

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 11-18-04.

The IRO reviewed group therapeutic activities, neuromuscular re-education, mechanical traction therapy, office visits, gait training therapy, massage therapy, electrical stimulation, group therapeutic procedures, contrast bath therapy, therapeutic exercises and ultrasound therapy rendered from 01-13-04 through 06-09-04 that were denied based upon "V".

The IRO determined that the group therapeutic activities, office visits, group therapeutic procedures and therapeutic exercises from 01-13-04 through 06-09-04 **were** medically necessary. The IRO determined that massage therapy, ultrasound, mechanical traction therapy, contrast bath therapy, neuromuscular re-education, electrical stimulation and gait training from 01-13-04 through 06-09-04 **were not** medically necessary.

The Medical Review Division has reviewed the IRO decision and determined that the **requestor prevailed** on the **majority** of 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 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 12-09-04, 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.

CPT code 99080-73 date of service 02-25-04 denied with denial code "V" (unnecessary medical treatment based on a peer review). The TWCC-73 is a required report per Rule 129.5 and is not subject to an IRO review. The Medical Review Division has jurisdiction in this matter. Reimbursement is recommended in the amount of \$15.00.

This Findings and Decision is hereby issued this 10th day of January 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 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 01-13-04 through 06-09-04 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 10th day of January 2005.

Roy Lewis, Supervisor
Medical Dispute Resolution
Medical Review Division

RL/dlh

Enclosure: IRO Decision

December 29, 2004

TEXAS WORKERS COMP. COMISSION
AUSTIN, TX 78744-1609

CLAIMANT:
EMPLOYEE:
POLICY: M5-05-0979-01
CLIENT TRACKING NUMBER: M5-05-0979-01 / 5278

Medical Review Institute of America (MRIoA) has been certified by the Texas Department of Insurance as an Independent Review Organization (IRO). The Texas Workers Compensation Commission has assigned the above mentioned case to MRIoA for independent review in accordance with TWCC Rule 133 which provides for medical dispute resolution by an IRO.

MRIOA has performed an independent review of the case in question 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. Itemization of this information will follow.

The independent review was performed by a peer of the treating provider for this patient. The reviewer in this case is on the TWCC approved doctor list (ADL). The reviewer has signed a statement indicating they have no known conflicts of interest existing between themselves and the treating doctors/providers for the patient in question or any of the doctors/providers who reviewed the case prior to the referral to MRIOA for independent review.

Records Received:

Records from the State:

- 1 page notification of IRO Assignment dated 12/8/04
- 1 page memo from TWCC dated 12/8/04
- 15 page Medical Dispute Resolution Request/Response, receipt from requestor date 11/18/04
- 10 pages of Workers' Compensation Explanation of Benefits for dates of service 1/13/04 through 5/24/04
- 2 pages of TWCC-62 Explanation of Benefits forms for dates of service 5/24/04 through 6/9/04

Records from Downtown Performance Rehab:

- 4 page Synopsis of Patient's Injury and Care from Dr. Nguyen dated 12/13/04

- 3 page Initial Evaluation from Thuy Nguyen, DC dated 12/6/02
- 1 page lumbar MRI study dated 5/30/03
- 2 page EMG/NCV study dated 6/27/03
- 1 page lumbar ESI report dated 7/22/03
- 1 page lumbar ESI report dated 8/26/03
- 1 page report from Lynn Fitzgerald, MD dated 9/4/03
- 2 page lumbar myelogram report dated 10/21/03
- 1 page report from Dr. Fitzgerald dated 11/4/03
- 2 page operative report dated 12/10/03
- 1 page report from Dr. Fitzgerald dated 12/23/03
- 1 page report from Dr. Fitzgerald dated 1/8/04
- 1 page report from Dr. Fitzgerald dated 2/5/04
- 2 page lumbar MRI report dated 2/19/04
- 1 page report from Dr. Fitzgerald dated 3/1/04
- 2 page operative report dated 3/17/04

2 page report from Ajay Bindal, MD dated 12/10/04
15 pages of duplicate medical records

Summary of Treatment/Case History:

The patient, a 42-year-old male, was injured on the job on ___ when he was lifting a steel beam weighing 400 lbs. while turning and rotating his trunk, resulting in a low back injury. He went to the chiropractor on 12/13/02 and he exhibited lower back pain and right lower extremity pain and numbness rated at 7/10. A lumbar MRI study was performed on 5/30/03 that demonstrated desiccation of the L5-S1 disc and the L4-5 disc with generalized bulging.

