

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

SOAH DOCKET NO. 453-05-5249.M5

MDR Tracking Number: M5-05-1310-01

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. The dispute was received on 1-6-05.

The Medical Review Division has reviewed the enclosed IRO decision and determined that **the requestor did not prevail** on the issues of medical necessity. The IRO agrees with the previous determination that the therapeutic exercises, manual therapy, chiropractic manipulation, neuromuscular re-education and somatosensory study from 3-15-04 through 7-21-04 were not medically necessary.

Based on review of the disputed issues within the request, the Medical Review Division has determined that medical necessity fees were the only fees involved in the medical dispute to be resolved. As the services listed above were not found to be medically necessary, reimbursement for dates of service 3-15-04 through 7-21-04 are denied and the Medical Review Division declines to issue an Order in this dispute.

This Finding and Decision is hereby issued this 18th day of March, 2005.

Donna Auby
Medical Dispute Resolution Officer
Medical Review Division

DA/da

Enclosure: IRO decision

**IRO Medical Dispute Resolution M5 Retrospective Medical Necessity
IRO Decision Notification Letter**

Date:	3/17/05
Injured Employee:	
MDR #:	M5-05-1310-01
TWCC #:	
MCMC Certification #:	5294

REQUESTED SERVICES:

Please review the item in dispute regarding 97110 therapeutic exercises, 97140-59 manual therapy, 98941 chiropractic manipulation, 97112 neuromuscular reeducation, 95926-27-59 somatosensory. Denied by carrier for medical necessity with "V" and "U" codes.

Dates of service in dispute: 03/15/2004 through 07/21/2004

DECISION: UPHELD

MCMC llc (MCMC) is an Independent Review Organization (IRO) that has been selected by The Texas Workers' Compensation Commission (TWCC) to render a recommendation regarding the medical necessity of the above disputed service.

Please be advised that a MCMC Physician Advisor has determined that your request for an M5 Retrospective Medical Dispute Resolution on 2/2/05, concerning the medical necessity of the above referenced requested service, hereby finds the following:

The medical necessity of the array of services listed above during the above captioned dates of service is not established

CLINICAL HISTORY:

Records indicate that the above captioned individual was injured during the course of his normal employment on or about _____. Records indicate that the injured individual was a hotel employee. The history reveals that the injured individual was throwing trash into a dumpster and experienced a sudden onset of low back pain. According to the injured individual, the pain increased over the course of several days. The injured individual sought care under the administration of Dr. Richard Cobb on or about _____. Records indicate that a question arose as to whether the injured individual actually had insurance coverage or not through his employer. Apparently, according to the documentation and the Attending Provider's (AP) narrative, this injured individual claims to be victimized through poor cooperation from the employer to disclose important insurance information necessary for the procurement of appropriate care. The injured individual sought care through a litany of entities and eventually sought care under the administration of Dr. VanderWerff. Treatment commenced under the administration of the current AP on 10/06/2003. An MRI of the lumbar spine was performed on 11/14/2003, which revealed a 1cm extruded disc herniation at the L4/L5 level, which was opined to result in radicular symptoms at the L5 nerve root. There was also some mass effect on the thecal sac but with no canal stenosis. An EMG was performed on 05/05/2004, which revealed a normal study with no abnormal neural activity. Care under the administration of the AP has consisted of chiropractic management to include passive and active modalities. From a subjective standpoint, pain levels have decreased from an initial 7-8/10 level to a 5-6/10 level. Outcome assessment forms dated 11/11/2003 and 03/08/2004, reveal minimal diminution of a disability index from 34 to 31. From an objective standpoint, serial physical performance evaluations dated 10/21/2003, 05/13/2004 and 09/16/2004 reveal decreasing subjective pain levels from 8 initially to 5/10. Objectively, the period of time from the first physical performance evaluation to the second physical performance evaluation revealed increased ranges of motion, however, it should be noted that there is an unusually long period of time from the first physical performance evaluation to the second. Furthermore, it should be noted that there is little to no objective evidence that ranges of motion increased from the second physical performance evaluation to the

third. An IME evaluation dated 05/10/2004 recommended ESIs and possible surgery. A designated doctor evaluation dated 10/19/2004 opined that the injured individual was at MMI and was awarded a 10% whole person impairment for lingering low back pain with lingering evidence of radiculopathy.

RATIONALE:

The medical necessity of the treatment performed during the disputed dates of service is not predicated on the fact that the injured individual is or is not a candidate for conservative care. Furthermore, the medical necessity in this case is not predicated on the fact of whether or not the injured individual was denied reasonable access to medical care due to alleged negligence on the part of the employer and or carrier as presumed and alleged by the Attending Provider (AP) and/or injured individual. The AP makes an impassioned case that this injured individual had profound work related injuries occurring as a result of a work related incident. There is also objective evidence contained within the documentation that this injured individual has profound injuries as evidenced by clinical examinations as well as positive findings from an MRI examination to include a large extruded herniated disc at the L4/L5 level. There is no question in this case that this injured individual has sustained significant injuries, allegedly as a result of the occupational incident. Furthermore, there is no question in this case that this injured individual was a candidate for the application of a course of conservative care. The question in this case is whether or not the initial course of chiropractic intervention was documented to have resulted in adequate therapeutic gain to warrant the additional application of similar chiropractic care.

