Texas Department of Insurance, Division of Workers' Compensation
7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1609

MEDICAL DISPUTE RESOLUTION FINDINGS AND DECISION

Retrospective Medical Necessity and Fee Dispute

PART I: GENERAL INFORMATION

Type of Requestor: (X) Health Care Provider ( ) Injured Employee ( ) Insurance Carrier

Requestor's Name and Address: Gabriel Gutierrez, D.C. P O BOX 229 Katy, Texas 77492-0229	MDR Tracking No.: M5-05-2529-01 Claim No.: Injured Employee's Name:
Respondent's Name and Address: Employers Insurance Co of Wausau Box 28	Date of Injury: Employer's Name: Insurance Carrier's No.:

PART II: REQUESTOR'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

DOCUMENTATION SUBMITTED: TWCC-60, CMS 1500's, medical documentation and explanation of benefits.

PART III: RESPONDENT'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

No carrier response received.

PART IV: SUMMARY OF DISPUTE AND FINDINGS

Date(s) of Service	CPT Code(s) or Description	Medically Necessary?	Additional Amount Due (if any)
09-27-04 to 11-10-04	97545-WH-CA (2 units @ $128.00 X 16 DOS)	☒ Yes ☐ No	$2,048.00
09-27-04 to 11-10-04	97546-WH-CA (6 units @ $384.00 X 16 DOS)	☒ Yes ☐ No	$6,144.00

PART V: 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 Division Rule 133.308 (relating to Medical Dispute Resolution by Independent Review Organization), Medical Dispute Resolution 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 **prevailed** on the disputed medical necessity issues. The amount pending from the carrier for the medical necessity issues equals **$8,192.00.**

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 Medical Dispute Resolution.

On 08-24-05, 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.

Per Rule 133.308(e)(1) CPT code 99204 date of service 05-17-04 was not timely filed and is not eligible for review.

CPT code 97540 date of service 06-23-04 denied with denial code "R/X206" (the service(s) is for a condition(s) which is not related to the covered work related injury). The carrier was contacted and verification was made with the adjustor that the denial code was an error on the part of the carrier and the diagnoses billed were compensable. CPT code 97540 per the 2002 Medical Fee Guideline is not a valid code. No reimbursement is recommended.

CPT code 99213 date of service 06-23-04 denied with denial code "R/X206" (the service(s) is for a condition(s) which is not related to the covered work related injury). The carrier was contacted and verification was made with the adjustor that the denial code was an error on the part of the carrier and the diagnoses billed were compensable. Reimbursement is recommended per Rule 134.202(c)(1) in the amount of **$67.25.**

CPT code 97750-FC date of service 07-20-04 denied with denial code "F" (the charge for the procedure exceeds the fee schedule or usual and customary values as established by Ingenix). The carrier has made a payment of $183.75. Per the 2002 Medical Fee Guideline additional reimbursement of **$316.25** is recommended.

Review of CPT codes 97545-WH-CA and 97546-WH-CA date of service 10-11-04 revealed that neither party submitted copies of EOBs. Per Rule 133.307(e)(2)(B) the requestor did not provide convincing evidence of carrier receipt of the providers request for EOBs. No reimbursement is recommended.

CPT code 97545-WH-CA (2 units) date of service 11-02-04 denied with denial code "A" (preauthorization was required, but not requested for this service). The provider is CARF accredited and no preauthorization is required. Reimbursement is recommended in the amount of **$128.00.**

CPT code 97546-WH-CA (6 units) date of service 11-02-04 denied with denial code "A" (preauthorization was required, but not requested for this service). The provider is CARF accredited and no preauthorization is required. Reimbursement is recommended in the amount of **$384.00.**

PART VI: GENERAL PAYMENT POLICIES/REFERENCES IMPACTING DECISION

28 Texas Administrative Code Sec. 133.308 and Rules 134.202(c)(1) and 133.307(e)(2)(B)

PART VII: DIVISION DECISION AND ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code, Sec. 413.031, the Division has determined that the requestor is entitled to additional reimbursement in the amount of $9,087.50 . In addition, the Division finds that the requestor was the prevailing party and is entitled to a refund of the IRO fee in the amount of $460.00. The Division hereby **ORDERS** the insurance carrier to remit this amount plus all accrued interest due at the time of payment to the Requestor within 30 days of receipt of this Order.

