

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 12-07-04.

The IRO reviewed electrical stimulation manual, manual therapy technique, therapeutic exercises, mechanical traction, hot/cold pack therapy, range of motion and report, each extremity (excluding hand) or each trunk section (spine), physical review and interpretation of motion tests with written report, manual muscle testing with report, hand with or without comparison of with normal side, level III office visit, manual muscle testing with report, extremity (excluding hand) or trunk rendered from 01-27-04 through 05-06-04 that were denied based upon "V".

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

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.

CPT code 97010 date of service 03-04-04 revealed that neither party submitted an EOB. The requestor provided convincing evidence of carrier receipt of the providers request for an EOB per Rule 133.307(e)(2)(B). The respondent per Rule 133.307(e)(3)(B) did not provide an EOB as required. Per the Medicare Local Coverage Determination code 97010 is a bundled service code and considered an integral part of a therapeutic procedure(s). Payment is included in the allowance for another therapy service/procedure performed. No reimbursement is recommended. A referral will be made to Compliance and Practices due to the carrier being in violation of Rule 133.307(e)(3)(B).

CPT code 97010 dates of service 04-08-04 and 05-06-04 denied with denial codes "F" (fee guideline MAR reduction) and "N" (not appropriately documented) respectively. Per the Medicare Local Coverage Determination code 97010 is a bundled service code and considered an integral part of a therapeutic procedure(s). Payment is included in the allowance for another therapy service/procedure performed. No reimbursement is recommended.

Review of CPT code 97012 date of service 03-04-04 revealed that neither party submitted an EOB. The requestor provided convincing evidence of carrier receipt of the providers request for an EOB per Rule 133.307(e)(2)(B). The respondent per Rule 133.307(e)(3)(B) did not provide an

EOB as required. Reimbursement per Rule 134.202(c)(1) is recommended in the amount of **\$19.21 (\$15.37 X 125%)**. A referral will be made to Compliance and Practices due to the carrier being in violation of Rule 133.307(e)(3)(B).

Review of CPT code 97032 (10 units) dates of service 03-04-04, 05-12-04, 05-18-04, 05-24-04 and 06-15-04 revealed that neither party submitted an EOB. The requestor provided convincing evidence of carrier receipt of the providers request for an EOB per Rule 133.307(e)(2)(B). The respondent per Rule 133.307(e)(3)(B) did not provide an EOB as required. Reimbursement per Rule 134.202(c)(1) is recommended in the amount of **\$202.00 (\$16.16 X 125% = \$20.20 X 10 units)**.

A referral will be made to Compliance and Practices due to the carrier being in violation of Rule 133.307(e)(3)(B).

Review of CPT code 97110 dates of service 03-04-04, 05-12-04, 05-18-04, 05-24-04 and 06-15-04 revealed that neither party submitted an EOB. The requestor provided convincing evidence of carrier receipt of the providers request for an EOB per Rule 133.307(e)(2)(B). The respondent per Rule 133.307(e)(3)(B) did not provide an EOB as required, 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 all of the Commission requirements for proper documentation. Reimbursement not recommended. A referral will be made to Compliance and Practices due to the carrier being in violation of Rule 133.307(e)(3)(B).

Review of CPT code 97140 (5 units) dates of service 03-04-04, 05-12-04, 05-18-04, 05-24-04 and 06-15-04 revealed that neither party submitted an EOB. The requestor provided convincing evidence of carrier receipt of the providers request for an EOB per Rule 133.307(e)(2)(B). The respondent per Rule 133.307(e)(3)(B) did not provide an EOB as required. Reimbursement per Rule 134.202(c)(1) is recommended in the amount of **\$170.65 (\$27.30 X 125% = \$34.13 X 5 units)**.

A referral will be made to Compliance and Practices due to the carrier being in violation of Rule 133.307(e)(3)(B).

