disputes indicate confusion regarding what constitutes "one-on-one". Therefore, consistent with the general obligation set forth in Section 413.016 of the Labor Code, the Medical Review Division has reviewed the matters in light of all of the Commission requirements for proper documentation. No reimbursement is recommended.

Review of CPT code 97140 (14 units) dates of service 02-16-04, 02-18-04, 02-20-04, 02-23-04, 02-24-04, 02-25-04 and 02-27-04 revealed that neither party submitted EOBs. Per Rule 133.307(e)(2)(B) the requestor provided convincing evidence of carrier receipt of the providers request for EOBs. The MAR per the Medicare Fee Schedule is \$33.91 (\$27.13 X 125%). The requestor billed \$33.90 per unit for each unit in dispute. Reimbursement is recommended in the amount of \$474.60 (\$33.90 X 14 units).

Review of CPT code 97112 (7 units) dates of service 02-16-04, 02-18-04, 02-20-04, 02-23-04, 02-24-04, 02-25-04 and 02-27-04 revealed that neither party submitted EOBs. Per Rule 133.307(e)(2)(B) the requestor provided convincing evidence of carrier receipt of the providers request for EOBs. The MAR per the Medicare Fee Schedule is \$36.75 (\$29.40 X 125%). The requestor billed \$36.69 for each unit in dispute. Reimbursement is recommended in the amount of \$256.83 (\$36.69 X 7 units).

This Findings and Decision is hereby issued this 22<sup>nd</sup> day of February 2005.

Debra L. Hewitt  
Medical Dispute Resolution Officer  
Medical Review Division

### **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 the 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 12-31-03 through 02-27-04 in this dispute.

This Order is hereby issued this 22<sup>nd</sup> day of February 2005.

Margaret Ojeda, Manager  
Medical Dispute Resolution  
Medical Review Division

MQO/dlh

Enclosure: IRO Decision



Specialty Independent Review Organization, Inc.

---

January 14, 2005

Amended 1/26/05

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

Patient:  
TWCC #:  
MDR Tracking #: M5-05-0908-01  
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 Chiropractor. 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

According to the records received, \_\_\_ was injured on \_\_\_ while lifting a piece of wood. He indicated pain in the lumbar spine. He presented to treatment with Pain and Recovery Clinic on or about 11/10/03. He underwent passive and active treatments (active began 11/24/03) until a MRI of 12/9/03. The MRI revealed the following: L3/4 small bulge yielding foraminal stenosis, L4/5 small bulge with foraminal stenosis, a small bulge at L5/S1 with no foraminal stenosis and facet arthrosis at L4/5 and L5/S1. An EMG/NCV exam was performed on 1/22/04, which revealed an indication of L4 radiculopathy. This examination has been discussed at length with the various peer reviewers who reviewed this case. They felt it to be of dubious validity while the treating providers felt it was valid. The patient had three ESI's followed by active therapy protocols. An IDET procedure was requested and denied. Dr. Evangelista performed DD exams on 2/27/04 (not at MMI) and 6/25/04 (at MMI). The latest TWCC 73 that was submitted indicates the patient was taken off work through 11/26/04.

### RECORDS REVIEWED

The following is a list of records received from the carrier in response to a request for documentation to support their position: letter of 12/28/04, various TWCC 62's, daily progress notes from Pain and Recovery Clinic from 11/17/03 through 10/01/04, 8/20/04 letter from Jamie Pogue, 1/26/04 EMG report, 1/22/04 report by neurologic diagnostic labs reports, letter from TWCC to Prisco Evangelista, MD of 8/5/04, DD dispute letter of 7/29/04, 12/9/03 imaging report of lumbar MRI, 7/28/04 TWCC 69 with report, 7/8/04 new patient exam by Guy Fogel, MD, various subsequent medical reports by Dean McMillan, MD, various TWCC 73's, various studies regarding ESI's in the C-spine, 4/10/04 and 7/19/04 reports by Occupational Health Systems (OHS), 2/27/04 and 6/25/04 DD reports by P. Evangelista, MD, FCE of 6/30/04 by H Bryan Lee, DC, peer review dispute by S. Ali Mohamed, MD and Hal Montgomery, MD, follow up notes from Pain institute of Texas from 3/8/04 through 5/27/04, operative report of 4/21/04, 5/19/04, PT notes of 02/02/04 through 08/30/04, addendum to peer review by Zvi Kalisky, MD, 2/26/04 initial consult note from The Pain Institute of TX (TPI), non-authorization of service letter 3/4/04, 1/22/04 note by Lubor Jarolimek, MD, initial evaluation by Clay Meekins, LPT @ Pain and Recovery Clinic (PRC) 12/22/03, 1/22/04 peer review by Dr. Kalisky, 11/10/03 initial

