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: Pain and Recovery Clinic % Bose Consulting, L. L. C. P. O. Box 550496 Houston, Texas 77255	MDR Tracking No.: M5-05-2761-01 Claim No.: Injured Employee's Name:
Respondent's Name and Address: TASB Risk Management Fund, Box 12	Date of Injury: Employer's Name: Insurance Carrier's No.:

PART II: REQUESTOR'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

Documents included TWCC 60 form, Explanations of Benefits, medical documentation and CMS 1500's. The position summary stated, "Necessary treatment."

PART III: RESPONDENT'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

The position summary stated, "Unnecessary treatment per peer review."

PART IV: SUMMARY OF DISPUTE AND FINDINGS

Date(s) of Service	CPT Code(s) or Description	Medically Necessary?	Additional Amount Due (if any)
8-9-04 – 11-18-04	CPT codes 99212, 99214, 97032, 97140, 97110, 97112, E1399, 97002	☐ Yes ☒ No	-0-

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 did **not** prevail on the disputed medical necessity issues.

Based on review of the disputed issues within the request, the 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 8–5-05 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 99191 on 8-26-04 was denied by the carrier as "F – code used is inconsistent with description of service rendered." Per the 2002 MFG the criteria for this code is "assembly and operation of pump with oxygenator or heat exchanger (with or without ECG and/or pressure monitoring)." The Daily Progress Notes provided by the requestor do not support delivery of services per Rule 133.307(g)(3)(A-F). Recommend no reimbursement.

CPT code 99080-73 on 9-27-04 was denied by the carrier with a "V" for unnecessary medical treatment based on a peer review; however, the TWCC-73 is a required report per Rule 129.5 and is not subject to an IRO review. The Medical Review Division has jurisdiction in this matter. Recommend reimbursement of $15.00.

PART VI: GENERAL PAYMENT POLICIES/REFERENCES IMPACTING DECISION

28 Texas Administrative Code Sec. 133.308, 129.5 and 133.307(g)(3)(A-F).

PART VII: DIVISION DECISION

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 reimbursement in the amount of $15.00. 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. The requestor is not entitled to a refund of the paid IRO fee.

Findings and Decision by:

	Donna Auby	9-19-05
Authorized Signature	Typed Name	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.

September 9, 2005

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

Re: Medical Dispute Resolution

MDR #:	M5-05-2761-01
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:dd

REVIEWER'S REPORT
M5-05-2761-01
___

Information Provided for Review:
TWCC-60, Table of Disputed Services, EOB's
Information provided by Requestor:
- Position Statement
- Office Notes 02/13/04 – 09/27/04
- PT Notes 05/06/04 – 11/18/04

Electrodiagnostic Eval 08/20/04
Radiology Report 03/09/04
Information provided by Respondent:
Designated Reviews
Pain Management
Office Notes 03/02/04 – 10/05/04
OR Report 04/14/04
Spine
Office Notes 06/17/04 – 08/19/04

Clinical History:
This diabetic claimant underwent extensive physical medicine treatments and ESI after injuring her lumbar spine on ___ when she bent over to put something in the refrigerator while at work.

Disputed Services:
Office visits – 99212/99214, electrical stimulation – 97032, manual therapy technique – 97140, therapeutic exercises – 97110, neuromuscular re-education – 97112, DME E1399 and physical therapy re-evaluation – 07002 not marked as "fee" from 08/09/04 through 11/18/04.

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

Rationale:
The provider's Bose Consulting, LLC report is completely without foundation. After outlining the history of treatments performed, it then repeats verbatim "boilerplate" language that has been submitted in multiple other MDRs. Therefore, it is not in any way specific to this case and is without any standing whatsoever. More importantly, it bordered on misrepresentation for Bose Consulting, LLC to detail the patient's positive response to treatment for dates that were completely outside the date range for this MDR. (See double bullets under heading IV., Item A. on page 2 of their undated report)

Physical medicine is an accepted part of a rehabilitation program following an injury. However, for medical necessity to be established, there must be an expectation of recovery or improvement within a reasonable and generally predictable time period. In addition, the frequency, type and duration of services must be reasonable and consistent with the standards of the health care community. General expectations include: (A) As time progresses, there should be an increase in the active regimen of care, a decrease in the passive regimen of care and a decline in the frequency of care. (B) Home care programs should be initiated near the beginning of care, include ongoing assessments of compliance and result in fading treatment frequency. (C) 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. (D) Supporting documentation for additional treatment must be furnished when exceptional factors or extenuating circumstances are present. (E) Evidence of objective functional improvement is essential to establish reasonableness and medical necessity of treatment.

Expectation of improvement in a patient's condition should be established based on success of treatment. Continued treatment is expected to improve the patient's condition and initiate restoration of function. If treatment does not produce the expected positive results, it is not reasonable to continue that course of treatment. In this case, there is no documentation of objective or functional improvement in this patient's condition and no evidence of a change of treatment plan to justify additional treatment in the absence of positive response to prior treatment.

The medical records submitted also failed to document that chiropractic spinal adjustments were performed at any time during the disputed time frame or before. According to the AHCPR[1] guidelines, spinal manipulation was the only recommended treatment that could relieve symptoms, increase function and hasten recovery for adults suffering from acute low back pain; the British Medical Journal [2] reported that spinal manipulation combined with exercise yielded the greatest benefit; and JMPT [3] reported that spinal manipulation may be the only treatment modality offering broad and significant long-term benefit for patients with chronic spinal pain syndromes. Based on those findings, this reviewer is perplexed why a doctor of chiropractic would withhold this recommended treatment while continuing to perform a host of other non-recommended therapies that had already been unsuccessful.

Based on CPT [4], there is no support for the medical necessity for the office visits on most every visit during an established – and unchanging – treatment plan.

Specifically in regard to 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 [5], "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.

While the designated doctor opined that further conservative treatment was indicated, he obviously did not have the opportunity to review the provider's medical records that clearly indicated that the disputed treatment had not fulfilled statutory requirements[6] for medical necessity. Specifically, the patient obtained no relief, promotion of recovery was not accomplished and there was not an enhancement of the employee's ability to return to or retain employment. In fact, the patient's verbal pain rating was 5/10 on 08/09/04 at the initiation of the disputed treatment, and remained at 5/10 on 10/20/04 near the termination of the disputed treatment.

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[1] 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.
[2] *UK Back pain Exercise And Manipulation (UK BEAM) randomised trial*:
Medical Research Council, British Medical Journal (online version) November 2004.
[3] Muller, R. Giles, G.F. J Manipulative Physiol Ther 2005;28:3-11.
[4] *CPT 2004: Physician's Current Procedural Terminology, Fourth Edition, Revised*. (American Medical Association, Chicago, IL 1999),
[5] HGSA Medicare Medical Policy Bulletin, Physical Therapy Rehabilitation Services, original policy effective date 04/01/1993 (Y-1B)
[6] Texas Labor Code 408.021