

MDR Tracking Number: M5-05-1686-01

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 2-14-05.

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.

On 4-20-05 the requestor faxed a revised Table of Disputed Services with which the requestor withdrew all items which had been reimbursed by the respondent. Many of these items had been certified as medically necessary by the IRO.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

The IRO reviewed CPT codes 99211, 99212, 99213, 97110, 97112, 97032, 97140, 97035, 97150, E1399, 97116, 98940, and 97124 from 3-29-04 through 9-10-04.

CPT code 97110 from 3-29-04 through 5-12-04; CPT code 97112 on 4-26-04; CPT code 99212 on 3-29-04, 4-20-04, 5-7-04, 5-14-04, 5-24-04, 6-2-04, 6-28-04, 7-7-04, 8-23-04; CPT code 99213 on 4-28-04, 8-9-04 and CPT code 99211 on 6-16-04, 6-18-04, 7-16-04 **were found** to be medically necessary. The remaining services **were not found** to be medically necessary. The respondent raised no other reasons for denying reimbursement for the above listed services. **The amount due the requestor for the medical necessity issues is \$714.17.**

HCPCS Code E1399 was denied as "F-The procedure code submitted is not the proper code for this service." The Requestor did not submit relevant documentation to support service rendered per Rule 133.307(g)(3)(B). **Recommend no reimbursement.**

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 \$714.17 from 4-20-04 through 8-23-04 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 Decision and Order is hereby issued this 16th day of May 2005.

Medical Dispute Resolution Officer
Medical Review Division

DA/da

Enclosure: IRO decision



Specialty Independent Review Organization, Inc.

April 5, 2005

Hilda Baker
TWCC Medical Dispute Resolution
7551 Metro Center Suite 100
Austin, TX 78744

Patient:
TWCC #:
MDR Tracking #: M5-05-1686-01
IRO #: 5284

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

Specialty IRO 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.

This case was reviewed by a licensed Chiropractor. The reviewer is on the TWCC ADL. The Specialty IRO 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 Specialty IRO for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to the dispute.

CLINICAL HISTORY

Mr. ___ was injured on ____. The records indicate he is 5'5" and weighs approximately 229 lbs. He initially presented to the company doctor but changed treating doctors to Ramiro Torres, DC on or about 11/5/03. He was referred for active therapeutics until he had surgery in January of 2004. He underwent post surgical therapy followed by ESI's (6/30/04, 7/13/04 and 8/13/04) and facet injections (8/27/04 and 9/7/04). He has undergone multiple psychological/psychiatric evaluations. During an RME the patient, Dr. Twomey indicates that an updated MRI with gadolinium should be obtained to rule out HNP vs. post-surgical scarring on 7/28/04. The designated doctor opined the patient to not be at MMI as of 7/22/04. The FCE of the same time period indicates he is functioning at a sedentary/light PDL with below average CV fitness. The patient has apparently not returned to work according to the TWCC 73's, which were provided by the carrier. The patient is required to reach a medium PDL according to a WH team report by Dan Hamill, PhD and Elisa Miranda PT. The FCE by Dr. H Bryan Lee indicates he has a heavy PDL; therefore, it is difficult to determine the PDL of his job.

RECORDS REVIEWED

Records were received from the respondent and the requestor/treating doctor. Records from the respondent include the following: 2/23/04 comprehensive analysis by Austin and Assoc., 2/29/04 Marvin Van Hal, MD report, Pain and Recovery Clinic of Houston (PRC) daily note 3/15/04, various TWCC 73's, PRC rehab sheet, gulf coast DME script for EMS device, multiple dates of E1399 medical necessity letters, massage therapy monitoring forms of various dates, 'current treatment plan' sheets of various dates, progress notes of PRC (4/28/04, 6/4/04, 9/4/04), PRC clinical doctor notes, Gulf Coast DME 'moist heating pad' script, report by Jeremiah Twomey, MD, DD exam by Charles Silver, MD of 7/22/04, MRI of 7/26/04, (3/3/04, 4/21/04, 5/26/04, 8/24/04) orthopedic reports by K. Berliner, MD., NP evaluation by Guy Fogel, MD, 9/13/04 report by Mark McDonnell, MD, EMG/NCV exam by Suzanne Page, MD, myelogram report of 5/10/04, 8/13/04 lumbar MRI with gadolinium, LESI letter by Ajay Aggarwal, MD, notes of ESI's #1, #2 and #3 and notes of facet blocks #1 and #2 by Dr. Aggarwal.