This injured individual initiated care under the administration of the AP on 10/17/2003. There appears to be sufficient documentation to form a reasoned opinion in this particular case as to the medical necessity of care during the disputed dates of service based on the injured individual's response to the initial course of care. As of 03/15/2004, the first disputed date of service, the injured individual had completed almost five months of care under the administration of the AP. It should be noted that the injured individual also participated in a previous course of care to include physical therapy as well. It should also be noted that there was an apparent interruption of medical care due to the lack of verification of coverage. However, the course of care from 03/2003 up to 03/15/2004 would be a more than adequate course of care to ascertain if additional chiropractic care would be warranted based on the response to the initial one year course of care. In this particular case, even though the injuries were opined to be profound, there is insufficient objective and subjective evidence to clearly establish that an additional course of chiropractic care would be warranted and could be reasonably expected to provide additional significant therapeutic relief. Specifically, the injured individual's subjective pain levels minimally decreased from 8/10 to 6/10. It is not evident that this decrease in subjective symptoms could have been obtained without provider driven care and simply from withdrawing from his work activities alone. Furthermore, from an objective standpoint, the only true comparative objective information contained within the documentation is in the form of three physical performance evaluations dated 10/21/2003, 05/13/2004, and 09/16/2004. The documentation suggests that the injured individual's ranges of motion increased from the first physical performance evaluation dated 10/21/2003 to the second physical performance evaluation dated 05/13/2004. However, there is no comparative objective information between these two dates of evaluation. Standard chiropractic record

keeping would provide for more frequent evaluations to demonstrate that the ongoing chiropractic care was proving to be efficacious from an objective standpoint.

Furthermore, these increases in ranges of motion are opined to be somewhat minimal and not obviously more than what would be observed from simply withdrawing from work related activities and without provider driven care. Furthermore, from a retrospective standpoint, the objective information contained within the second physical performance evaluation dated 05/13/2004, compared with the third physical performance evaluation dated 09/16/2004, does not establish that any objective progress occurred during that course of care. Therefore, it is not clearly demonstrated within the documentation that, objectively, this injured individual was progressing to the point that a protracted course of conservative chiropractic care would be warranted beyond what would be reasonably expected from a typical application of chiropractic care to treat similar profound injuries. Given the fact that this injured individual had already had one opinion that surgery was likely necessary, a larger burden of proof would be placed on the documentation to establish that conservative care is a reasonable course of action in deference to the strong surgical opinion.

Furthermore, the comparative Oswestry outcome assessment forms do not clearly show that this injured individual was making adequate progress to again warrant the application of a protracted course of care beyond what would be reasonably expected for similar work related cases. The disability index values did decrease however, minimally and not obviously beyond what would be expected from a simple withdrawal from work related activities and a home exercise program outside of the confines of a provider driven course of treatment.

Lastly, serial Oswestry outcome assessment scores dated 11/11/2003 and 03/08/2004, reveal minimal diminution of the disability index from 34 to 31. This does not, over the course of an intensive four days per week, four month course of treatment, appear to warrant the additional application of similar care.

Consistent with the above discussion, given the year's duration of conservative care, the lack of regular comparative objective examinations, and the minimal observed resolution of symptomatology as noted above, the medical necessity of the course of care in question is not established.

RECORDS REVIEWED:

- TWCC Notification of IRO Assignment dated 2/2/05
- TWCC MR-117 dated 2/2/05
- TWCC-60 stamped received 1/6/05
- TWCC-69 dated 10/26/04
- Wausau: EOB for dates of service 3/15/04 to 7/21/04
- Millennium Chiropractic and Scoliosis Center: Letter from Dr. VanderWerff dated 3/4/05 (with articles and references) (30 pages); Initial Report dated 10/17/03; Treatment Plan dated 10/26/03; Daily Notes 3/15/04 to 07/29/04; Letter from Dr. VanderWerff dated 10/7/04
- Sherine Boyd Reno, MD: Electrodiagnostic Results dated 5/5/04; H&P dated 8/8/04
- Revised Oswestry Disability Index (in Spanish) dated 11/11/03, 3/8/04, 6/1/04, 9/30/04
- Texas Imaging and Diagnostic Center: MRI of Lumbar Spine dated 11/14/03

- Diagnostic Neurological Medical Practice, PA: Electrophysiological Study dated 4/20/04
- Charles Kennedy, MD: Independent Medical Exam dated 5/10/04
- Dempsey Gordon, DO: Designated Doctor Exam dated 10/22/04
- Back@Work Rehab: Physical Performance Evaluations dated 10/21/03, 5/13/04, 9/16/04
- Letter from ____ (undated)

The reviewing provider is a Licensed Chiropractor and certifies that no known conflict of interest exists between the reviewing Chiropractor and any of the treating providers or any providers who reviewed the case for determination prior to referral to the IRO. The reviewing physician is on TWCC's Approved Doctor List.

This decision by MCMC is deemed to be a Commission decision and order (133.308(p) (5)).

In accordance with commission rule 102.4(h), I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent via facsimile to the office of TWCC on this

17th day of March 2005.

Signature of IRO Employee: _____

Printed Name of IRO Employee: _____