

MDR Tracking Number: M5-05-1687-01

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 2-14-05.

The IRO reviewed office visits, electrical stimulation, gait training, group therapeutic procedures, chiropractic manipulation, DME, therapeutic exercises, and ultrasound.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor did not prevail** on the majority of the medical necessity issues. The IRO deemed that all office visits (99213 & 99214) and all chiropractic manipulations (98940) under dispute were medically necessary. The manual therapy technique (97140) on 8-27-04 was medically necessary. The electrical stimulation (97032) and ultrasound (97035) from 6-18-04 to 7-1-04 and again from 7-26-04 to 8-11-04 were medically necessary. One set of electrodes (E1399) on 7-18-04 was medically necessary **in the amount of \$681.62**. The IRO agreed with the previous adverse determination that the remaining services in dispute were not medically necessary. 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.

This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division. On 3-4-05, 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.

Code 99080-73 billed for dates of service 5-7-04, 6-14-04, 7-21-04, and 8-23-04 was denied as "V – unnecessary medical"; however, per Rule 129.5, the TWCC-73 is a required report and is not subject to an IRO review. The Medical Review Division has jurisdiction in this

matter. The required reports were billed in accordance with the rule; therefore, **recommend reimbursement of \$15.00 x 4 days = \$60.00.**

### **ORDER**

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 \$741.62 as outlined above for dates of service 5-7-04 to 8-23-04.

- in accordance with Medicare program reimbursement methodologies for dates of service on or after August 1, 2003 per Commission Rule 134.202 (c);
- In accordance with TWCC reimbursement methodologies regarding Work Status Reports for dates of service on or after August 1, 2003 per Commission Rule 134.202 (e)(8);
- 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 10th day of May 2005.

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

TWCC Case Number:	
MDR Tracking Number:	M5-05-1687-01
Name of Patient:	
Name of URA/Payer:	Houston Pain & Recovery
Name of Provider: (ER, Hospital, or Other Facility)	Houston Pain & Recovery
Name of Physician: (Treating or Requesting)	Ramiro Torres, DC

March 23, 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. Notification of IRO Assignment, Table of Disputed Services and Carrier EOBs
2. Employer's First Report of Injury, dated 09/17/02
3. Emergency room notes, dated 9/16-17/02
4. Cervical x-ray report, dated 9/17/02
5. MRIs cervical and lumbar spines, dated 10/31/02
6. EMG/NCV, upper and lower extremities, dated 11/11/02
7. Multiple narrative reports from referral medical doctors, multiple dates
8. Multiple doctor of chiropractic follow-up reports, physical therapy evaluations and reevaluations, and daily therapy notes
9. Functional Capacity Evaluation, dated 1/17/03
10. Work hardening notes
11. Designated doctor examination and report, dated 4/7/03
12. Vocational consultation, dated 9/4/03
13. Copies of peer reviews, dated 4/1/03, 6/03/03, 9/12/04 and 10/24/04
14. Operative report for ESI, dated 03/05/04
15. Initial medical report from new doctor of chiropractic, dated 3/19/04 and two progress note reports, dated 6/16/04 and 8/18/04
16. Daily SOAP notes and therapy notes from treating doctor of chiropractic from March 2004 through 9/1/04
17. Various TWCC-73 "Work Status Reports"

Patient is a 48-year-old female custodial supervisor who, on \_\_\_\_, slipped and fell at work, injuring her head, neck and lower back. She

treated initially with a doctor of chiropractic from 10/7/02 through 4/16/03, receiving chiropractic care, physical therapy, medical doctor referrals, and eventually even work hardening from 8/26/03 through 10/3/03. The patient changed treating doctors on 11/20/03 to another doctor of chiropractic, who eventually referred the patient to the current doctor of chiropractic, who then sent the patient for epidural steroid injection 03/05/04 and performed post-injection chiropractic and physical therapy.

#### REQUESTED SERVICE(S)

Office visits, level III new (99203), office visits, levels I and II established (99211 and 99212), electrical stimulation, attended (97032), ultrasound (97035), manual therapy techniques (97140), therapeutic exercises (97110), gait training (97116), group therapeutic exercises (97150), durable medical equipment dispensed (E1399), chiropractic manipulative treatment, spinal 1-2 areas (98940), and neuromuscular reeducation (97112) for dates of service 03/19/04 through 09/22/04.

#### DECISION

The initial evaluation (99203), the manual therapy techniques (97140), the single dispensed DME on date of service 4/13/04 (the only one not a fee dispute), and the chiropractic manipulative therapies, spinal 1-2 areas (98940) for dates of service 4/28/04 through 5/26/04 are approved.

All remaining treatments and procedures *including all chiropractic manipulative therapies past date of service 5/26/04* are denied.

#### RATIONALE/BASIS FOR DECISION

According to the substantial medical records submitted for review in this case, no chiropractic manipulative therapy of any kind had been performed prior to the patient's presentation to this doctor of chiropractic. Several studies<sup>1 2 3 4 5 6</sup> have proven the effectiveness of

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<sup>1</sup> Hurwitz EL, Morgenstern H, Harber P, Kominski GF, Yu F, Adams AH. A randomized trial of chiropractic manipulation and mobilization for patients with neck pain: clinical outcomes from the UCLA neck-pain study. *Am J Public Health.* 2002 Oct;92(10):1634-41.

<sup>2</sup> Hoving JL, Koes BW, de Vet HC, van der Windt DA, Assendelft WJ, van Mameren H, Deville WL, Pool JJ, Scholten RJ, Bouter LM. Manual therapy, physical therapy, or continued care by a general practitioner for patients with neck pain. A randomized, controlled trial. *Ann Intern Med.* 2002 May 21;136(10):713-22.

spinal manipulation for patients with cervical spine symptoms and conditions, and according to a study published in *Spine*<sup>7</sup>, chiropractic spinal manipulation yielded the best results for chronic spinal pain. Therefore, following an appropriate examination to rule out contraindications to manual therapy, a trial of spinal manipulation in this case was warranted and supported as medically necessary.