Review of CPT code 99213 dates of service 03-04-04, 05-12-04, 05-18-04, 05-24-04 and 06-15-04 revealed that neither party submitted an EOB. The requestor provided convincing evidence of carrier receipt of the providers request for an EOB per Rule 133.307(e)(2)(B). The respondent per Rule 133.307(e)(3)(B) did not provide an EOB as required. Reimbursement per Rule 134.202(c)(1) is recommended in the amount of **\$341.20 (\$54.59 X 125% = \$68.24 X 5 DOS)**. A referral will be made to Compliance and Practices due to the carrier being in violation of Rule 133.307(e)(3)(B).

CPT code 95851 (2 units) dates of service 07-19-04 and 09-03-04 denied with denial code "G/509" (correct coding initiative bundle guidelines indicate code is a comprehensive component of another code on the same day). Per Rule 133.304(c) and 134.202(a)(4) the carrier

did not specify which service code 95851 was global to. Reimbursement is recommended per Rule 134.202(c)(1) in the amount of **\$52.80 (\$21.12 X 125% = \$26.40 X 2 units)**.

CPT code 95832 (2 units) dates of service 07-23-04 and 09-07-04 denied with denial code "G/509" (correct coding initiative bundle guidelines indicate code is a comprehensive component of another code on the same day). Per Rule 133.304(c) and 134.202(a)(4) the carrier did not specify which service code 95851 was global to. Reimbursement is recommended per Rule 134.202(c)(1) in the amount of **\$53.12 (\$21.25 X 125% = \$26.56 X 2 units)**.

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 03-04-04, 04-08-04, 05-06-04, 05-12-04, 05-18-04, 05-24-04, 06-15-04, 07-19-04, 07-23-04, 09-03-04 and 09-07-04 in this dispute.

This Findings and Decision and Order are hereby issued this 9th day of February 2005.

Debra L. Hewitt
Medical Dispute Resolution
Medical Review Division

DLH/dlh

Enclosure: IRO Decision



7600 Chevy Chase, Suite 400
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NOTICE OF INDEPENDENT REVIEW DECISION

Date: February 2, 2005

To The Attention Of: TWCC
7551 Metro Center Drive, Suite 100, MS-48
Austin, TX 78744-16091

RE: Injured Worker:
MDR Tracking #: M5-05-1073-01
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.

NOTE: I have reviewed over 1200 pages of information, most of which was provided by the carrier. It would be of great and unnecessary burden to list every single document which was reviewed; however, I have tried as best I can to summarize what has been reviewed below.

Submitted by Requester:

- Usual notice of IRO assignment and list of disputed services
- Letter from Dr. Murphy, the treating chiropractor, dated 12/14/04 which was essentially a position letter regarding the disputed dates of service
- Several prescriptions from Dr. Chouteau, D.O. for physical therapy dated 2/9/01, 3/8/04 and 4/5/04
- Several evaluation notes from Dr. Chouteau dated 3/8/04 and 5/3/04
- Range of motion and strength evaluations which were essentially summaries of strength tests which were done from 3/1/04 through 11/2/04
- Operative note of 6/29/04 which was from the claimant's second surgery to the left elbow
- Note of 9/20/04 from Dr. Yabraian, M.D. in regard to recommendation of further post operative rehabilitation

Submitted by Respondent:

Again, the documentation provided from the carrier was very extensive and in some cases was in the form of multiple copies of the same notes which were intermingled among other notes making it very difficult for me to distinguish what was repetitive and what was not repetitive. At any rate, a good summary is as follows:

- Chiropractic peer review report of 12/5/03 from Dr. Fahey
- Multiple daily chiropractic notes from the treating physician, Dr. Murphy, which essentially ran from 1/27/04 through October 2004
- Medical record review report of 10/29/04

