THIS DECISION HAS BEEN APPEALED. THE FOLLOWING IS THE RELATED SOAH DECISION NUMBER:

SOAH DOCKET NO. 453-05-4907.M5

MDR Tracking Number: M5-05-1108-01

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 (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 12-09-04.

In accordance with Rule 133.308 (e), requests for medical dispute resolution are considered timely if it is filed with the division no later than one (1) year after the date(s) of service in dispute. The following date(s) of service are not timely and are not eligible for this review: 12-01-03 through 12-08-03.

The insurance carrier has stated in its position paper that it is requesting a refund for erroneous payment made for dates of service 12-08-03 through 12-24-03. Per 133.307 (e) "all carrier requests for medical dispute resolutions shall be made in the form, format, and manner prescribed by the commission." This request will not be reviewed in this dispute.

The Division has reviewed the enclosed IRO decision and determined that **the requestor did not prevail** on the majority of the medical necessity issues. 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.

CPT codes 97140, 97112, and 99070 from 12-09-03 through 12-12-03 **were found** to be medically necessary. CPT codes 97140, 97112, 99070, 98940, 98941, 97530, 97116 and HCPCS codes E1399 and E0745 from 12-09-03 through 12-12-03 **were not found** to be medically necessary. The respondent raised no other reasons for denying reimbursement for the above listed services.

Based on review of the disputed issues within the request, the Medical Review Division has determined that medical necessity issues were not the only issues involved in the medical dispute 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 1-28-05, the Medical Review Division submitted a Notice to the 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.

Neither the carrier nor the requestor provided EOB's for services from CPT code 97116 on 1-16-04, CPT code 97112 on 1-19-04 and CPT code 99215 on 1-21-04. There is no "convincing

evidence of the carrier's receipt of the provider request for an EOB" according to 133.307 (e)(2)(B). **No reimbursement recommended.**

Pursuant to 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 for dates of service after August 1, 2003 per Commission Rule 134.202(c); in accordance with Medicare program reimbursement methodologies for dates of service after August 1, 2003 per Commission Rule 134.202 (c)(6); 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 12-9-03 through 12-12-03 as outlined above in this dispute.

This Decision and Order is hereby issued this 17th day of February 2005.

Donna Auby
Medical Dispute Resolution Officer
Medical Review Division

DA/da

Enclosure: IRO decision

7600 Chevy Chase, Suite 400
Austin, Texas 78752
Phone: (512) 371-8100
Fax: (800) 580-3123

NOTICE OF INDEPENDENT REVIEW DECISION

Date: January 28, 2005

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

RE: Injured Worker:
MDR Tracking #: M5-05-1108-01
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 is board certified in chiropractic) 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:

- Request for Additional Therapy dated 11/26/03 from Patrick Davis, D.C.
- Request for Additional Therapy dated 12/24/03 from Patrick Davis, D.C.
- Request for Additional Therapy dated 1/23/04 from Patrick Davis, D.C.
- EMG/NCS Report dated 12/10/03 from R. Frank Morrison, M.D.
- Initial Evaluation dated 11/5/03 from Patrick Davis, D.C.
- Daily SOAP Notes dates 11/6/03-1/23/04
- Therapeutic Procedure Notes dates 12/1/03-1/23/04
- Initial Functional Capacity Evaluation dated 2/6/04
- Appeal for Pre-Authorization dated 3/17/04 from Patrick Davis
- Interim Functional Capacity Evaluation dated 3/10/04
- Manual Muscle Testing Report
- Pre-Authorization Request for Work Conditioning
- TWCC 69 Report dated 4/27/04 from Patrick Davis, D.C.

Submitted by Respondent:

- Independent Review Organization Summary dated 1/4/05
- Retrospective Reviews from Phillip Osborn, M.D. dates 3/8/04, 7/27/04 and 9/27/04
- Retrospective Review dated 3/7/04 from Michael Hamby, D.C.
- Retrospective Review dated 3/17/04 from Brad Hayes, D.C.
- Employers First Report of Injury/Illness
- Workers' Compensation Request for Medical Care
- Request For Designated Doctor Evaluation
- Payment Compensation or Notice of Refused Disputed Claim dates 10/20/03-8/23/04
- Required Medical Evaluation Notice or Request for Order
- Board Review Conference Report dated 3/8/04
- TWCC 73 dates 10/20/03, 10/24/03 and 11/6/03 from Noble Rainwater, M.D.
- Evaluation Report from Concentra Medical Center dated 10/20/03
- Follow-up Office Visit at Concentra Medical Center dates 10/27/03 and 11/3/03
- Initial Physical Therapy Evaluation dated 10/23/03 from HEALTHSOUTH
- Physical Therapy Daily Notes from HEALTHSOUTH dates 10/23/03-11/13/03

