

THIS DECISION HAS BEEN APPEALED. THE  
FOLLOWING IS THE RELATED SOAH DECISION NUMBER:  
SOAH DOCKET NO. 453-05-5825.M5

MDR Tracking Number: M5-05-1695-01

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.

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

The massage therapy treatments **were found** to be medically necessary. The gait training, neuromuscular reeducation and therapeutic exercises from 7-16-04 through 9-15-04 **were not found** to be medically necessary. The respondent raised no other reasons for denying reimbursement for the above listed services.

Per Rule 134.202(d), reimbursement shall be the least of the (1) MAR amount as established by this rule or, (2) the health care provider's usual and customary charge.

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 outlined above totaling \$462.60 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.
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This Order is applicable to dates of service 7-16-04 through 9-15-04 as outlined above in this dispute.

This Decision and Order is hereby issued this 22<sup>nd</sup> day of March 2005.

Donna Auby  
Medical Dispute Resolution Officer  
Medical Review Division

DA/da

Enclosure: IRO decision

March 17, 2005

TEXAS WORKERS COMP. COMISSION  
AUSTIN, TX 78744-1609

CLAIMANT:

EMPLOYEE:

POLICY: M5-05-1695-01

CLIENT TRACKING NUMBER: M5-05-1695-01-5298

Medical Review Institute of America (MRIOA) has been certified by the Texas Department of Insurance as an Independent Review Organization (IRO). The Texas Workers Compensation Commission has assigned the above mentioned case to MRIOA for independent review in accordance with TWCC Rule 133 which provides for medical dispute resolution by an IRO.

MRIOA has performed an independent review of the case in question 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. Itemization of this information will follow.

The independent review was performed by a peer of the treating provider for this patient. The reviewer in this case is on the TWCC approved doctor list (ADL). The reviewer has signed a statement indicating they have no known conflicts of interest existing between themselves and the treating doctors/providers for the patient in question or any of the doctors/providers who reviewed the case prior to the referral to MRIOA for independent review.

**Records Received:**

Records received from State

1. Notification of IRO Assignment dated 3/7/05 - 2 pages
2. Table of Disputed Services dated 7/16/04 to 9/15/04 - 6 pages
3. List of providers - 1 page
4. Carrier Explanation of benefits - 5 pages

Records received from providers

5. Letter of Clarification to a peer reviewer, dated 02/25/05 - 3 pages
6. Office narrative notes from referral pain management medical doctor dated 6/16/04, 7/28/04, 8/4/04, 8/25/04, 9/15/04 - 13 pages

7. Operative reports for ESIs, dated 07/29/04 and 09/07/04 – 6 pages
8. Initial psychosocial interview dated 9/1/04 – 3 pages
9. Functional Capacity Evaluation, dated 09/07/04 – 8 pages
10. Psychosocial interview notes, dated 09/01/04

### **Summary of Treatment/Case History:**

The patient is a 45-year-old female funeral director who, on \_\_\_ was assisting with lifting a casket when she felt pain in her lower back and legs. She presented to a doctor of chiropractic for conservative physical medicine, but eventually received epidural steroid injection, followed by post-injection physical therapy.

### **Questions for Review:**

1. Were the massage therapy treatments (#97124), gait training (#97116), neuromuscular reeducation (#97112) and therapeutic exercises (#97110) from 07/16/04 through 09/15/04 medically necessary to treat this patient's injury?

### **Explanation of Findings:**

1. Were the massage therapy treatments (#97124), gait training (#97116), neuromuscular reeducation (#97112) and therapeutic exercises (#97110) from 07/16/04 through 09/15/04 medically necessary to treat this patient's injury?

The massage therapy treatments (#97124) are approved. All remaining services and procedures within the specified date range are denied.

### **Conclusion/Decision to Certify/Decision to Not Certify:**

First of all, the documentation submitted was devoid of office records, daily notes, and examination records from the treating doctor of chiropractic. In fact, the only examination or office notes of any kind were from the psychologist and the referral orthopedic pain management specialist. In addition, although the treating doctor mentioned x-rays, a lumbar MRI and a lower extremity EMG, none of these reports were included in the actual medical records submitted (see "Records Reviewed" above). According to the orthopedist's notes, there was adequate documentation provided to substantiate the presence of muscular spasms and myofascial pain to support the medical necessity for post-injection massage therapy services.

However, insofar as the therapeutic exercises (#97110) were concerned, there was no evidence to support the need for continued monitored therapy. Services that did not require "hands-on care" or supervision of a health care provider are not considered medically necessary services *even if* the services were performed by a health care provider. In other words, the provider failed to establish why the services were still required to be performed one-on-one after 07/16/04 when current medical literature states, "...there is no strong evidence for the effectiveness of supervised training as compared to home exercises." (ref. 1)

In terms of the neuromuscular reeducation services (#97112), 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 Medicare Medical Policy Bulletin (ref. 2), "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, however, the documentation failed to fulfill these requirements, rendering the performance of this service medically unnecessary.

And with respect to the gait training procedures (97116), the documentation was also devoid of any reference to gait disturbances or aberrations that would otherwise warrant the necessity for this procedure.

Finally, the medical records submitted fail to document that chiropractic spinal adjustments were performed at any time. According to the AHCPR guidelines (ref. 3), spinal manipulation was the only recommended treatment that could relieve symptoms, increase function and hasten recovery for adults suffering from acute low back pain. Based on this study, it is difficult to comprehend why a doctor of chiropractic would withhold this recommended treatment while performing a host of other non-recommended therapies.

#### **References Used in Support of Decision:**

<sup>1</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>2</sup> HGSA Medicare Medical Policy Bulletin, Physical Therapy Rehabilitation Services, original policy effective date 04/01/1993 (Y-1B)

<sup>3</sup> Bigos S., Bowyer O., Braen G., et al. Acute Low Back Problems in Adults. Clinical Practice Guideline No. 14. AHCPR Publication No. 95-0642. Rockville, MD: Agency for Health Care Policy and Research, Public Health Service, U.S. Department of Health and Human Services. December, 1994

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This review was provided by a chiropractor who is licensed in Texas, certified by the National Board of Chiropractic Examiners, is a member of the American Chiropractic Association and has several years of licensing board experience. This reviewer has given numerous presentations with their field of specialty. This reviewer has been in continuous active practice for over twenty years. MRLoA is forwarding this decision by mail, and in the case of time sensitive matters by facsimile, a copy of this finding to the treating provider, payor and/or URA, patient and the TWCC.

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