

THIS DECISION HAS BEEN APPEALED. THE
 FOLLOWING IS THE RELATED SOAH DECISION NUMBER:
 SOAH DOCKET NO. 453-05-9458.M5

MEDICAL DISPUTE RESOLUTION FINDINGS AND DECISION

Retrospective Medical Necessity Dispute

PART I: GENERAL INFORMATION

Type of Requestor: (X) HCP () IE () IC	Response Timely Filed? () Yes (X) No
Requestor's Name and Address SCD Back & Joint Clinic Ltd 200 E. 24 th Street Suite B Bryan TX 77803	MDR Tracking No.: M5-05-2409-01
	TWCC No.:
	Injured Employee's Name:
Respondent's Name and Address Rep Box # 28 Liberty Mutual Insurance	Date of Injury:
	Employer's Name:
	Insurance Carrier's No.:

PART II: SUMMARY OF DISPUTE AND FINDINGS

Dates of Service		CPT Code(s) or Description	Did Requestor Prevail?
From	To		
7-2-04	9-17-04	97110, 97150, 99213, 99212, 99212-25, 99211-25, 95851, A9150, 97024, 97012, 97124, 98940, A4595, 97112, L1499	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

PART III: MEDICAL DISPUTE RESOLUTION REVIEW SUMMARY, METHODOLOGY, AND/OR EXPLANATION

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code and Commission Rule 133.308 (relating to Medical Dispute Resolution by Independent Review Organization), the Medical Review Division assigned an Independent Review Organization (IRO) to conduct a review of the medical necessity issues between the requestor and respondent.

The Division has reviewed the enclosed IRO decision and determined that the requestor did **not** prevail on the disputed medical necessity issues.

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 6-23-05 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.

On 7-6-05, the requestor submitted a letter of withdrawal for the fee issues (TWCC-73 report).

Rule 134.202 (b) states that Texas Workers' Compensation system participants shall apply the Medicare program

reimbursement coding, billing, and reporting payment policies in effect on the date a service is provided. Rule 133.1(a)(3)(C) states that a complete medical bill includes correct billing codes from Commission fee guidelines in effect on the date of service.

The requestor billed codes 97139-EU and 97750-MT for dates of service from 7-6-04 to 9-29-04. These modifiers are invalid after 8-1-03; therefore, no review and no reimbursement recommended. The requestor will be billed for using invalid modifiers.

PART IV: COMMISSION DECISION

Based upon the review of the disputed healthcare services, the Medical Review Division has determined that the requestor is not entitled to reimbursement for the services involved in this dispute and is not entitled to a refund of the paid IRO fee.

Findings and Decision by:

Authorized Signature

Typed Name

8-16-05

Date of Order

PART V: INSURANCE CARRIER DELIVERY CERTIFICATION

I hereby verify that I received a copy of this Decision in the Austin Representative's box.

Signature of Insurance Carrier: _____ Date: _____

PART VI: YOUR RIGHT TO REQUEST A HEARING

YOUR RIGHT TO REQUEST A HEARING

If you are unhappy with all or part of this decision, you have the right to appeal the decision. Those who wish to appeal decisions that were issued during the month of August 2005 should be aware of changes to the appeals process, which take effect September 1, 2005.

House Bill 7, recently enacted by the 79th Texas Legislature, provides that an appeal of a medical dispute resolution order that is not pending for a hearing at the State Office of Administrative Hearings (SOAH) on or before August 31, 2005 is not entitled to a SOAH hearing. This means that the usual 20-day window to appeal to SOAH, found in Commission Rule 148.3, will be shortened for some parties during this transition phase. If you wish to seek an appeal of this medical dispute resolution order to SOAH, you are encouraged to have your request for a hearing to the Commission as early as possible to allow sufficient time for the Commission to submit your request to SOAH for docketing. A request for a SOAH hearing should be sent to: Chief Clerk of Proceedings/Appeals Clerk, P.O. Box 17787, Austin, Texas 78744 or faxed to 512-804-4011. A copy of this Decision should be attached to the request.

Beginning September 1, 2005, appeals of medical dispute resolution orders are procedurally made directly to a district court in Travis County [see Texas Labor Code, Sec. 413.031(k), as amended and effective Sept. 1, 2005]. An appeal to District Court must be filed not later than 30 days after the date on which the decision that is the subject of the appeal is final and appealable.

Si prefieres hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.

IRO America Inc.