- Report of medical evaluation from Dr. Raper, D.C. which was essentially a designated doctor exam that was recommended by the treating physician. The claimant was found to be at MMI on this date with 2% impairment rating. The date of MMI was 8/4/04
- Operative note of 2/13/03 involving the claimant's first surgery of his left elbow
- Left upper extremity electrodiagnostic study report of 2/19/04
- Note from Duncanville Medical Center dated 3/18/04 which was an MRI report of the left shoulder and left elbow
- Operative note of 6/29/04 involving the claimant's second surgery
- Multiple TWCC-73 reports from Dr. Murphy, treating chiropractor
- Several notations from Dr. Graybill, D.O. in the fall of 2004 in regard to the claimant's stellate ganglion blocks
- Medical record review from Dr. Levy, M.D. dated 12/9/04
- Chiropractic peer review report of 12/2/04 from Dr. Martin, D.C.
- Several evaluations and notations from Dr. Small, M.D. regarding the claimant's shoulder and low back which were mostly in the fall of 2004
- Two designated doctor evaluation reports from Dr. Czewski, D.O. dated 7/22/03 and 11/27/02
- Voluminous daily chiropractic notes and range of motion and strength evaluations from Dr. Murphy, treating chiropractor
- Note of 10/5/04 from American Orthopedic and Neurological Rehabilitation Centers
- Follow up note from Dr. Yabrain, M.D. dated 9/20/04
- Multiple evaluations from Dr. Chouteau in March and May 2004
- Multiple daily chiropractic notes from Dr. Davis, D.C., one of the claimant's first treating chiropractors, dated through much of 2003
- Several notations from Dr. Nosnik, M.D., most notably during the month of October 2003 while the claimant was involved in a chronic pain management program
- Voluminous documentation and daily notations from the claimant's pain management program which essentially began in July 2003
- Initial consultation report from Dr. Troum, M.D. dated 10/16/02
- Several notations from Dr. Wilson, M.D., orthopedist
- Lower extremity electrodiagnostic report of 10/3/02
- Medical consultation note from Dr. Galbraith, M.D. dated 10/4/02
- Several clinical notations from Family Medicine Associates, PA dated through August 2002
- Several TWCC-73 reports from Dr. Dang as well as Dr. Davis, D.C.

Clinical History

According to the documentation submitted for review, the claimant experienced low back pain due to a faulty seat of a backhoe that the claimant was driving. The claimant also reportedly developed left elbow pain; however, the initial documentation revealed that the left elbow pain had actually begun to occur 2 months prior to the date of injury. The claimant has also stated that he struck his elbow on the backhoe and he has also stated that a gearshift which was going back and forth struck his elbow. There is some discrepancy among what exactly occurred with respect to the mechanism of injury. At any rate the claimant has obviously undergone voluminous amounts of conservative care. He has reportedly undergone 2 injections and then he has undergone a surgery to the left elbow on 2/13/03. This was for the repair of what was thought to

be a small tear in the distal triceps muscle near the elbow. The claimant also had quite a bit of synovitis. The claimant went through the usual post operative rehabilitation and I believe he underwent another injection which would be his third injection in May 2003. The claimant then entered into what appeared to be a chronic pain management program which lasted for quite some time. On 1/27/04 the claimant saw Dr. Murphy, D.C. who began another trial of conservative care which was also recommended by Dr. Chouteau. The claimant underwent several more injections, one into the lateral epicondyle area and one into the cubital tunnel followed by rehabilitation. None of these interventions appeared to work and the claimant ended up undergoing another surgery in late June 2004.

Requested Service(s)

97032 – electrical stimulation manual; 97140 – manual therapy technique; 97110 - therapeutic exercises; 97012 – mechanical traction; 97010 – hot/cold pack therapy; 95851 – range of motion and report, each extremity (excluding hand) or each trunk section (spine); 96004 – physician review and interpretation of motion tests with written report; 95832 – manual muscle testing with report, hand with or without comparison of with normal side; 99213 – level III office visit; 95831 – manual muscle testing with report, extremity (excluding hand) or trunk for disputed dates of service 1/27/04 to 5/6/04

Decision

I agree with the carrier and find that the services in dispute were not medically necessary.

