

## MEDICAL DISPUTE RESOLUTION FINDINGS AND DECISION

### Retrospective Medical Necessity Dispute

#### PART I: GENERAL INFORMATION

<b>Type of Requestor:</b> (X) HCP ( ) IE ( ) IC	<b>Response Timely Filed?</b> (X) Yes ( ) No
<b>Requestor=s Name and Address</b>  <b>Gabriel Gutierrez, DC</b> <b>P.O. Box 229</b> <b>Katy, TX 77492-0229</b>	<b>MDR Tracking No.:</b> M5-05-2662-01
	<b>TWCC No.:</b>
	<b>Injured Employee's Name:</b>
<b>Respondent's Name and Address</b>  <b>ZNAT Insurance Company, Box 47</b>	<b>Date of Injury:</b>
	<b>Employer's Name:</b>
	<b>Insurance Carrier's No.:</b>

#### PART II: SUMMARY OF DISPUTE AND FINDINGS – MEDICAL NECESSITY ISSUES

Dates of Service		CPT Code(s) or Description	Did Requestor Prevail?
From	To		
7-23-04	10-6-04	CPT codes 99204, 99212, 99214, 97032, 97110, 97140-59, 97750-FC, 97545-WH-CA, 97546-WH-CA	<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.

On 7-12-05 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.

Regarding CPT code 99080-73 on 8-11-04 and 8-31-04: The carrier denied these services with a "V" for unnecessary medical treatment", however, the TWCC-73 is a required report per Rule 129.5 and is not subject to an IRO review. A referral will be made to Compliance and Practices for this violation. The Medical Review Division has jurisdiction in this matter. **Recommend reimbursement of \$30.00 (\$15.00 X 2 DOS).**

Regarding CPT code 90801 on 8-19-04: This service was denied by the carrier as "Preauthorization not obtained." The criteria for this CPT code states, "The psychiatrist interviews the patient in an initial diagnostic examination." Per Rule

134.600 only repeat psychiatric interviews require preauthorization. **Recommend reimbursement of \$128.00.**

CPT code 99215 on 8-19-04 was denied as "N – not documented." The requestor did not provide documentation or medical notes to support delivery of services per Rule 133.307(g)(3)(A-F). **Reimbursement is not recommended.**

**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 a refund of the IRO fee. The Division hereby **ORDERS** the insurance carrier to remit the amount of \$158.00, plus all accrued interest due at the time of payment to the Requestor within 20-days of receipt of this Order.

Findings and Decision by:

8-12-05

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
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**

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

July 29, 2005

Texas Workers' Compensation Commission  
Medical Dispute Resolution  
Fax: (512) 804-4868

Re: Medical Dispute Resolution  
MDR #: M5-05-2662-01  
TWCC#: \_\_\_\_\_  
Injured Employee: \_\_\_\_\_  
DOI: \_\_\_\_\_  
SS#: \_\_\_\_\_  
IRO Certificate No.: IRO 5055

Dear \_\_\_\_:

IRI has performed an independent review of the medical records of the above-named case to determine medical necessity. In performing this review, IRI reviewed relevant medical records, any documents provided by the parties referenced above, and any documentation and written information submitted in support of the dispute.

I am the Secretary and General Counsel of Independent Review, Inc. and I certify that the reviewing healthcare professional in this case has certified to our organization that there are no known conflicts of interest that exist between him and any of the treating physicians or other health care providers or any of the physicians or other health care providers who reviewed this case for determination prior to referral to the Independent Review Organization.

Information and medical records pertinent to this medical dispute were requested from the Requestor and every named provider of care, as well as from the Respondent. The independent review was performed by a matched peer with the treating health care provider. This case was reviewed by a physician who is licensed in chiropractic, and is currently on the TWCC Approved Doctor List.

Sincerely,

Gilbert Prud'homme  
General Counsel

GP:thh

**REVIEWER'S REPORT**  
**M5-05-2662-01**

---

**Information Provided for Review:**

TWCC-60, Table of Disputed Services, EOB's

Information provided by Requestor:

Correspondence

Office visits 08/20/04 – 09/20/04

Physical therapy notes 08/23/04 – 10/06/04

EMG report 11/14/02

FCE 08/18/04

Radiology reports 10/31/02 – 11/12/02

Information provided by Respondent:

Correspondence

Information provided by Pain Management Specialist:

Office notes 10/15/02 – 05/14/03

Operative report 01/25/03

Information provided by Psychologist:

Assessment 08/19/04

**Clinical History:**

This female patient underwent physical medicine treatments including work hardening after sustaining injury in a motor vehicle accident on \_\_\_\_.

