

THIS DECISION HAS BEEN APPEALED. THE FOLLOWING
IS THE RELATED SOAH DECISION NUMBER: 453-05-7235.M5

MDR Tracking Number: M5-05-1492-01

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, 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 01-20-05.

The IRO reviewed office visits, ultrasound, therapeutic activities and prolonged evaluation rendered from 05-24-04 through 09-27-04 that were denied based upon "V".

The IRO determined that office visits dated 05-24-04, 06-25-04, 07-26-04, 08-20-04 and 09-27-04 **were** medically necessary. The IRO determined that the remainder of the services in dispute **were not** medically necessary.

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

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 03-03-05, 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 99080-73 on dates of service 06-09-04, 07-06-04, 07-09-04 and 07-19-04 denied with denial code "V" (unnecessary medical treatment and/or service per peer review). The TWCC-73 per Rule 129.5 is a required report and is not subject to an IRO review. The Medical Review Division has jurisdiction in this matter. Reimbursement is recommended in the amount of **\$60.00 (\$15.00 X 4 DOS)**. A Compliance and Practices referral will be made due to the carrier violating Rule 129.5.

CPT code 97035 date of service 06-14-04 denied with denial code "2" (the charge for this procedure exceeds the fee schedule or usual and customary allowance). The carrier has made no payment. The requestor submitted documentation to support delivery of service. Per Rule 133.307(g)(3)(A-F) reimbursement is recommended in the amount of **\$14.81 (\$11.85 X 125%)**.

Review of CPT code 99212 dates of service 07-07-04, 07-13-04, 07-28-04 and 08-03-04, CPT code 97035 dates of service 07-13-04 and 08-20-04 and CPT code 97530 date of service 09-01-04 revealed that neither party submitted copies of EOBs. Per Rule 133.307(e)(2)(A) the requestor shall submit a "copy of all medical bill(s) as originally submitted to the carrier for reconsideration". The requestor provided no copies of HCFAs as proof of submission for payment. No reimbursement recommended.

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 for dates of service 05-24-04, 06-09-04, 06-14-04, 06-25-04, 07-06-04, 07-09-04, 07-19-04, 07-26-04, 08-20-04 and 09-27-04 totaling \$284.36 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 Findings and Decision and Order are hereby issued this 4th day of May 2005.

Medical Dispute Resolution Officer
Medical Review Division

Enclosure: IRO Decision



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

NOTICE OF INDEPENDENT REVIEW DECISION – AMENDED DECISION

Original Date: March 24, 2005

Amend Date: May 3, 2005

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

RE: Injured Worker:
MDR Tracking #: M5-05-1492-01
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.

Submitted by Requester:

- Daily notes
- Exercise notes
- Stretching routines
- Narrative reports
- MRI reports
- TWCC forms
- Various referrals and prescriptions
- Table of services
- Letter from the treating chiropractor stating his position
- Treating doctor narratives

Submitted by Respondent:

- Table of services
- Brief statement letter from the carrier's counsel

Clinical History

According to the supplied documentation, it appears the claimant sustained an injury at work when he was moving glass that weighed approximately 40-60 pounds at the same time he twisted his back to the right. The claimant reported pain in his lower back and was unable to work the rest of the day. The claimant was referred to the rehabilitation facilities of St. Joseph's where he was given medications. MRI was performed on 2/23/04 which revealed a right lateral disc bulge/protrusion at L3/4 which may contact the exiting right L3 nerve root. There is also associated annular fissure in this portion of the disc. The remainder of the MRI was unremarkable. The claimant then sought care at the Back and Joint Clinic where he was treated by John R. Wyatt, D.C. Dr. Wyatt began active and passive chiropractic therapies on the claimant. On 3/22/04 the claimant was seen by Kenneth G. Berliner, M.D. for an orthopedic consult. Dr. Berliner reported the claimant should undergo a series of selective nerve root blocks to the right L3 nerve root and the foramen. On 4/14/04 Dr. Wyatt wrote a letter to TWCC reporting that he was withdrawing as the treating doctor. The claimant also filed a request to change treating doctors on 4/14/04 to Chris G. Dalrymple, D.C. Dr. Dalrymple reported that the claimant did not want to undergo any surgical procedures and wanted to continue conservative chiropractic treatment. Documentation supported the claimant underwent an extensive amount of active and passive chiropractic modalities throughout the duration of his treatment. The documentation ends here.

Requested Service(s)

99212, 99213 – office visit, 97035 – ultrasound, 97530 – therapeutic activities, 99358 – prolonged evaluation

Decision

I disagree with the carrier and find that the office visits dated 5/24/04, 6/25/04, 7/26/04, 8/20/04 and 9/27/04 were medically necessary. I agree with the carrier that the remainder of the services in dispute were not medically necessary.

Rationale/Basis for Decision

According to the supplied documentation, the claimant began conservative therapy shortly after the injury occurred and was treated with passive and active modalities under his original treating physician. The claimant changed treating chiropractors and continued active and passive modalities. After careful review of the documentation and the table of services, it appears the majority of the services in dispute are related to an office visit and an ultrasound treatment. On 5/24/04, approximately 3 months after the injury occurred, the treating doctor was still performing mostly passive activities which are not supported by the documentation. At this time it would be necessary for the claimant to be undergoing an extensive active protocol as well as a home based exercise that could continue to modify and reduce the claimant's symptoms by reducing any complications of doctor dependence. Every treatment date documented on the table the claimant was also treated with a 99212 office visit CPT code which is not medically necessary. The documentation does not support that the claimant was undergoing an office evaluation on each visit. Since the claimant was being seen on a routine basis, daily office evaluations are not considered reasonable, medically necessary nor are they supported by the documentation. Monthly office visits for evaluation, discussions with the claimant and referrals are seen as medically necessary and are reported with the dates shown above. The remainder of the therapy on the table of disputed services is not seen as reasonable or medically necessary. According to the Official Disability Guidelines (page 902) the chiropractic guidelines for a lumbar disc disorder without myelopathy would support a total of up to 18 visits over 6-8 weeks, avoid chronicity and gradually fade the claimant to an active self directed care program. The documentation does not support that this occurred and all other documentation for the therapy in question is way beyond this guideline.

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 3rd day of May 2005.

Signature of IRO Employee:

Printed Name of IRO Employee: Denise Schroeder