An Independent Review Organization

(IRO America Inc. was formerly known as ZRC Services Inc. DBA ZiroC)

7626 Parkview Circle

Austin, TX 78731

Phone: 512-346-5040

Fax: 512-692-2924

August 8, 2005

TWCC Medical Dispute Resolution

Fax: (512) 804-4868

Patient: _____

TWCC #: _____

MDR Tracking #: _____

IRO #: _____

M5-05-2409-01

5251

IRO America Inc. (IRO America) has been certified by the Texas Department of Insurance as an Independent Review Organization. The Texas Worker's Compensation

Commission (TWCC) has assigned this case to IRO America for independent review in accordance with TWCC Rule 133.308 which allows for medical dispute resolution by an IRO.

IRO America has performed an independent review of the proposed care 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; the Reviewer is a credentialed Panel Member of IRO America's Medical Knowledge Panel who is a licensed Provider, board certified and specialized in Chiropractic care. The reviewer is on the TWCC Approved Doctor List (ADL).

The IRO America Panel Member/Reviewer is a health care professional who 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 IRO America 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

Notification of IRO assignment, information provided by Requestor, Respondent, and Treating Doctor(s) including:

1. Medical Dispute Resolution Request.
2. Table of Disputed Services.
3. Billing records from Liberty Mutual.
4. Reports from Joyce Howard, RN, 10-14-03, 10-16-03, 11-3-03, and 11-17-03.
5. Physical Therapy Evaluation from Victoria Functional Assessment Center, 10-20-03.

6. Medical reports from David Suchowiecky, M.D., 12-17-03 through 11-15-04.
7. Narrative Reports from John Wyatt, D.C., 11-24-03 through 10-5-04.
8. SOAP notes from John Wyatt, D.C., dated 11-24-03 through 5-12-05.
9. Lumbar MRI report, 12-10-03.
10. Lumbar range of motion assessment reports from John Wyatt, DC.
11. Medical reports from Kenneth Berliner, M.D., dated 1-26-04 through 10-18-04.
12. Medical reports from David Calvo, M.D., dated 2-2-04 through 3-15-04.
13. Chiropractic reviews from Professional Reviews, dated 2-5-04, 3-15-04, 7-29-04, and 12-17-04.
14. Operative report, 2-10-04 and 3-1-04.
15. Impairment Rating by Uma Gullapalli, M.D., 3-9-04.
16. Operative report, 4-16-04.
17. MRI of the sacrum, 7-20-04.
18. Lumbar MRI, 8-12-04.
19. Medical report from Barbara Bryant, LPC, 9-20-04.
20. Pain Management documentation from 11-11-04 through 3-1-05.
21. Designated Doctor Evaluation from William Smith, M.D., 12-30-04.
22. Medical report from Issan Shanti, M.D., 4-19-05.
23. Liberty Mutual report from Virginia Cullipher, 6-28-05.
24. Letter from John Wyatt, D.C., 6-28-05.
25. Three pages of exercise pictures.

CLINICAL HISTORY

According to the documentation, the patient was working for the _____ when he slipped and fell on his right hip. The patient was initially evaluated at Citizens Medical Center on 10-11-03. The patient was given prescription medication, x-ray, and released. The patient participated in physical therapy at the Victoria Functional Assessment and Restoration Center. The patient was managed medically by Dr. Nguyen and released to full duty work on 11-17-03.

The patient was managed medically by David Suchowiecky, M.D. The patient reported ongoing low back pain and left radiating leg pain rated between 4/10 and 8/10. Motor, sensory, and reflex testing were unremarkable. Nerve root tension signs were absent. EMG testing was unremarkable.

According to the documentation, the patient was treated with chiropractic/physical therapy treatment under the auspices of John Wyatt, D.C. from 11-24-03 through 5-12-05.

Lumbar MRI dated 12-10-03 denoted "mild multi-level lumbar spondylosis, with mild central canal stenosis at L4-5 and a left focal disc protrusion at L4-S1."

On 1-26-04, the patient was evaluated by Kenneth Berliner, M.D. The patient reported low back pain, right buttock pain, and right thigh pain. Reflex, motor, and sensory testing was within normal limits. Nerve root tension signs were absent. MRI revealed a far lateral disc herniation at L4-L5 and a left-sided disc herniation at L5-S1. He recommended epidural steroid injections.

On 2-2-04, the patient was evaluated by David Calvo, M.D. He recommended epidural steroid injections. The first epidural steroid injection was performed on 2-10-04. Three epidural steroid injections were performed in total. No lasting benefit was observed. Oral steroids were also prescribed.

On 3-9-04, an Impairment Rating was performed by Uma Gullapalli, M.D. She assigned 7% Whole Person Impairment.