The patient underwent a lower extremity EMG/NCV on 6/27/03 that demonstrated a chronic left S1 radiculopathy and motor/sensory polyneuropathy secondary to diabetes.

The patient underwent a series of epidural steroid injections on 7/22/03 and 8/26/03.

The patient was referred to Lynn Fitzgerald, MD for a neurosurgical consultation on 9/4/03 and he was diagnosed with pain radiating down the right leg along the lateral side of the leg to the top of the foot in the L5 distribution. Dr. Fitzgerald indicated that the EMG/NCV findings related to the left sided radiculopathy were irrelevant and the patient was prescribed a Medrol Dose pack.

The patient underwent a lumbar myelogram study on 10/21/03 that revealed partial effacement of the right L4 nerve root sleeve, minimal spondylotic ridging posteriorly at L2-3, and minimal to moderate spinal stenosis at L4-5 due to posterior disc bulge or protrusion.

The 11/4/03 report from Dr. Fitzgerald indicated that the patient would benefit from a right L4-5 foraminotomy and laminectomy at L3, L4, and L5. The patient underwent the above-mentioned spinal surgery on 12/10/03. Dr. Fitzgerald re-examined the patient on 12/23/03, and he recommended a physical therapy or rehabilitation program after the holidays to get him back to normal activity levels. The patient was having difficulty walking due to his stenosis and foraminal narrowing and radicular pain.

The patient began a postoperative rehabilitation program with the chiropractor on 1/13/04 and he was treated on the following dates with therapeutic exercises (#97110), group therapeutic exercises (#97530), mechanical traction (#97012), brief office visits (#99211), neuromuscular reeducation

(#97112), gait training (#97116), group therapeutic procedures (#97150), contrast bath therapy (#97034), and intermediate office visits (#99213):

Jan 04: 13, 14, 15, 19, 21, 26, 29

Feb 04: 2, 11, 12, 16, 17, 23, 25

Mar 04: 1, 4, 8

The patient was re-examined by the neurosurgeon on 1/8/04 and he began complaining of left S1 radiculopathy and stiffness in the back. The neurological examination was unremarkable. The patient was re-examined by the neurosurgeon on 2/5/04, and the patient complained of pain radiating to the left leg that appeared to be due to an S1 radiculopathy. The patient was sent for a second lumbar MRI study, which was performed on 2/19/04. The study revealed bulging of the L3-4 disc 2-3 mm, bulging of the L4-5 disc 3-4 mm, and a 5-6 mm disc herniation at L5-S1 displacing both nerve root sleeves posteriorly.

The patient underwent a lumbar discectomy, hemilaminotomy, and foraminotomy at the L5-S1 level on 3/17/04 and he was subsequently referred back to the chiropractor for post-surgical rehabilitation on 4/14/04.

The patient began a second postoperative rehabilitation program with the chiropractor on 4/14/04 and he was treated on the following dates with therapeutic exercises (#97110), electrical stimulation (#97032), ultrasound (#97035), group therapeutic exercises (#97530), mechanical traction (#97012), brief office visits (#99211), neuromuscular reeducation (#97112), gait training (#97116), contrast bath therapy (#97034), massage therapy (#97124), and intermediate office visits (#99213):

Apr 04: 14, 16, 19, 20, 23, 26, 30

May 04: 4, 5, 6, 10, 11, 14, 24

Jun 04: 1, 7, 8, 9

Questions for Review:

The dates of service in dispute are 1/13/04 through 6/9/04. The items in dispute include: group therapeutic activities (#97530-GP), neuromuscular reeducation (#97112-GP), mechanical traction therapy (#97012-GP), office visits (#99211), gait training therapy (#97116-GP), massage therapy (#97124-GP), electrical stimulation (#97032-GP), group therapeutic procedures (#97150-GP), contrast bath therapy (#97034-GP), therapeutic exercises (#97110-GP), and ultrasound therapy (#97035-GP). Denied with V for medical necessity with peer review.