Findings and Decision by:

		09-30-05
Authorized Signature		Date of Findings and Decision

Order by:

		09-30-05
Authorized Signature		Date of Order

PART VIII: YOUR RIGHT TO REQUEST JUDICIAL REVIEW

Appeals of medical dispute resolution decisions and 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. The Division is not considered a party to the appeal.

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

7600 Chevy Chase, Suite 400
Austin, Texas 78752
Phone: (512) 371-8100
Fax: (800) 580-3123

NOTICE OF INDEPENDENT REVIEW DECISION

Date: September 19, 2005

To The Attention Of: DWC
7551 Metro Center Drive, Suite 100, MS-48
Austin, TX 78744-16091

RE: Injured Worker: ___
MDR Tracking #: M5-05-2529-01
IRO Certificate #: IRO 5263

Forté has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Division of Workers' Compensation (DWC) at the Texas Department of Insurance has assigned the above referenced case to Forté for independent review in accordance with DWC Rule §133.308 which allows for medical dispute resolution by an IRO.

Forté has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, relevant medical records, any documents utilized by the parties referenced above in making the adverse determination and any documentation and written information submitted in support of the appeal was reviewed.

The independent review was performed by a Chiropractic reviewer who has an ADL certification. The reviewer has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for a determination prior to the referral to for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to this case.

Submitted Medical Records by Requestor:

- Work Hardening Treatment Record, Human Resource Performance and Rehabilitation Institute/Gabriel Gutierrez D.C.; DOS: 9/27/04 - 11/11/04 (101 pgs.)
- Treatment Guidelines, Official Disability Guidelines/American College of Occupational and Environmental Medicine/Mayo Clinic Website Data; DOS: No Date Provided (24 pgs.)
- Medical Dispute Resolution Correspondence/Service Table/EOB data, DOS: 8/23/05 (19 pgs.)
- Treatment/Functional Capacity Evaluation Record, Human Resource Performance and Rehabilitation Institute/Gabriel Gutierrez D.C.; DOS: 6/07/04 - 8/26/05
- AROM/Muscle Testing Record, Global Medical; DOS: 4/02/03 (6 pgs.)
- Evaluation/Treatment Record, Texas Pain Institute; DOS: 7/08/04 - 7/14/05 (14 pgs.)
- Neurodiagnostic Record, Diagnostic Neurology of Houston; DOS: 3/07/02 (2 pgs.)
- Treatment/Evaluation Record, Jackie Stephenson M.D.; DOS: 4/23/03 (3 pgs.)
- Treatment/Evaluation Record, The Pain Institute of Texas; DOS: 5/21/03 - 2/02/04 (22 pgs.)
- Evaulation/TWCC-69 Record, Pete Nguyen M.D.; DOS: 1/20/04 - 2/09/05 (23 pgs.)
- Impairment Evaulation/TWCC-69 Record, Gabriel Gutierrez D.C.; DOS: 11/04/04 (8 pgs.)
- MR Imaging Report cervical spine, DOS: 1/25/03 (1 pg.)

- MR Imaging Report left wrist, DOS: 11/04/02 (1 pg.)

- MR Imaging Report left elbow, DOS: 1/26/04 (1 pg.)
- MR Imaging Report, left wrist, DOS: 6/04/03 (1 pg.)
- Bone Scan Imaging report, DOS: 1/26/04 (2 pgs.)
- Treatment/Evaluation Record, Monie G. Smith MA; DOS: 7/29/04 (3 pgs.)
- Treatment Record, John T. Burns M.D.; DOS: 10/07/03 (27 pgs.)
- Treatment Record, Steven W. Schierman M.D.; DOS: 9/27/04 (21 pgs.)
- Peer Review Record, Thomas B. Sato D.C.; DOS: 11/14/04 (5 pgs.)