**Disputed Services:**

Office visits, electrical stimulation, therapeutic exercises, manual therapy technique, physical performance testing and work hardening program during the period of 07/23/04 thru 10/06/04

**Decision:**

The reviewer agrees with the determination of the insurance carrier and is of the opinion that the treatment and services in dispute as stated above were not medically necessary in this case.

**Rationale:**

No treatment records were available for review during the time period immediately preceding the treatment in question. Therefore, it is unknown what kinds of therapies and/or treatments had been attempted, what was beneficial and what was not, and were the disputed treatments different or more of the same? Without medical treatment records that answer those questions, there is no support for the medical necessity of the 99204, 99212, 99214 office visits, 97032 electrical stimulation, 97110 therapeutic exercises, 97140 manual therapy technique, and 97750 physical performance test.

In regard to the work hardening program, the preamble of the Texas Workers Compensation Commission's amendments to rule 134.600 states: "Over-utilization of medical care can both endanger the health of injured workers and unnecessarily inflate system costs. Unnecessary and inappropriate health care does not benefit the injured employee or the workers' compensation system. Unnecessary treatment may place the injured worker at medical risk, cause loss of income, and may lead to a disability mindset. Unnecessary or inappropriate treatment can cause an acute or chronic condition to develop." 1 In its report to the legislature, the Research and Oversight Council on Texas Workers' Compensation explained its higher costs compared to other health care delivery systems by stating, "Additional differences between Texas workers' compensation and Texas group health systems also widen the cost gap. These differences include...in the case of workers' compensation, the inclusion of costly and questionable medical services (e.g., work hardening / conditioning)." 2 In this case, the provider's work hardening program is just the type of questionable services of which the TWCC and the legislature spoke when expressing concern in regard to medically unnecessary treatments that may place the injured worker at medical risk, create disability mindset, and unnecessarily inflate system costs.

Rehabilitative exercises may be performed in a clinic one-on-one, in a clinic in a group, at a gym or at home with the least costly of these options being a home program. A home exercise program is also preferable because the patient can perform them on a daily basis. On the most basic level, the provider has failed to establish why the services were required to be performed one-on-one or that multidisciplinary treatments were indicated when current medical literature states, "...there is no strong evidence for the effectiveness of supervised training as compared to home exercises. There is also no strong evidence for the effectiveness of multidisciplinary rehabilitation as compared to usual care." 3 The literature further states "...that there appears to be little scientific evidence for the effectiveness of multidisciplinary

---

1 26 Tex. Reg. 9874 (2001)

2 "Striking the Balance: An Analysis of the Cost and Quality of Medical Care in Texas Workers' Compensation System," Research and Oversight Council on Workers' Compensation, Report to the 77<sup>th</sup> Legislature, page 6.

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.

biopsychosocial rehabilitation compared with other rehabilitation facilities...”<sup>4</sup> And a systematic review of the literature for a multidisciplinary approach to chronic pain found only 2 controlled trials of approximately 100 patients with no difference found at 12-month and 24-

month follow-up when multidisciplinary team approach was compared with traditional care.<sup>5</sup>

The medical records also failed to substantiate that the disputed services fulfilled statutory requirements<sup>6</sup> for medical necessity. In fact, the records indicate that the patient obtained no relief, promotion of recovery was not accomplished and there was no enhancement of the employee’s ability to return to employment. Specifically, the patient’s pain rating was 6/10 on 08/27/04 near the beginning of the work hardening program and remained at 5/10 on 10/04/04 near the termination of the work hardening program. Moreover, patients should be formally assessed and re-assessed periodically to see if the patient is moving in a positive direction in order for the treatment to continue. In this case, the medical necessity of the work hardening program is unsupported since there is no documentation of objective or functional improvement in the patient’s condition.

---

<sup>4</sup> Karjalainen K, Malmivaara A, van Tulder M, Roine R, Jauhiainen M, Hurri H, Koes B. Multidisciplinary biopsychosocial rehabilitation for neck and shoulder pain among working age adults. *Cochrane Database Syst Rev.* 2003;(2):CD002194.

<sup>5</sup> Karjalainen K, et al. Multidisciplinary rehabilitation for fibromyalgia and musculoskeletal pain in working age adults. *Cochrane Database of Systematic Reviews* 2000;2.

<sup>6</sup> Texas Labor Code 408.021