

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 03-08-05.

The IRO reviewed office visits, therapeutic exercises, neuromuscular re-education and manual therapy rendered from 06-29-04 through 09-10-04 that were denied based upon "V".

The IRO determined that the office visit on 07-30-04 **was** medically necessary. The IRO further determined that all remaining services and procedures **were not** medically necessary. The amount of reimbursement due from the carrier for the medical necessity issues equals **\$67.25 (\$53.80 X 125%)**.

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 04-01-05, 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 date of service 07-30-04 denied with denial code "V" (unnecessary treatment with peer review). 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. Reimbursement is recommended in the amount of **\$15.00**. A Compliance and Practices referral will be made as the carrier is in violation of Rule 129.5.

### 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 date of service 07-30-04 totaling \$82.25 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 21st day of April 2005.

Medical Dispute Resolution Officer  
Medical Review Division  
Enclosure: IRO Decision

April 13, 2005

TEXAS WORKERS COMP. COMMISSION  
AUSTIN, TX 78744-1609

CLAIMANT:

EMPLOYEE:

POLICY: M5-05-1873-01

CLIENT TRACKING NUMBER: M5-05-1873-01/5278

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 TWCC:

- Notification of IRO Assignment, dated 04/01/05 - 1 page
- Texas Workers' Compensation Commission Form, dated 04/01/05 - 11 pages
- TWCC-62 Explanation of Benefit, dated 07/23/04-10/12/04 - 8 pages
- Dispute Resolution Information System, dated 03/31/05 - 1 page

Records received from Horizon Health:

- Texas Workers' Compensation Work Status Report, dated 12/14/04 - 1 page
- History, dated 11/22/04 - 2 pages
- Range of Motion Evaluation, dated 11/11/04 - 4 pages
- Operative Report, dated 11/01/04 - 2 pages
- Certification Notice, dated 10/26/04 - 1 page
- History, dated 10/20/04 - 2 pages
- Letter from Horizon Health to Zurich Insurance Group, dated 10/19/04 - 1 page
- Request for Reconsideration, undated - 2 pages
- Texas Workers' Compensation Work Status Report, dated 10/12/04 - 1 page
- Letter from Horizon Health to Zurich Insurance Group, dated 09/28/04 - 1 page
- Letter from Horizon Health for Request for Reconsideration, undated - 2 pages
- Texas Workers' Compensation Work Status Report, dated 09/27/04 - 1 page

- Letter from Texas Workers' Compensation Commission to \_\_\_\_, dated 09/23/04 - 2 pages
- History, dated 09/20/04 - 2 pages
- Operative Report, dated 09/13/04 - 2 pages
- Letter from Horizon Health to Zurich Insurance Company, dated 09/08/04 - 1 page
- Chart Notes, dated 09/07/04 - 1 page
- Texas Workers' Compensation Work Status Report, dated 08/30/04 - 1 page
- Chart Notes, dated 08/31/04 - 1 page
- Extension Notice, dated 08/27/04 - 1 page
- TWCC-69 Report of Medical Evaluation, dated 08/25/04 - 1 page
- Designated Doctor's Narrative to Accompany TWCC 69, dated 08/28/04 - 3 pages
- History, dated 08/20/04 - 1 page
- Chart Notes, dated 08/10/04-08/17/04 - 2 pages
- Exam Notes, dated 08/10/04 - 2 pages
- Chart Notes, dated 08/02/04 - 1 page
- Texas Workers' Compensation Commission Form, dated 08/06/04 - 2 pages
- Texas Workers' Compensation Work Status Report, dated 07/30/04 - 1 page
- Chart Notes, dated 07/30/04 - 1 page
- Chart Notes, dated 07/20/07-07/27/04 - 2 pages
- History of Present Illness, dated 07/20/04 - 8 pages
- Progress Report, dated 07/19/04 - 2 pages
- Chart Notes, dated 07/14/04 - 1 page
- Chart Notes, dated 07/08/04 - 1 page
- Chart Notes, dated 06/29/04-07/07/04 - 2 pages
- Exam Notes, dated 06/29/04 - 1 page
- Progress Report, dated 06/24/04 - 2 pages
- Operative Report, dated 06/16/04 - 2 pages
- Chart Notes, dated 06/15/04 - 1 page
- Operative Report, dated 06/14/04 - 2 pages
- Anesthesia Record, dated 06/14/04 - 1 page
- Pre-Anesthesia Assessment, dated 06/14/04 - 1 page
- Peer Review, dated 06/11/04 - 7 pages
- Chart Notes, dated 06/09/04 - 1 page
- Operative Report, dated 06/04/04 - 2 pages
- Letter from Dr. Twomey to TWCC, dated 06/03/04 - 3 pages
- Electrodiagnostic Evaluation, dated 06/03/04 - 4 pages
- Chart Notes, dated 06/02/04 - 1 page
- Functional Capacity Evaluation, dated 05/28/04 - 10 pages
- Extension Notice from Zurich, dated 05/27/04 - 1 page
- Texas Workers' Compensation Work Status Report, dated 05/24/04 - 1 page
- Chart Notes, dated 05/24/04 - 1 page
- Chart Notes, dated 05/18/04-05/24/04 - 2 pages
- Referral Request for Diagnostic Testing, dated 05/18/04 - 1 page
- History and Physical, dated 05/17/04 - 2 pages
- Texas Workers' Compensation Commission Form, dated 05/17/04 - 2 pages
- History and Physical, dated 05/12/04 - 2 pages
- Chart Notes, dated 04/26/04-05/10/04 - 3 pages
- Texas Workers' Compensation Work Status Report, dated 04/26/04 - 1 page