Submitted Medical Records by Respondent:

- None submitted

Clinical History

Worker sustained a work related injury while working as a ; the claimant sustained an injury when he lifted a 75 pound box. Neurodiagnostic testing of the upper quarter performed on 3/07/02 revealed a clinically unremarkable study. MR imaging of left hand performed on 11/06/02 revealed a clinically unremarkable study. MR imaging over the cervical spine revealed multifocal sponndylosis/posterocentral disc protrusion at C3-C6 and C6/7 posterocentral osteophyte encroaching 5mm in the anterior central canal. On 4/24/03, the claimant presented to the offices of Jackie Stephenson M.D., evaluation revealed clamant had a cervical nerve root irritation and left wrist strain/sprain (possible complex regional pain syndrome); recommendations for a cervical epidural steroid injection (ESI) and stellate ganglion block were implemented. Claimant presented to the offices of John T. Burns M.D. on 10/07/03 and a referral to a multidisplinary program was advised as appropriate. Worker presented to the offices of The Texas Pain Institute of Texas from 5/21/03 though 3/25/04; a diagnosis of cervical discogenic pain, cervical radiculopathy, cervical facet syndrome, and left wrist internal derangement syndrome. MR imaging over the left wrist on 6/04/03 revealed presence of ganglion cyst. Designated doctor evaluation performed by Pete Nguyen M.D. revealed that the claimant was not at Maximum Medical Improvement and that MMI was purposed on 5/20/04. MR imaging over the left elbow performed on 1/26/04 revealed a clinically unremarkable study. Bone scan performed on 1/26/04 revealed findings not correlated to clinical symptomology. Claimant presented to the offices of Human Resource Performance and Rehabilitation/Gabreil Gutierrez D.C. on/about 6/07/04; a diagnosis of regional pain syndrome, unspecified injury to elbow/forearm, unspecified injury to wrist/hand, brachial neuritis, myofascial pain syndrome, myospasm, and displacement of cervical intervetebral disc with myelopathy. On 7/08/04, the claimant presented to the offices of Texas Pain Institute; a diagnosis of complex regional pain syndrome over the right wrist/hand was rendered. Worker consulted with Texas Pain Institute from 7/08/04 through 7/14/05 for the medical management of complex regional pain syndrome; a stellate ganglion block was advised for pain control. Functional Capacity Evaluation was performed on 7/20/04 that revealed reductions in shoulder/cervical/thoracic Active range of motion (AROM) secondary to neurogenic/myofascial pain, claimant was unable to meet medium physical demand classification necessary for return to industry, and worker was referred to a multidisplinary return to work program. Evaluation was performed on 7/29/04 by Monie G. Smith MA that revealed that the claimant is a candidate for work hardening service. Work hardening services were implemented with Human Resource Performance and Rehabilitation/Gabriel Gutierrez D.C. from 9/27/04 through 11/11/04. The claimant presented to the offices of Steven W. Schierman M.D. on 9/27/04 and it was determined that further chiropractic/diagnostic applications were not appropriate. Worker was placed at Maximum Medical Improvement on 11/04/04 by Gabriel Gutierrez D.C. and a 24% whole person impairment of function was assessed. Peer review was performed by Thomas Sato on 11/14/04 and a work hardening program was not advised. Claimant presented for a designated doctor examination with Pete Nguyen M.D. on 1/25/05 that revealed the claimant was at Maximum Medical Improvement on 10/27/04, a 5% whole person impairment of function was rendered.

Requested Service(s)

Work hardening and work hardening each additional hour - 97545-WH-CA and 97546-WH-CA for dates of service disputed 6/23/04 through 11/10/04

Decision

I disagree with the carrier and find that the services in dispute were medically necessary.

Rationale/Basis for Decision

It is evident from the various medical records that the claimant was not at MMI until 10/27/04. There is sufficient behavioral data and functional deficits that establish clinical rationale for the transition of this claimant's care to a goal directed multidisplinary program. A number of clinicians diagnosed this claimant with complex regional pain syndrome and medical data illustrates that highly structured multidisplinary programs are appropriate in the management of this claimant's condition.

Peer review study on 11/14/04 suggested that, because the claimant does not have a job, then he is not entitled to proceed with mulidisplinary therapeutics for the resolution of his pain generators is fundamentally flawed. Functional Capacity Evaluation performed on 7/20/04 revealed functional deficits that warranted transition to a multidisplinary program.

It is likely, despite the claimant not having a current job, that he will return to general industry in a capacity similar to his previous position. It is essential to allow this claimant the ability to eliminate current functional deficits in a highly structured multidisplinary work hardening program over a 20 session duration.

There is insufficient clinical qualitative/quantative data to warrant any additional work hardening applications in the management of this claimant's condition beyond an initial 20 session trial.

In accordance with Commission Rule 102.4(h), I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to DWC via facsimile or U.S. Postal Service from the office of the IRO on this 19th day of September 2005.

Signature of IRO Employee:

Printed Name of IRO Employee: Denise Schroeder