Rationale/Basis for Decision

The dates of service in dispute which were disputed with a “V” code included 1/27/04, 2/12/04, 2/19/04, 2/23/04, 2/26/04, 3/1/04, 3/9/04, 3/18/04, 3/23/04, 3/29/04, 4/1/04, 4/5/04, 4/8/04, 4/15/04, 4/22/05, 4/29/04 and 5/6/04. It should be noted that on 4/8/04 and 5/6/04, the 97010 code is not in dispute because this is a fee issue. The services rendered from 5/12/04 through the end of the disputed dates of service are in regard to a fee issue only.

The services provided by Dr. Murphy would not be considered reasonable or medically necessary in a situation such as this whereby the claimant has undergone voluminous amounts of prior treatment to consist of extensive and over utilized chiropractic care, several injections, a previous surgery, a chronic pain management program, Feldenkrais, Yoga, acupuncture, psychological counseling and physical therapy to include passive and active modality treatments. The claimant reportedly injured his low back due to a faulty seat on a backhoe and he reportedly struck his left elbow on a gearshift or on the door of the vehicle. There have been different mechanisms of injury described as it pertains to the actual injury that occurred to the left elbow. The extensive treatment rendered including the surgeries have not been justified given the expected sequelae of this type of injury. A faulty seat would not cause so much damage to the claimant’s low back and merely striking one’s elbow would not cause such extensive damage. The bottom line is that more than sufficient treatment had taken place prior to the claimant ever seeing Dr. Murphy beginning on 1/27/04. The treatment offered and performed by Dr. Murphy was no different than what had already been performed. There was no medical need to start over with therapy even if the claimant was still symptomatic. The documentation strongly suggests

that this claimant's pain levels have remained at about a 7/10 pain level in the left elbow despite voluminous amounts of treatment rendered. Any short term improvements which were appreciated via the more recent chiropractic care during the disputed dates of service would be very temporary and the documentation shows that these improvements were indeed very temporary. The documentation supports that the injections done by Dr. Chouteau on 3/8/04 and 5/3/04 resulted in no relief of symptoms. The purpose of injections is to decrease pain such that a more aggressive physical therapy program can be performed. Since there was no change in the claimant's complaints, there would be no need for physical therapy and this is a moot point anyway because the claimant had already undergone extensive amounts of treatment that far surpassed the evidence based guidelines recommendations. Dr. Chouteau was recommending 12 visits of rehabilitation for each injection which is also excessive for any type of post injection program. The claimant demonstrated minimal evidence of injury and quite a bit of symptom magnification during both of his designated doctor exams with Dr. Czewski. Even Dr. Troum, the claimant's first surgeon, stated on 11/17/03 that the claimant's complaints of diffuse left arm pain did not correlate with the minimal objective findings. Dr. Troum went on to state on 11/17/03 that the claimant had actually been previously discharged due to lack of objective findings. The more recent elbow MRI revealed the reported presence of left medial epicondylitis and the chiropractor diagnosed left lateral epicondylitis. The left ulnar nerve irritation at the left elbow and the lateral or medial epicondylitis are obviously chronic conditions at this point and do not respond to long term chiropractic management. The type of services provided during the disputed dates of service are indicative of an initial treatment plan during the acute stage of the injury and these types of services are obviously not warranted at 2 years post injury. It appears that at least an hour and 15 minutes were also spent in exercising this claimant's left elbow which would also be considered excessive for one small area of the left elbow. The claimant should be well versed enough by now to perform some general exercises on his own. The claimant has been non-responsive to all forms of medical care. There is no reason to expect that these additional services would be any better. Much of these services were also passive in nature and modality treatment such as electric muscle stimulation and massage are not indicated for epicondylitis and ulnar nerve entrapment. There is very little a chiropractor can do beyond the initial 8 weeks of the injury for peripheral nerve entrapment and epicondylitis problems. Dr. Murphy did act appropriately by not wasting too much time in getting this claimant to Dr. Chouteau; however, a prescription for physical therapy from Dr. Chouteau is insufficient rationale for treatment in the presence of previous extensive treatment of all kinds.

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 2nd day of February 2005.

Signature of IRO Employee:

Printed Name of IRO Employee: Denise Schroeder