

MDR Tracking #M5-05-1646-01

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. This dispute was received on 2-7-05.

In accordance with Rule 133.308 (e)(1), 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: 2-4-04 through 2-5-04.

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 massage therapy, ultrasound, electrical stimulation, therapeutic exercise, and aquatic therapy from 2-10-04 through 6-4-04 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 not the only fees involved in the medical dispute to be resolved.

On 3-7-05 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 97002 on 3-1-04 was denied by the carrier as "D – duplicate invoice." Neither the requestor nor the respondent submitted original EOB's, therefore it will be reviewed according to the Medicare Fee Schedule. **Recommend reimbursement of \$48.63.**

CPT code 99080-73 on 3-8-04 was denied by the carrier as "V-unnecessary medical treatment." The TWCC-73 is a required report and is not subject to an IRO review per Rule 129.5. The Medical Review Division has jurisdiction in this matter and, therefore, recommends reimbursement. Requestor submitted relevant information to support delivery of service. A referral will be made to Compliance and Practices for this violation. **Recommend reimbursement of \$15.00.**

Regarding CPT code 99455-VR on 4-20-04: Neither the carrier nor the requestor provided EOB's. The requestor submitted convincing evidence of carrier receipt of provider's request for EOB's in accordance with 133.307 (e)(2)(B). Respondent did not

provide EOB's Per Rule 133.307(e)(3)(B). **Recommend reimbursement per Rule 134.202 of \$50.00.**

Regarding CPT codes 97113 on 4-26-04 (4 units) and 4-28-04 (3 units) and CPT code 97002 on 4-28-04: Carrier denied these services as "J – case has been settled; therefore payment is denied." At a BRC on 7-20-04 the parties reached agreement. Per Rule 133.304(c): The insurance carrier must provide correct payment exception codes required by the Commission's instructions, and shall provide sufficient explanation to allow the sender to understand the reason for the insurance carrier's actions.

Recommend reimbursement as follows:

CPT code 97113 (7 units) - \$284.97

CPT code 97002 – \$48.63

CPT code 99455-VR on 6-2-04 and 99455-V5 on 7-29-04 were denied by the carrier as "V – unnecessary treatment with peer review." However, according to Rule 134.202(e)(6), this exam is not subject to IRO review. The requestor billed the above services in accordance with Rule 134.202 (e)(6) for a disability exam by the treating physician when the office visit level of service is equal to "moderate to high severity" level of at least 45 minutes duration. In accordance with Rule 133.307 (g)(3)(A-F), the requestor submitted relevant information to support delivery of service, therefore, **reimbursement is recommended in the amount of \$350.00.**

Regarding CPT codes 97545-WH-AP and 97546-WH-AP for 6-15-04 through 7-23-04: Per Advisory 2001-14, preauthorization for work hardening or work conditioning programs are not required for CARF accredited providers. Reimbursement will be at the CARF rate according to Rule 134.202 (e)(5)(A)(i) and (C)(ii) at \$64.00 per hour. The requestor will be billed for using an incorrect modifier per Rule 134.202 (b).

Recommend reimbursement of \$5,120.00.

CPT code 99455-V5 on 7-29-04 was denied by the carrier as "R-Extent of injury". Required exams cannot be denied by the carrier as "R". The requestor billed the above service in accordance with Rule 134.202 (e)(6)(D)(II)(-b)(1-2) for an MMI/IR rating of 2 musculoskeletal body areas with range of motion. In accordance with Rule 133.307 (g)(3)(A-F), the requestor submitted relevant information to support delivery of service. **Recommend reimbursement of \$300.00.**

CPT code 99080-69 on 7-29-04 was denied by the carrier as "R-Extent of injury". Per Rule 134.202(e)(6), reimbursement for MMI/IR exams includes, "the preparation and submission of reports (including the narrative report, and responding to the need for further clarification, explanation, or reconsideration), calculation tables, figures, and worksheets." As a result, there is NOT a separate reimbursement for the TWCC-69. **Recommend no reimbursement.**

This Finding and Decision is hereby issued this 24th day of May, 2005.

Medical Dispute Resolution Officer
Medical Review Division

On this basis, and pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the Respondent to pay the unpaid medical fees totaling \$6,217.23 from 3-1-04 through 7-29-04 outlined above as follows:

- In accordance with Medicare program reimbursement methodologies for dates of service on or after 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 Order is hereby issued this 24th day of May, 2005.