report by Dean McMillan, MD, E1 report, non-authorization of service letter of 10/29/04 (IDET) and 10/13/04 letter of service authorization (facet injection), 10/4/04 note by Son Nguyen, MD, 8/10/04 operative report, CT discography report of 8/10/04 and 8/30/04 report by James Hood MD.

The staff at Pain and Recovery Clinic states that the records were combined for mailing purposes. The following is a list of records received from the treating doctor/requestor in response to a request for documentation to support their position: TWCC intake paperwork, 8/3/04 request for reconsideration letter, peer review of 1/22/04 by Dr. Kalisky, E1 report, 11/17/03 initial report by PRC, report and script to N. Houston Imaging Center for lumbar MRI, 12/15/03-2/22/04 subsequent medical reports by Dr. McMillan, 12/22/03 report by Clay Meekins PT, daily progress notes from 12/31/04 through 2/27/04, Dr. Jarolimek report of 1/22/04, neurodiagnostic report of 1/22/04, PT notes of 2/2/04 and 3/8/04, initial consult note by Dr. Mohamed, 2/26/04 letter from Dr. McMillan, DD report of 2/27/04 by Dr. Evangelista, non-authorization of service letter of 3/4/04, follow up note of 3/18/04 by TPI, 3/23/04 authorization letter for ESI.

#### DISPUTED SERVICES

The notification of IRO assignment, in conjunction with the table of disputed services, indicates that the following services are in need of review: 99212, 97110, 97140 and 97112 as denied by the respondent with "V" codes for dates of service 12/31/03 through 2/13/04. There are multiple dates listed for review beyond 2/13/04; however, the respondent has listed them as 'fee disputes'.

#### DECISION

The reviewer agrees with the previous adverse determination regarding 97140 for all dates of service.

The reviewer disagrees with the previous adverse determination regarding 99212 on the following dates of service: (12/31/03, 1/6/04, 1/12/04, 1/29/04, 2/6/04 and 2/13/04).

The reviewer disagrees with the previous adverse determination regarding codes 97110 and 97112 from 12/31/03 through 1/29/04. In regards to this statement, there are 4 units of 97110 documented and 1 unit of 97112 on each of these dates of service.

The reviewer agrees with the previous adverse determination regarding all remaining services, which were not specifically mentioned above.

#### BASIS FOR THE DECISION

The above decisions are based upon Medicare Payment Policy Guidelines, TWCC rules, accepted PT treatment protocols, Evidence Based Medicine Guidelines and the ACOEM guidelines. The treating doctor prescribed active rehabilitative treatments to begin on 11/24/04. It

is a standard protocol to perform these services for between four and eight weeks with extensions for care depending on diagnosis and exacerbations. This gentleman has a minor disc injury with radiculopathy, which is superimposed over a pre-existing facet arthropathy. The radiculopathy is a bit questionable; however, it has not been disproven via other diagnostic measures. The continuation of passive therapies (97140) during the time of review is not warranted due to the likelihood of doctor dependence. Office visits on an almost daily basis are not warranted and should be performed on a weekly basis. Care beyond 2/13/04 cannot be reviewed at this time due to the 'fee dispute status' assigned by the respondent.

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