- Chart Notes, dated 04/26/04 – 1 page
- Chart Notes, dated 04/19/04 – 1 page
- Consultation, dated 04/14/04 – 3 pages
- Chart Notes, dated 04/13/04 – 1 page
- Certification Notice, dated 04/07/04 – 1 page
- EMS Supply Order, dated 04/06/04 – 1 page
- Chart Notes, dated 03/31/04 – 1 page
- Texas Workers' Compensation Work Status Report, dated 03/31/04 – 1 page
- Initial Medical Report–Workers' Compensation Insurance, dated 03/31/04 – 3 pages
- Employee's Notice of Injury or Occupational Disease and Claim for Compensation, dated 03/31/04 – 1 page
- Chart Notes, dated 03/29/04 – 1 page
- MRI Lumbosacral Spine Report, dated 03/22/04 – 1 page
- Texas Workers' Compensation Work Status Report, dated 03/22/04 – 1 page
- Chart Notes, dated 03/22/04 – 1 page
- Letter from The Methodist Hospital to \_\_\_\_, dated 02/19/04 – 1 page
- Employee Permit For Treatment, dated 02/20/04 – 1 page
- Chart Notes, dated 02/20/04 – 1 page
- Employee Permit for Treatment, dated 2/16/04, 2/18/04 – 2 page
- X-ray Pelvis Report, dated 02/16/04 – 1 page
- Emergency Physician Record, dated 02/16/04 – 3 pages
- Discharge Instructions, dated 02/16/04 – 1 page
- Workers Compensation Proof of Claim, dated 04/13/04 – 4 pages
- Supervisor's Accident Report, dated 02/16/04 – 1 page

Records received from Flahive, Ogden & Latson:

- Letter from Flahive, Ogden & Latson to MRIOA, dated 04/05/05 – 2 pages
- Letter from Flahive, Ogden & Latson to TWCC, dated 03/25/05 – 2 pages
- Medical Dispute Resolution Request/Response, dated 03/08/05 – 1 page
- Peer Review, dated 06/11/04 – 7 pages

Records received from Bose Consulting, LLC:

- List of Exhibits – 1 page
- Exhibit No. 1 – 1 page
- Position Statement – 3 pages
- Exhibit No. 2 – 1 page
- MRI Lumbosacral Spine Report, dated 03/22/04 – 1 page
- X-ray Pelvis Report, dated 02/16/04 – 1 page
- Exhibit No. 3 – 1 page
- Electrodiagnostic Evaluation, dated 06/03/04 – 2 pages
- Electrodiagnostic Results, dated 06/03/04 – 2 pages
- Exhibit No. 4 – 1 page
- General Examination, dated 08/10/04 – 2 pages
- Initial Consultation Report, dated 07/20/04 – 7 pages
- Exhibit No. 5 – 1 page
- Letter from Jeremiah J. Twomey, MD to TWCC, dated 06/03/04 – 3 pages
- Exhibit No. 6 – 1 page
- Chart Notes, dated 05/17/04–06/29/04 – 5 pages

- Exhibit No. 7 – 1 page
- History, dated 08/20/04 – 2 pages
- Progress Report, dated 07/19/04–06/24/04 – 4 pages
- History & Physical, dated 05/12/04 – 2 pages
- Consultation, dated 04/14/04 – 3 pages
- Chart Notes, dated 06/29/04–09/07/04 – 8 pages

**Summary of Treatment/Case History:**

The patient is a 36-year-old female surgical technician for a local hospital who, on \_\_\_\_, slipped on a slippery substance on the floor while carrying a tray of instruments and fell landing onto her back. She felt immediate pain in her lower back and right leg. She was initially seen by the emergency room, and then was referred for follow-up with the company doctor. On 03/17/04, the patient related that she was carrying a heavy tray of instruments when she began feeling significant pain in her lower back and had to drop the tray. An MRI was performed on 03/22/04 that revealed a L3–4 right foraminal disc herniation. She then began conservative chiropractic care, including physical therapy and rehabilitation, but eventually underwent right-sided L3–4 ESI and IVF injections, as well as L2–3, L3–4 and L4–5 left-sided facet injections, followed by post-injection therapy.