Manager, Medical Necessity Team
Medical Dispute Resolution
Medical Review Division

Enclosure: IRO Decision

Z iro C

A Division of ZRC Services, Inc.
7626 Parkview Circle
Austin, Texas 78731
Phone: 512-346-5040
Fax: 512-692-2924

AMMENDED DECISION

May 12, 2005 Same copy that was sent April 25th. In response to same fax sent 5/2.
April 25, 2005

TWCC Medical Dispute Resolution
Fax: (512) 804-4868

Patient: _____
TWCC #: _____
MDR Tracking #: M5-05-1646-01
IRO #: 5251

Ziroc has been certified by the Texas Department of Insurance as an Independent Review Organization. The Texas Worker's Compensation Commission has assigned this case to Ziroc

for independent review in accordance with TWCC Rule 133.308 which allows for medical dispute resolution by an IRO.

Ziroc has performed an independent review of the care rendered to determine if the adverse determination was appropriate. In performing this review, all relevant medical records and documentation utilized to make the adverse determination, along with any documentation and written information submitted, was reviewed.

The independent review was performed by a matched peer with the treating doctor. This case was reviewed by a licensed physician certified and specialized in chiropractic care and MDT. The reviewer is on the TWCC Approved Doctor List (ADL). The Ziroc health care professional has signed a certification statement stating that no known conflicts of interest exist between the reviewer and any of the treating doctors or providers or any of the doctors or providers who reviewed the case for a determination prior to the referral to Ziroc for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to the dispute.

RECORDS REVIEWED

1. Medical Dispute Resolution Request/Response.
2. Table of Disputed Services, 2-4-04 through 7-16-04.
3. Explanation of Benefits, 2-4-04 through 6-4-04.
4. Lumbar MRI report, 1-30-03.
5. Medical reports from Arthur Speece, D.O., 1-7-04 through 4-21-04.
6. HCFA 1500s from Mega-Rehab, 1-5-04 through 3-17-04.
7. Medical reports from Mega-Rehab, 1-5-04 through 7-29-04, totaling 5 reports.
8. IR from Mega-Rehab, 7-29-04.
9. Physical Therapy Daily Progress Notes, 1-8-04 through 6-11-04.
10. DD Evaluation by James Knott, M.D., 4-2-04.
11. FCE, 4-6-4.
12. Lumbar MRI report, 4-28-04.
13. Medical reports from Gunda Kirk, D.O., 4-30-04 through 7-21-04, totaling 3 reports.
14. Medical report from Frederick Todd, M.D., 5-17-04.
15. Lumbar x-ray report, 5-18-04.
16. IME by Charles Xeller, M.D., 5-18-04.
17. Addendum to the 5-18-04 IME by Dr. Xeller, 7-1-04.
18. FCE, 6-11-04.
19. Medical report from Mega-Rehab, 7-29-04.
20. Work Hardening documentation, 6-14-04 through 7-22-04.

CLINICAL HISTORY

According to the documentation provided, the claimant reported a work related injury on ____ . The patient was an assistant manager for the _____ when she injured her low back. Apparently, she was pushing her manager in an office chair when she experienced low back pain. The patient was initially evaluated and treated at the Concentra Medical Center. Treatment included prescription medication and physical therapy. She was returned to work. Due to persistent symptoms, the patient was referred to Samuel Biener, M.D.

On 1-5-04, one year and two months after the onset of symptoms, the patient started chiropractic/physical therapy treatment under the auspices of Stephen Dudas, D.C. at the Mega-

Rehab Center. The patient reported low back pain, radiating left leg symptoms, left foot numbness, and left leg weakness. The patient was taking Ambien, Tramadol, and Metformin. SLR was negative. Palpation revealed tenderness in the lumbar paraspinal musculature and left SI joint. Lumbar range of motion was restricted in left lateral flexion and minor restrictions with flexion and extension were noted. Diagnoses included disc disorder and lumbar radiculitis. The chiropractor felt the patient would have an excellent response to epidural steroid injections and a "minimal" amount of therapy.

