

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

**SOAH DOCKET NO. 453-05-5859.M5**

MDR Tracking Number: M5-05-1491-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution- General, 133.307 titled Medical Dispute Resolution of a Medical Fee Dispute, 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 1-20-05.

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 adverse determination that the diagnostic interview and the work hardening program were not medically necessary. Therefore, the requestor is not entitled to reimbursement of the IRO fee.

Based on review of the disputed issues within the request, the Medical Review Division has determined that medical necessity fees were the only issue involved in this medical dispute. As the services listed above were not found to be medically necessary, reimbursement for dates of service from 2-9-04 to 5-14-04 is denied and the Medical Review Division declines to issue an Order in this dispute.

Code 90801 billed for date of service 2-19-04 was also denied as "A, preauthorization required by not requested". Rule 134.600(h)(4), states that preauthorization is required for all psychological testing and psychotherapy, repeat interviews and biofeedback, except when any service is part of a preauthorized or exempt rehabilitation program. The requestor is CARF accredited and the work hardening program was not denied for no preauthorization. There was no proof that the diagnostic interview on this date of service was a 'repeat' interview; therefore, preauthorization is not required. The carrier also denied the diagnostic interview as unnecessary medical and has been addressed by the IRO.

This Decision is hereby issued this 5th day of April 2005.

Dee Z. Torres  
Medical Dispute Resolution Officer  
Medical Review Division  
Enclosure: IRO Decision

## **MEDICAL REVIEW OF TEXAS**

[IRO #5259]

**3402 Vanshire Drive                      Austin, Texas 78738**  
**Phone: 512-402-1400                      FAX: 512-402-1012**

### **NOTICE OF INDEPENDENT REVIEW DETERMINATION**

**REVISED 3/30/05**

TWCC Case Number:	
MDR Tracking Number:	M5-05-1491-01
Name of Patient:	
Name of URA/Payer:	Gabriel Gutierrez, DC
Name of Provider: (ER, Hospital, or Other Facility)	
Name of Physician: (Treating or Requesting)	Todd Beal, DC

March 22, 2005

An independent review of the above-referenced case has been completed by a chiropractic doctor. The appropriateness of setting and medical necessity of proposed or rendered services is determined by the application of medical screening criteria published by Texas Medical Foundation, or by the application of medical screening criteria and protocols formally established by practicing physicians. All available clinical information, the medical necessity guidelines and the special circumstances of said case was considered in making the determination.

The independent review determination and reasons for the determination, including the clinical basis for the determination, is as follows:

See Attached Physician Determination

Medical Review of Texas (MRT) hereby certifies that the reviewing physician is on Texas Workers' Compensation Commission Approved Doctor List (ADL). Additionally, said physician has certified that no known conflicts of interest exist between him and any of the treating

physicians or providers or any of the physicians or providers who reviewed the case for determination prior to referral to MRT.

Sincerely,

Michael S. Lifshen, MD  
Medical Director

cc: Texas Workers Compensation Commission

#### CLINICAL HISTORY

Documents Reviewed Included the Following:

1. Correspondence, medical literature studies, examination reports and work hardening treatment records from the provider.
2. Report from the Back Institute of Houston
3. Psychological evaluation
4. Carrier reviews

Forty-four year-old male claimant underwent a work hardening program after sustaining an on-the-job injury when he stepped off of a moving locomotive and rolled his left ankle resulting in a fracture of the left ankle.

#### REQUESTED SERVICE(S)

Medical necessity of diagnostic interview (90801), work hardening (97545-WH-CA) and work hardening each additional hour (97546-WH-CA).

#### DECISION

Denied.

## RATIONALE/BASIS FOR DECISION

In the preamble of the Texas Workers Compensation Commission's amendments to rule 134.600, the Commission states as follows: "Over-utilization of medical care can both endanger the health of injured workers and unnecessarily inflate system costs. Unnecessary and inappropriate health care does not benefit the injured employee or the workers' compensation system. Unnecessary treatment may place the injured worker at medical risk, cause loss of income, and may lead to a disability mindset. Unnecessary or inappropriate treatment can cause an acute or chronic condition to develop." <sup>1</sup> In its report to the legislature, the Research and Oversight Council on Texas Workers' Compensation explained its higher costs compared to other health care delivery systems by stating, "Additional differences between Texas workers' compensation and Texas group health systems also widen the cost gap. These differences include...in the case of workers' compensation, the inclusion of costly and questionable medical services (e.g., work hardening / conditioning.)" <sup>2</sup> In this case, the provider's work hardening program, along with the 02/19/04 diagnostic interview that recommended it, are just the type of questionable services of which the TWCC and the legislature spoke when expressing concern in regard to medically unnecessary treatments that may place the injured worker at medical risk, create disability mindset, and unnecessarily inflate system costs.

No treatment records were available for review during the time period immediately preceding the treatment in question. Therefore, it is unknown what kinds of therapies and/or treatments had been attempted, what was beneficial and what was not, and were the disputed treatments different or more of the same? Without medical treatment records that answer those questions, there is less than sufficient documentation to support the medical necessity of the disputed treatment.

Rehabilitative exercises may be performed in a clinic one-on-one, in a clinic in a group, at a gym or at home with the least

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<sup>1</sup> 26 Tex. Reg. 9874 (2001)

<sup>2</sup> "Striking the Balance: An Analysis of the Cost and Quality of Medical Care in Texas Workers' Compensation System," Research and Oversight Council on Workers' Compensation, Report to the 77<sup>th</sup> Legislature, page 6.

costly of these options being a home program. A home exercise program is also preferable because the patient can perform them on a daily basis. On the most basic level, the provider has failed to establish why the services were required to be performed one-on-one or that multidisciplinary treatments were indicated when current medical literature states, "...there is no strong evidence for the effectiveness of supervised training as compared to home exercises. There is also no strong evidence for the effectiveness of multidisciplinary rehabilitation as compared to usual care." <sup>3</sup>

The records also fail to substantiate that the disputed services fulfilled the statutory requirements <sup>4</sup> since the patient obtained no relief, promotion of recovery was not accomplished and there was no enhancement of the employee's ability to return to employment. Specifically, the patient's pain rating was 5/10 on 03/29/04 at the initiation of the disputed treatment and remained at 5/10 when last recorded on 05/07/04 near the termination of the disputed treatment.

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<sup>3</sup> Ostelo RW, de Vet HC, Waddell G, Kerchhoffs MR, Leffers P, van Tulder M, Rehabilitation following first-time lumbar disc surgery: a systematic review within the framework of the cochrane collaboration. Spine. 2003 Feb 1;28(3):209-18.

<sup>4</sup> Texas Labor Code 408.021