Records from the requestor/treating doctor include some of the above in addition to the following: List of Exhibits and position statement by Bose Consulting, 3/10/03 lumbar MRI, 5/10/04 post myelographic CT lumbar, FCE of 4/21/04 and 7/22/04, reports by Dr. Berliner of (12/2/03, 12/16/03 and 1/21/04), operative report of 1/9/04 and discharge summary of 1/11/04, 4/17/03 electrodiagnostic report, mental health eval of 11/1/04, SOAP notes from 03/19/04 through 11/12/04, 7/8/04 NP eval by Dr. Fogel, 10/27/04 psychiatric assessment by Bernard Gerber, MD, Emile Mathurin, MD report of 8/7/03, 9/13/04 report by Mark McDonnell, MD, Charles Covert, MD psychiatric report of 2/20/04, WH team report of 7/25/03, postsurgical evaluation by PRC of 1/26/04, initial eval by Clay Meekins, LPT, PRC progress notes of (7/8/04, 3/24/04, 2/25/04, 1/22/04) and initial eval by Ramiro Torres, DC of 11/5/03.

DISPUTED SERVICES

Disputed services include the following according to the TWCC notification of IRO assignment: Office visits 99211, 99212, 99213, 97110, 97112, 97032, 97140, 97035, 97150, E1399, 97116, 98940 and 97124 from 3/29/04 through 8/25/04.

DECISION

The reviewer disagrees with the previous adverse determination regarding codes: **97110** from 3/29/04 through 5/12/04; **97112** on 4/26/04, **99212** (3/29/04, 4/20/04, 5/7/04, 5/14/04, 5/24/04, 6/2/04, 6/28/04, 7/7/04, 8/23/04); **99213** (4/28/04, 8/9/04) and **99211** (6/16/04, 6/18/04, 7/16/04).

The reviewer agrees with the previous adverse determination regarding all remaining services not specifically mentioned above.

BASIS FOR THE DECISION

According to the Official Disability Guidelines, a lumbar laminectomy return to work pathway is dependent upon the patient's PDL such as: clerical/modified work: 28 days, laminectomy, manual work: 70 days, laminectomy, heavy manual work: indefinite. This patient's PDL is uncertain according to the records received. The literature indicates that a normal rehabilitative program for a lumbar laminectomy lasts between eight and twelve weeks depending upon the patient's response to treatment, complicating factors and comorbid conditions. Because this patient's PDL cannot be established firmly, it is difficult to determine the return to work pathway to use.

In Bose Consulting's position statement, they indicate that Rehabilitation Protocols for surgical and non-surgical procedures by McFarland and Buckhart, 1999 states "a patient may need four months of post-surgical rehabilitation on page 51. However, Figure 16 on page 51 indicates that two to four months of post-surgical rehabilitation may be needed for an inpatient post surgical lumbar protocol for fusion surgeries. Regarding a non-fusion type of surgery, this information can be found in Chapter six of the previously mentioned book. The patient began rehab on approximately 2/11/04 with Dr. Torres. The patient appears to have progressed through rehab

protocols through 4/2/04 when he did not perform rehabilitation until 4/21/04 due to increased pain. He began rehab again on 4/21/04 through 5/12/04 when again an exacerbation was noted. After basically three months of rehabilitation, the patient had stopped improving functionally; therefore, further treatment is found to not be medically necessary.

Gait training is not allowed, as it was not begun for over two months post-rehab. E-stim with pads is not allowed, as it is a passive therapy, which is generally not used beyond four to six weeks post-surgical at a maximum. Manipulation is contraindicated at the level of surgery with a laminectomy; therefore, it is not medically necessary. Lastly, massage therapy was not medically necessary as it was under dispute two months post surgical. It is the reviewer's opinion that this is generally ineffective post-surgically.

References:

According to the Medical Disability Advisor, the following is a representative explanation of a normally accepted disability guideline:

Job Classification	Minimum	Optimum	Maximum
<i>Sedentary</i>	21	35	91
<i>Light</i>	28	42	119
<i>Medium</i>	28	84	182
<i>Heavy</i>	42	98	Indefinite
<i>Very Heavy</i>	56	112	Indefinite

Kisner, Carolyn, and Lynn Allen Colby. "The Spine: Treatment of Acute Problems." Therapeutic Exercise: Foundations and Techniques, 2nd ed. Philadelphia: F.A. Davis Company, 1990. 473-499.

Timm K E. A randomized-control study of active and passive treatments for chronic low back pain following L5 laminectomy. Journal of Orthopaedic & Sports Physical Therapy, 1994;20(6):276-286. (indicates that active therapeutics were more effective than other types of treatment).

McFarland Buckhart, Rehabilitation Protocols for Surgical and Non-surgical Procedures, North Atlantic Books, California, 1999 p. 55-62.

Maxey L, Magnusson J Rehabilitation for the Postsurgical Orthopedic Patient, Mosby, 2001.

Andrews J, Harrelson, G, Wilk, K Physical Rehabilitation of the Injured Athlete, 2nd Edition, Saunders, 1998, Chapter 12.

Specialty IRO has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. Specialty IRO has made no determinations regarding benefits available under the injured employee's policy. Specialty IRO believes it has made a reasonable attempt to obtain all medical records for this review and afforded the requestor, respondent and treating doctor an opportunity to provide additional information in a convenient and timely manner.

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

Sincerely,

Wendy Perelli, CEO

CC: Specialty IRO Medical Director