Explanation of Findings:

The use of group therapeutic activities (#97530-GP), brief office visits (#99211), group therapeutic procedures (#97150-GP), and therapeutic exercises (#97110-GP) were medically necessary from 1/13/04 through 6/9/04 for the postoperative treatment of the patient.

Haldeman, et al, indicate that it is beneficial to proceed to the rehabilitation phase of care as rapidly as possible to minimize dependence on passive forms of treatment/care, and reaching the rehabilitation phase as rapidly as possible and minimizing dependence on passive treatment usually leads to the optimum result (Haldeman, S., Chapman-Smith, D., and Petersen, D., Guidelines for Chiropractic Quality Assurance and Practice Parameters, Aspen, Gaithersburg, Maryland, 1993)

The use of massage therapy (#97124-GP), ultrasound (#97035-GP), mechanical traction therapy (#97012-GP), contrast bath therapy (#97034-GP), and electrical stimulation (#97032-GP) was not medically necessary from 1/13/04 through 6/9/04.

The Philadelphia Panel found that therapeutic exercises were found to be beneficial for chronic, subacute, and post-surgery low back pain. Continuation of normal activities was the only intervention with beneficial effects for acute low back pain. For several interventions and indications (eg, thermotherapy, therapeutic ultrasound, massage, electrical stimulation), there was a lack of evidence regarding efficacy (Philadelphia Panel Evidence-Based Guidelines on Selected Rehabilitation Interventions for Low Back Pain. Phys Ther. 2001;81:1641-1674).

The Agency for Health Care Policy and Research: Clinical Practice Guideline Number 14, "Acute Low Back Problems In Adults" indicates that "the use of physical agents and modalities in the treatment of acute low back problems is of insufficiently proven benefit to justify its cost. They did note that some patients with acute low back problems appear to have temporary symptomatic relief with physical agents and modalities." Therefore, the use of passive physical therapy modalities (hot/cold packs, electrical stimulation) is not indicated after the first 2-3 weeks of care.

Van der Windt, et al, conducted a review to evaluate the effectiveness of ultrasound therapy in the treatment of musculoskeletal disorders. Thirty-eight studies were included in the review, evaluating the effects of ultrasound therapy for lateral epicondylitis, shoulder pain, degenerative rheumatic disorders, ankle distortions, temporomandibular pain or myofascial pain and a variety of other disorders. The authors concluded that, as of yet, there seems to be little evidence to support the use of ultrasound therapy in the treatment of musculoskeletal disorders. The large majority of 13 randomized placebo-controlled trials with adequate methods did not support the existence of clinically important or statistically significant differences in favor of ultrasound therapy (Van der Windt DA, et al, "Ultrasound therapy for musculoskeletal disorders: a systematic review", Pain. 1999 Jun;81(3):257-71).

Robertson and Baker conducted a systematic review of randomized controlled trials (RCTs) in which ultrasound was used to treat people with those conditions. Thirty-five English-language RCTs were published between 1975 and 1999. Each RCT identified was scrutinized for patient outcomes and methodological adequacy. Ten of the 35 RCTs were judged to have acceptable methods using criteria based on those developed by Sackett et al. Of these RCTs, the results of 2 trials suggest that therapeutic ultrasound is more effective in treating some clinical problems (carpal tunnel syndrome and calcific tendinitis of the shoulder) than placebo ultrasound, and the results of 8 trials suggest that it is not. The authors concluded that there was little evidence that active therapeutic ultrasound is more effective than placebo ultrasound for treating people with pain or a range of musculoskeletal injuries or for promoting soft tissue healing. The few studies deemed to have adequate methods examined a wide range of patient problems. The dosages used in these studies varied considerably, often for no discernable reason (Robertson VJ, Baker KG, "A review of therapeutic ultrasound: effectiveness studies", *Phys Ther.* 2001 Jul;81(7):1339-50).