The patient was evaluated by Dr. Speece M.D. on 1-7-04. Multiple epidural steroid injections were performed on 1-14-04, 1-28-04, and 2-18-04. Due to minimal short-term relief, lumbar facet injections were performed on 3-17-04, 3-31-04, and 4-14-04. Rehabilitation at the Mega-Rehab Center was implemented concurrently. Despite these procedures and therapy, the patient continued to complain of ongoing back pain and left leg symptoms.

PT re-evaluation was performed on 3-1-04 after the patient's 12 therapy session. The patient reported constant low back pain rated 7/10. The patient continued to complain of numbness and tingling in the left foot. Functional limitations include sitting greater than 20 minutes, standing greater than 15 minutes, walking greater than 12 minutes, and driving greater than 20 minutes. The patient reported sleep disturbance. Objectively, lumbar flexion was 80°, extension 25°, right lateral flexion 36°, and left lateral flexion 40°. Manual motor testing of the trunk revealed some weakness. Nerve root tension signs were absent.

Designated Doctor Evaluation by Dr. Knott was performed on 4-2-04. Despite the three months of chiropractic treatment, the patient reported a numerical pain scale of 7/10. The patient reported ongoing back and leg pain. Physical examination revealed a discrepancy between supine SLR and sitting SLR. He felt the patient was not at maximum medical improvement.

Despite the three months of chiropractic/physical therapy care, pain behaviors were strongly evident. For instance, the FCE dated 4-6-04 revealed strong evidence of sub-maximal effort (static strength report, heart rate monitoring, dynamic lifting, and grip strength); therefore, these results were completely invalid and not a true indication of her physical abilities.

PT re-evaluation after 32 sessions of therapy was performed on 4-28-04. The patient reported constant low back pain rated 7/10 with symptoms into the lower extremity. With medication, her numerical pain scale was 7/10. Lumbar flexion 60°, extension 25°, right lateral flexion 35°, and left lateral flexion 35°. SLR produced low back pain bilaterally. Trunk strength remained the same.

Lumbar MRI dated 4-28-04 demonstrated mild facet arthropathy at L4-L5 and L5-S1, anterior osteophytes and anterior disc protrusion at L1-L2, and disc bulging at T11-12. There was no significant central or foraminal stenosis and no focal mass effect on the exiting nerve roots at any level.

On 4-30-04, Dr. Kirk prescribed Flexeril, Vicodin, and Celebrex. The patient was evaluated by Frederick Todd, M.D. on 5-17-04. The patient reported ongoing back and left leg pain. Numerical pain scale was 7/10. Lumbar x-rays dated 5-18-04 demonstrated bilateral facet joint arthropathy at L5-S1.

An IME was performed by Dr. Xeller on 5-18-04. The patient reported constant low back pain and numbness and tingling into the lower extremity. Dr. Xeller felt the patient could return to work and felt she reached maximum medical improvement on 5-18-04 and assigned 5% WPI.

On 6-8-04, after six months of physical therapy and 47 visits, the patient was re-evaluated. The patient reported constant low back pain rated 7/10 with symptoms into the lower extremity. "With medication" numerical pain scale was 6/10. Trunk flexion was 65°, extension 30°, right lateral flexion 35°, and left lateral flexion 40°. SLR was positive bilaterally with a complaint of low back pain.

FCE on 6-11-04 indicated her global effort rating was "unreliable" and there was evidence of "inappropriate illness behavior." On 7-1-04, Dr. Xeller reviewed the functional capacity evaluation dated 6-11-04 and felt the patient did not give full effort.

The patient was re-evaluated by Dr. Kirk on 7-22-04. The patient reported ongoing back and leg pain. Symptoms awakened the patient 4-5 times per night. She indicated she was "not getting any sleep at all."

An Impairment Rating was performed by Dr. Dudas. According to the doctor, the patient reached maximum medical improvement on 7-29-04 and assigned 10% WPI. The patient reported constant low back pain with left leg symptoms. She complained of her leg "giving-out." The patient was taking Celebrex, Hydrocodone, and Soma. Her numerical pain scale was 7/10. Range of motion was actually worse when compared to the 4-28-04 evaluation. Lumbar flexion was 60°, extension 25°, left lateral flexion 25°, and right lateral flexion 25°.

The patient attended a Work Hardening Program between 6-14-04 and 7-15-04.