**Questions for Review:**

Dates of service in dispute: 06/29/04 through 09/10/04. Has mixed issues.

Items in dispute: #99212 OV, #97110 Therapeutic exercises, #97112 Neuromuscular reeducation, #97140 Manual therapy technique, #99213 OV.

1. Advise regarding medical necessity.

Denied by carrier as unnecessary treatment with peer review, EOB codes V.

**Explanation of Findings:**

1. Advise regarding medical necessity.

The established patient office visit, level III (#99213) on date of service 7/30/04 is medically necessary. All remaining services and procedures (#99212, #97110, #97112, #97140) are not medically necessary.

Rationale: In this case, the documentation submitted adequately supported that a compensable injury to the patient’s lower back had occurred. Therefore, a periodic office visit for purposes of patient evaluation and management was appropriate.

However, in terms of the neuromuscular reeducation service (#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(1), “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.

Insofar as the established office visits, level II (#99212) were concerned though, neither the specific diagnosis nor the medical records submitted supported the medical necessity of performing this level of Evaluation and Management service (per CPT-2) on each and every office visit, and particularly not during an already-established treatment plan.

With regard to the 6 units of therapeutic exercises (#97110) that were performed, there was no evidence or rationale supplied to support the need for continued monitored therapy. Services that do 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. Put another way, the provider failed to establish why it was still necessary to perform these exercises one-on-one, when current medical literature states, “...there is no strong evidence for the effectiveness of supervised training as compared to home exercises.”(3) Also, since the patient had been receiving supervised exercise training for four months time by 6/29/04 - without documented evidence to the contrary - the patient should have been in a position to safely perform them at home at that point.

And finally, with regard to the manual therapy techniques (#97140) that were provided, the *Guidelines for Chiropractic Quality Assurance and Practice Parameters*(4) 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.” In reviewing the records provided by the treating doctor, there was no documentation to support improvement. Not only did the daily visits not provide a more objective tracking for symptom change (for example, a visual analog scale rating), the subjective information provided for the most part only repeated the complaints on a visit-to-visit basis (“patient c/o back pain”). On reexaminations, pain scales were provided and revealed that on 4/26/04, 5/24/04, 7/8/04 and 7/30/04, the patient’s reported pain ratings were 7/10 (3 weeks post-ESI), 6/10, 2/10, and 6/10. Therefore, the disputed treatment did not provide significant relief.

Furthermore, in terms of objective functional improvements, in reviewing the 2 reexaminations that occurred during the treatment time in question, range of motion did not essentially change with lumbar flexion *worsening*. Specifically, on the evaluation dated 7/8/04, the patient’s lumbar range of motion for flexion, extension, left lateral flexion and right lateral flexion was recorded as 60, 20, 20 and 20 (in degrees), respectively. For the evaluation dated 7/30/04 - using the values in the same order - the recordings were 45, 15, 20 and 20. Therefore, since the patient remained off work during the time frame in dispute, coupled with this lack of documented response to care, the statutory requirements(5) for medical necessity were also not met since the patient did not obtain relief, promotion of recovery was not accomplished, and there was not an enhancement of the employee’s ability to return to employment.

## **Conclusion:**

### Decision to Certify:

The established patient office visit, level III (#99213) on date of service 7/30/04 is medically necessary.

### Decision to Not Certify:

All remaining services and procedures (#99212, #97110, #97112, #97140) are not medically necessary.

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

1. HGSA Medicare Medical Policy Bulletin, Physical Therapy Rehabilitation Services, original policy effective date 04/01/1993 (Y-1B)
2. CPT 2004: Physician's Current Procedural Terminology, Fourth Edition, Revised. (American Medical Association, Chicago, IL 1999)
3. 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.
4. Haldeman, S; Chapman-Smith, D; Petersen, D *Guidelines for Chiropractic Quality Assurance and Practice Parameters*, Aspen Publishers, Inc.
5. Texas Labor Code 408.021

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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.

MRIOA 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.

It is the policy of Medical Review Institute of America to keep the names of its reviewing physicians confidential. Accordingly, the identity of the reviewing physician will only be released as required by state or federal regulations. If release of the review to a third party, including an insured and/or provider, is necessary, all applicable state and federal regulations must be followed.

Medical Review Institute of America retains qualified independent physician reviewers and clinical advisors who perform peer case reviews as requested by MRIOA clients. These physician reviewers and clinical advisors are independent contractors who are credentialed in accordance with their particular specialties, the standards of the American Accreditation Health Care Commission (URAC), and/or other state and federal regulatory requirements.

The written opinions provided by MRIOA represent the opinions of the physician reviewers and clinical advisors who reviewed the case. These case review opinions are provided in good faith, based on the medical records and information submitted to MRIOA for review, the published scientific medical literature, and other relevant information such as that available through federal agencies, institutes and professional associations. Medical Review Institute of America assumes no liability for the opinions of

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