Gait training therapy (#97116-GP) was not medically necessary from 1/13/04 through 6/9/04, as the patient in this case had no lower extremity orthopedic deficits amenable to gait training. He did have problems with walking due to lower back antalgia, but the presence of lower back pain and antalgia does not provide the necessary medical necessity for use of gait training as a viable treatment in this case.

The use of neuromuscular reeducation (#97112-GP) was not medically necessary from 1/13/04 through 6/9/04. Neuromuscular reeducation is commonly utilized for post-stroke rehabilitation and is not commonly utilized for the management of conditions similar to the claimant's. The CPT Code Book defines neuromuscular reeducation as: "neuromuscular reeducation of movement, balance, coordination, kinesthetic sense, posture, and proprioception". The progress notes for the claimant's office visits do not provide medical necessity for the use of this procedure at each office visit, as no evidence of a neurological deficit leading to a breakdown in the neural link between the locomotor cortex of the brain and the musculoskeletal system was identified in the records as affecting the patient. Therefore, the neuromuscular reeducation was not medically necessary.

Conclusion/Partial Decision to Certify:

The use of group therapeutic activities (#97530-GP), brief office visits (#99211), intermediate office visits (#99213), group therapeutic procedures (#97150-GP), and therapeutic exercises (#97110-GP) were medically necessary from 1/13/04 through 6/9/04 for the postoperative treatment of the patient.

Gait training therapy (#97116-GP) was not medically necessary from 1/13/04 through 6/9/04

The use of neuromuscular reeducation (#97112-GP) was not medically necessary from 1/13/04 through 6/9/04

The use of massage therapy (#97124-GP), ultrasound (#97035-GP), mechanical traction therapy (#97012-GP), contrast bath therapy (#97034-GP), and electrical stimulation (#97032-GP) was not medically necessary from 1/13/04 through 6/9/04.

Applicable Clinical of Scientific Criteria or Guidelines Applied in Arriving at Decision:

Haldeman, S., Chapman-Smith, D., and Petersen, D., Guidelines for Chiropractic Quality Assurance and Practice Parameters, Aspen, Gaithersburg, Maryland, 1993

References Used in Support of Decision:

Philadelphia Panel Evidence-Based Guidelines on Selected Rehabilitation Interventions for Low Back Pain. Phys Ther. 2001;81:1641-1674

The Agency for Health Care Policy and Research: Clinical Practice Guideline Number 14, "Acute Low Back Problems In Adults"

Van der Windt DA, et al, "Ultrasound therapy for musculoskeletal disorders: a systematic review", Pain. 1999 Jun;81(3):257-71

Robertson VJ, Baker KG, "A review of therapeutic ultrasound: effectiveness studies", Phys Ther. 2001 Jul;81(7):1339-50

CPT Code Book

This review was provided by a Doctor of Chiropractic who is also a member of the American Chiropractic Academy of Neurology. This reviewer also holds a certification in Acupuncture. This reviewer has fulfilled both academic and clinical appointments and currently serves as an assistant professor at a state college, is in private practice and is a director of chiropractic services. This reviewer has previously served as a director, dean, instructor, assistant professor, and teaching assistant at a state college and was responsible for course studies consisting of pediatric and geriatric diagnosis, palpation, adjusting, physical therapy, case management, and chiropractic principles. This reviewer is responsible for multiple postgraduate seminars on various topics relating to chiropractics and has authored numerous publications. This reviewer has participated in numerous related professional activities including work groups, committees, consulting, national healthcare advisory

committees, seminars, National Chiropractic Coalition, media appearances, and industrial consulting. This reviewer has been in practice since 1986.

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