- TWCC 73 from Patrick Davis dates 12/29/03-4/27/04
- Evaluation Report dated 11/5/03 from Patrick Davis, D.C.
- Initial Consultation Report from Charles Willis, M.D. dated 11/20/03
- Follow-up Office Visits with Charles Willis, M.D. dates 12/11/03, 1/8/04 2/2/04, 3/1/04 and 4/12/04
- TWCC 73 from Charles Willis dates 11/20/03-3/1/04
- MRI Report of the Lumbar Spine dated 12/9/03 from Texas Imaging and Diagnostic Center
- EMG/NCS report dated 12/10/03 from R. Frank Morrison, M.D.
- MRI Report of the Thoracic Spine dated 1/15/04 from Texas Imaging and Diagnostic Center
- Initial Functional Capacity Evaluation dated 2/6/04
- Required Medical Evaluation dated 2/24/04 from Melissa Tonn, M.d.
- TWCC 69 Report dated 4/27/04 from Patrick Davis, D.C.
- Designated Doctor Evaluation dated 6/1/04 from Jack Kern, M.D.
- Daily SOAP Notes 11/5/03-4/26/04

Clinical History

I have had the opportunity to review the medical records in the above-mentioned case for the purpose of an Independent Review. ___ injured his low back ___ while lifting dog food bags while at work for . The claimant initially sought care at Concentra Medical Center where he was examined and given prescription medications for pain and inflammation. The claimant was also given a prescription for physical therapy at Healthsouth for evaluation and treatment. The claimant participated in approximately 7 physical therapy treatment visits at Healthsouth from 10/23/03-11/13/03. The claimant sought treatment at Chiropractic and Health Center on 11/6/03 with Patrick Davis, D.C. whose treatment plan consisted of chiropractic manipulation, with various physiotherapy modalities and active therapeutic exercises. Dr. Davis referred the claimant for evaluation with Charles Willis, M.D. who managed the claimant's prescription medication. The claimant was also referred for an EMG/NCS on 12/10/03 which revealed a L5 radiculopathy on the left. The claimant had a MRI of the lumbar spine on 12/9/03 from Texas Imaging and Diagnostic Center, which was a normal study. The claimant also had a MRI of the thoracic spine on 1/15/04 at Texas Imaging and Diagnostic Center, which was a normal study. The claimant had a Functional Capacity Evaluation performed on 2/6/04 and 3/10/04, which listed his physical demand level at light to medium. The claimant was determined at maximum medical improvement on 4/27/04 with a 10% whole person impairment by his treating doctor Patrick Davis, D.C. Based on the provided medical documentation it appears that the claimant had approximately 38 chiropractic treatment visits including a work hardening program from 11/5/03-4/26/04. The claimant was released to full duty on 4/27/04.

Requested Service(s)

97140 – manual therapy technique; 97112 – neuromuscular re-education; 99070 – misc. supplies/materials; 98940/98941 – chiropractic manipulative treatment, spinal 1-2/3-4

regions; 97530 – therapeutic activities; 97116 – gait training; E1399 – misc. DME; E0745 – electronic neuromuscular stimulator for dates of service 12/9/03-1/23/04.

Decision

1. I disagree with the insurance carrier and find that the services listed above are reasonable and necessary for the claimant for a period of 18 chiropractic treatments over a 6-8 week period (through 12/12/03).

2. I agree with the insurance carrier and find that the services listed above are not reasonable and necessary after 12/12/03 and further treatment beyond this time frame could be consider excessive.

Rationale/Basis for Decision

I form these decisions using the Official Disability Guidelines 8th Edition which uses many resources, one being the "Mercy Guidelines", the consensus document created by the American Chiropractic Association in conjunction with the Congress of State Chiropractic Associations, entitled Guidelines for Chiropractic Quality Assurance and Practice Parameters, Proceedings of the Mercy Center Consensus Conference allows up to 18 chiropractic treatment with evidence of objective functional improvement over a 6-8 weeks for lumbar sprain/strain injury. The doctor should help avoid chronicity and gradually fade the claimant into active self-directed care. Therefore, additional chiropractic treatment beyond 6-8 weeks or 12/12/03 would be considered excessive and far exceed the Official Disability Guidelines. Typically a muscle or nerve stimulator is used in the immediate post-injury or post-surgical period to provide acute pain relief and initiate soft tissue therapy and treatment. TENS units and other electronic neuromuscular stimulators should be used for acute pain and usually for no longer than two to four weeks with little evidence of permanent benefit (Occupation Medicine Practice Guidelines 2nd Edition, page 48).

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 28th day of January 2005.

Signature of IRO Employee:

Printed Name of IRO Employee: Denise Schroeder