DISPUTED SERVICES

Under dispute is the medical necessity of Massage therapy, ultrasound, electrical stimulation, therapeutic exercise, and aquatic therapy performed at Mega-Rehab from 2-10-04 through 6-4-04.

DECISION

The reviewer agrees with the determination of the insurance carrier.

BASIS FOR THE DECISION

In my medical opinion, the items in dispute between 2-10-04 and 6-4-04 were neither reasonable nor necessary to treat the compensable injury for multiple reasons.

First, aquatic therapy (97113) is considered medically appropriate for individuals who are unable to "safely" participate in a physical therapy program that is totally land-based due to weight-bearing restrictions, severe weakness or neurological conditions. The documentation must support the necessity of this intervention. Clinical examples of the need for skilled aquatic therapy include an individual with severe arthritis who cannot ambulate on land, an individual who recently had a total hip replacement with weight-bearing restrictions or an individual with Guillain Barre' or Multiple Sclerosis who is too weak to exercise on land. In my medical opinion, the documentation does not indicate the patient was "unable" to safely participate in land therapy. For this reason, 97113 cannot be supported.

Second, patient perceptions are an effective way to measure many aspects of quality of care. These can be quantified with numerical pain scales, symptom frequency, and/or VAS scales. In fact, subjective data is at least as important as objective findings since the subjective data reflects the patient's perceived disability/activity tolerance. The inter-tester examinations supplied from multiple providers clearly indicates a lack of relevant and lasting subjective improvement. In January, the patient complained of low back pain, radiating symptoms into the left lower extremity, and left foot numbness. Her numerical pain scale remained 7/10. After five months of additional treatment, the patient reported ongoing complaints of low back pain and left lower extremity symptoms rated 7/10. Additionally, symptom frequency was not reduced despite the six months of chiropractic/physical therapy care. The patient continues to report "constant" symptoms. In other words, it doesn't appear the chiropractic/physical therapy treatment relieved the effects of the injury.

Third, the chiropractic/physical therapy treatment between 2-4-04 and 6-4-04 extends far beyond guideline parameters. The Official Disability Guidelines indicate the typical lumbar radiculitis without nerve root compression will improve significantly within 6-8 weeks of chiropractic/physical therapy treatment. With delayed recovery factors, we could expect a more protracted course of supervised treatment over 12-16 weeks. In my medical opinion, 6 months of chiropractic/physical therapy treatment 1-2 years following this type of injury is not reasonable or necessary and likely counterproductive. Over-treatment commonly contributes to physician dependency, treatment dependency, illness behavior, and chronicity. This patient should have been more than capable of being discharged independent with home exercises and home pain control measures after 3-4 weeks of fine-tuning and modifying her previously established home program. Therefore, treatment beyond 2-3-04 can not be supported.

Fourth, in order to justify continuation of treatment outside guideline parameters, it is necessary to establish in a quantified and objectively measurable manner that the treatment was efficacious. This requires documentation of objectively measured and demonstrated functional gains, objective gains, and improvement with tolerance to daily activities and work activities. The documentation clearly fails to demonstrate adequate improvement. On 3-1-04, lumbar flexion was 80°, extension 25°, right lateral flexion 36°, left lateral flexion 40°, and SLR was negative. After 5 months of therapy, lumbar flexion was 65°, extension 30°, right lateral flexion 35°, left lateral flexion 40°, and SLR produced low back pain. According to the functional capacity evaluation dated 6-11-04, despite five months of treatment, the patient was functioning in the sedentary physical demand level. Basically, we have a patient that participated in a protracted course of chiropractic/physical therapy treatment without adequate objective functional improvement to support the medical necessity. In fact, the documentation indicates some of the patient's functional abilities actually deteriorated between January and June of 2004.

Fifth, the documentation did not include outcome assessment tools such as Oswestry Questionnaires, Rolland-Morris Questionnaires, or McGill Pain Questionnaires to quantify functional improvement. These questionnaires have been shown to be reliable means of measuring perceived functional intolerance. The ultimate goal of physical rehabilitation is to improve a patient's tolerance to functional activities of daily living and work activities. In my medical opinion, the chiropractic documentation did not quantify any functional improvement to support the protracted amount of chiropractic treatment.