However, the *Guidelines for Chiropractic Quality Assurance and Practice Parameters*<sup>8</sup> Chapter 8 under "Failure to Meet Treatment/Care Objectives" states, "After a maximum of two trial therapy series of manual procedures lasting up to two weeks each (four weeks total) without significant documented improvement, manual procedures may no longer be appropriate and alternative care should be considered." Moreover, the ACOEM Guidelines<sup>9</sup> state that if manipulation does not bring improvement in three to four weeks, it should be stopped and the patient reevaluated. Since the daily SOAP notes from the treating doctor of chiropractic revealed that the patient failed to respond after four weeks, the medical necessity for prolonging the clinical trial of spinal manipulation past 5/26/04 was not supported. (In fact, the "pain scale" diagram was repeatedly marked as a "6" where "1" represented "no pain," and a "10" represented "worst pain." On some occasions, the patient circled either a "7" or an "8," but nothing was marked under a "6" from March through September 2004.)

Insofar as the neuromuscular reeducation (97112) was concerned, there was nothing in either the diagnosis or the physical examination findings on this patient that demonstrated the type of neuropathology that would necessitate the application of this service. According to a

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<sup>3</sup> Gross AR, Hoving JL, Haines TA, Goldsmith CH, Kay T, Aker P, Bronfort G, Cervical overview group. Manipulation and Mobilisation for Mechanical Neck Disorders. *Cochrane Database Syst Rev.* 2004;1:CD004249.

<sup>4</sup> Koes, B, Bouter, L, et al. Randomised clinical trial of manipulative therapy and physiotherapy for persistent back and neck complaints: results of one year follow up. *BMJ* 1992;304:601-5.

<sup>5</sup> Koes BW, Bouter LM van Marmeren H, et al. A randomized clinical trial of manual therapy and physiotherapy for persistent neck and back complaints: sub-group analysis and relationship between outcome measures. *J Manipulative Physio Ther* 1993;16:211-9.

<sup>6</sup> Cassidy JD, Lopes AA, Yong-Hing K. The immediate effect of manipulation versus mobilization on pain and range of motion in the cervical spine: A randomized controlled trial. *J Manipulative Physio Ther* 1992;15:570-5.

<sup>7</sup> Giles LGF, Muller R. Chronic Spinal Pain - A Randomized Clinical Trial Comparing Medication, Acupuncture, and Spinal Manipulation. *Spine* 2003; 28:1490-1503.

<sup>8</sup> Haldeman, S; Chapman-Smith, D; Petersen, D *Guidelines for Chiropractic Quality Assurance and Practice Parameters*, Aspen Publishers, Inc.

<sup>9</sup> ACOEM *Occupational Medicine Practice Guidelines: Evaluation and Management of Common Health Problems and Functional Recovery in Workers, 2nd Edition*, p. 299.

Medicare Medical Policy Bulletin<sup>10</sup>, "This therapeutic procedure is provided to improve balance, coordination, kinesthetic sense, posture, motor skill, and proprioception. Neuromuscular reeducation may be reasonable and necessary for impairments which affect the body's neuromuscular system (e.g., poor static or dynamic sitting/standing balance, loss of gross and fine motor coordination, hypo/hypertonicity). The documentation in the medical records must clearly identify the need for these treatments." In this case, the documentation failed to fulfill these requirements, rendering the performance of this service medically unnecessary. The same is true of the gait training (97116) services, as the records were devoid of any pathological gait presentation that would otherwise warrant the medical necessity of this procedure.

In terms of the therapeutic exercises, individual or group (97110 and 97150, respectively), there was no evidence in this case to support the need for continued monitored therapy, particularly not in a patient who had already received months and months of supervised therapy prior to even presenting to this doctor chiropractic. Services that did not require "hands-on care" or supervision of a health care provider are not considered medically necessary services *even if* they were performed by a health care provider. In other words, the provider failed to establish why the services were required to be performed one-on-one when current medical literature states, "...there is no strong evidence for the effectiveness of supervised training as compared to home exercises."<sup>11</sup>

With regard to the established office visits, level II, there was no support for the medical necessity for this level of E/M service immediately following an initial examination, and certainly not on each and every visit during an already-established treatment plan. Furthermore, once the doctor performed and reported the chiropractic manipulative therapy (CMT), this low level pre-, intra- and post-encounter service is included in that code per CPT.<sup>12</sup>

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<sup>10</sup> HGSA Medicare Medical Policy Bulletin, Physical Therapy Rehabilitation Services, original policy effective date 04/01/1993 (Y-1B)

<sup>11</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>12</sup> *CPT 2004: Physician's Current Procedural Terminology, Fourth Edition, Revised*. (American Medical Association, Chicago, IL 1999),

And finally, with regard to the passive treatments including ultrasound (97035) and attended electrical stimulation (97032), it is the position of the Texas Chiropractic Association<sup>13</sup> that it is beneficial to proceed to the rehabilitation phase (if warranted) as rapidly as possible, and to minimize dependency upon passive forms of treatment/care since studies have shown a clear relationship between prolonged restricted activity and the risk of failure in returning to pre-injury status. The TCA Guidelines also state that repeated use of acute care measures alone generally fosters chronicity, physician dependence and over-utilization, and the repeated use of passive treatment/care tends to promote physician dependence and chronicity. Therefore, the medical necessity of these services was not supported.

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<sup>13</sup> Quality Assurance Guidelines, Texas Chiropractic Association.