On 3-22-04, due to a poor response with treatment, Dr. Berliner recommended surgery. Lumbar laminectomy was performed on 4-16-04 by Dr. Berliner. The patient continued to report back pain and leg symptoms following surgery.

Lumbar MRI dated 7-20-04 was unremarkable with the exception of the previously documented disc protrusions. Lumbar MRI dated 8-12-04 revealed post-op changes without evidence of recurrent disc herniation. Post-surgical injections were also attempted.

The patient participated in psychotherapy and 38 sessions of Chronic Pain Management from November of 2004 through February at 2005. Chiropractic treatment continued with Dr. Wyatt through 5-12-05.

DISPUTED SERVICE(S)

Under dispute is the retrospective medical necessity of Therapeutic exercise, group therapeutic procedures, office visits, range of motion testing, biofreeze, diathermy, mechanical traction, massage therapy, spinal manipulation, TENS, neuromuscular reeducation, and a lumbar roll from 7-2-04 through 9-17-04.

DETERMINATION/DECISION

The Reviewer agrees with the determination of the insurance carrier.

RATIONALE/BASIS FOR THE DECISION

The treatment in dispute including therapeutic exercise, group therapeutic procedures, office visits, range of motion testing, biofreeze, diathermy, mechanical traction, massage therapy, manipulation, TENS, and neuromuscular reeducation performed between 7-2-04 and 9-17-04 cannot be supported as medically reasonable or necessary for multiple reasons.

First, based on the inter-tester documentation, lasting subjective improvement from the treatment provided has not been shown. The inter-tester documentation fails to demonstrate improvement in regards to pain frequency, numerical pain scales, and patient's perceived improvement.

Second, the treatment extends beyond guideline parameters without medical justification to support additional treatment. The Official Disability Guidelines indicate the typical post-discectomy patient will require 6-8 weeks of postoperative rehabilitation with emphasis on a home exercise program and home pain control measures. In order to secure long-term benefits of in office treatment, the patient must continue to perform the home exercise program independently.

Third, the medical evidence clearly indicates post-discectomy patients do not typically require an extensive amount of postoperative treatment. A home exercise program has been shown to be just as beneficial for post-discectomy patient (Spine 2005). The Reviewer is implying that post-discectomy patients do not require any supervised treatment, however the Reviewer believes the study indicates that after a 6-8 week course of supervised treatment, the patient should be independent with home exercises and the need for additional in office treatment cannot be supported.

Fourth, the documentation does not include outcome assessment tools to quantify the level of functional improvement. Oswestry Questionnaires, Roland-Morris Questionnaires, and

Patient-Specific Functional Questionnaires have been shown to be valid and reliable means of quantifying functional improvement. Without documentation of perceived functional benefit, additional treatment beyond guideline parameters cannot be supported. There is no evidence within the documentation to support continuation of an unsuccessful treatment plan.

Fifth, over-utilization of passive care has not been shown to be beneficial with well-controlled medical studies. The Philadelphia Panel of Physical Therapy found insufficient evidence to support ongoing use of passive procedures in the treatment of back pain > 8 weeks. For this reason, passive modalities should be limited. Additionally, five units of passive care per visit are completely excessive. There is no indication that 5 units of passive care would provide any more benefit than 1-2 units. For these reasons, biofreeze, diathermy, mechanical traction, massage therapy, manipulation, and TENS can not be supported.

Screening Criteria

1. Specific:

Official Disability Guidelines

2. General:

In making his determination, the Reviewer had reviewed medically acceptable screening criteria relevant to the case, which may include but is not limited to any of the following: Evidence Based Medicine Guidelines (Helsinki, Finland); Texas Medical Foundation: Screening Criteria Manual (Austin, Texas); Texas Chiropractic Association: Texas Guidelines to Quality Assurance (Austin Texas); Texas Medical Foundation: Screening Criteria Manual (Austin, Texas); Mercy Center Guidelines of Quality Assurance; any and all guidelines issued by TWCC or other State of Texas Agencies; standards contained in Medicare Coverage Database; ACOEM Guidelines; peer-reviewed literate and scientific studies that meet nationally recognized standards; standard references compendia; and findings; studies conducted under the auspices of federal government agencies and research institutes; the findings of any national board recognized by the National Institutes of Health; peer reviewed abstracts submitted for presentation at major medical associates meetings; any other recognized authorities and systems of evaluation that are relevant.

CERTIFICATION BY OFFICER

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

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

IRO America is forwarding by mail or facsimile, a copy of this finding to the TWCC, the Injured Employee, the Respondent, the Requestor, and the Treating

Sincerely,

IRO America Inc.



Dr. Roger Glenn Brown

President & Chief Resolutions Officer

Doctor.