Sixth, passive care extended far beyond guideline parameters. In my medical opinion, the use of electrical stimulation (G0283), massage (97124), and ultrasound (97035) 1-2 years status-post

injury is unacceptable and counterproductive. Ongoing use of acute care measures generally fosters chronicity and dependency without providing meaningful long-term benefit. Patients with chronic pain (symptoms greater than three months) should have their treatment plans altered to deemphasize passive care and focus entirely on active based treatment. The Philadelphia Panel of Physical Therapy (Journal on the American Physical Therapy Association, 2002) found insufficient evidence to support ongoing use of passive procedures. The use of such passive care modalities should be time-limited. Well-controlled science has failed to demonstrate consistent benefit with TENS in the treatment of sub-acute or chronic low back pain (Deyo et al, NEJM, 1990; Marchand, Pain, 1993; Moore, Arch Phys Med Rehabil, 1997). The AHCPR Guidelines and the BMJ Guidelines also do not recommend ongoing use of TENS in the treatment of chronic low back pain. Massage therapy between 2-4-04 and 6-4-04 can not be supported. The Philadelphia Panel of Physical Therapy found insufficient data to support ongoing use of therapeutic massage in the treatment of chronic low back pain. Therapeutic ultrasound cannot be supported between 2-4-04 and 6-4-04. Finally, therapeutic ultrasound has not been shown to provide clinically important benefit for acute or chronic low back pain (Nwuga, Arch Phys Med Rehabil, 1983 and Roman, Phys Ther Rev, 1960). Furthermore, the AHCPR Guidelines and the BMJ Guidelines indicate evidence for the effectiveness of ultrasound is lacking.

Seventh, there is good medical evidence to support a trial of supervised therapy as opposed to an independent home program; however, there is insufficient evidence to support “ongoing” supervised rehabilitation after the program has been successfully established. Please remember, this patient was given a home-based exercise program from Concentra before ever starting treatment with Mega-Rehab. In my medical opinion, because this patient had already attended a great deal of previous physical therapy, I believe a home program could have been successfully established within three-four weeks (Jan. to Feb.). The patient should be independent with home exercises and the need for one-on-one supervision cannot be supported beyond this timeframe. Additionally, there is no indication within the documentation that one-on-one supervised rehabilitation would provide any lasting meaningful benefit equal to or greater than what would be seen with an independent home program.

Eighth, over-treatment can create a disability mindset. The initial evaluation from Dr. Dudas dated 1-5-04 indicated that he believed “this patient will respond excellent to the epidural steroid injections and a minimal amount of therapy.” Six months of supervised in-office treatment would certainly not be considered a “minimal amount of therapy.” Rule 134.600 indicates over-utilization of medical care can both endanger the health of the injured worker and inflate the health-care system costs. Unnecessary treatment may place the injured worker at medical risk for a disability mindset. In my medical opinion, the protracted course of supervised chiropractic treatment (6 months) likely contributed to chronic pain behaviors without providing meaningful benefit. The behavioral assessment and functional capacity evaluations clearly indicate pain behaviors were evident in June of 2004 despite this prolonged course of care.

In summary, the chiropractic/physical therapy treatment strategy implemented beyond 2-4-04 cannot be supported by the available documentation. In my medical opinion, the patient should have been discharged independent with a home exercise program by 2-3-04. There was no indication within the documentation that the chiropractic treatment that occurred after 2-3-4 relieved the effects of the injury, objectively enhanced the recovery process, or helped this patient return to or retain employment. In my medical opinion, the treatment that occurred after 2-4-04 likely created an obstacle to recovery such as dependency issues.

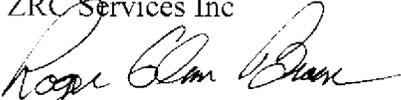
Ziroc has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. Ziroc has made no determinations regarding benefits available under the injured employee's policy

As an officer of ZRC Services, Inc, dba Ziroc, I certify that there is no known conflict between the reviewer, Ziroc and/or any officer/employee of the IRO with any person or entity that is a party to the dispute.

Ziroc is forwarding a copy of this finding by facsimile to the TWCC.

Sincerely,

ZRC Services Inc

A handwritten signature in black ink, appearing to read "Roger Glenn Brown". The signature is written in a cursive style with a large initial "R".

Dr. Roger Glenn Brown

Chairman & CEO

RGB:dd