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 Town East Rehabilitation 1125 Town East Mall Mesquite, Texas 75150	MDR Tracking No.: M5-05-2780-01 TWCC No.: Injured Employee's Name:
Respondent's Name and Address Employers Insurance Company of Wausau Box 28	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**		
12-09-04	**12-09-04**	**99204**	☒ **Yes** ☐ **No**
12-15-04	**03-03-05**	**99213, 97001, 97110, 95851, and 99199**	☐ **Yes** ☒ **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 **majority** of disputed medical necessity issues. The amount of reimbursement due from the carrier for the medical necessity issues equals **$159.00** which the requestor billed.

CPT code 99080-73 dates of service 01-06-05 and 02-17-05 denied with denial code "U" (unnecessary medical without peer review). The carrier submitted re-audited explanation of benefits reflecting the services in dispute being paid via check number 11117170, therefore, these services are no longer in dispute and will not be part of the review.

PART IV: COMMISSION DECISION

Based upon the review of the disputed healthcare services, the Medical Review Division has determined that the requestor **is** entitled to reimbursement for the services involved in this dispute totaling $159.00. The requestor is not entitled to a refund of the paid IRO fee. The Division hereby **ORDERS** the insurance carrier to remit this amount and the appropriate amount for the services in dispute consistent with the applicable fee guidelines, 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:

		08-08-05
Authorized Signature		Date of Decision

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 in español acerca de ésta correspondencia, favor de llamar a 512-804-4812.

MEDICAL REVIEW OF TEXAS

[IRO #5259]
3402 Vanshire Drive Austin, Texas 78738
Phone: 512-402-1400 FAX: 512-402-1012

NOTICE OF INDEPENDENT REVIEW DETERMINATION

TWCC Case Number:	
MDR Tracking Number:	M5-05-2780-01
Name of Patient:	___
Name of URA/Payer:	Town East Rehabilitation
Name of Provider: (ER, Hospital, or Other Facility)	Town East Rehabilitation
Name of Physician: (Treating or Requesting)	Trenton D. Weeks, DC

July 28, 2005

An independent review of the above-referenced case has been completed by a chiropractic doctor. The appropriateness of setting and medical necessity of proposed or rendered services is determined by the application of medical screening criteria published by Texas Medical Foundation, or by the application of medical screening criteria and protocols formally established by practicing physicians. All available clinical information, the medical necessity guidelines and the special circumstances of said case was considered in making the determination.

The independent review determination and reasons for the determination, including the clinical basis for the

determination, is as follows:

See Attached Physician Determination

Medical Review of Texas (MRT) hereby certifies that the reviewing physician is on Texas Workers' Compensation Commission Approved Doctor List (ADL). Additionally, said physician has certified that no known conflicts of interest exist between him and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for determination prior to referral to MRT.

Sincerely,

Michael S. Lifshen, MD
Medical Director

cc: Texas Workers Compensation Commission

CLINICAL HISTORY
Documents Reviewed Included the Following:

1. Notification of IRO Assignment, Table of Disputed Services, Carrier EOBs
2. Position statement from treating doctor, dated 6/9/05
3. Required medical examination report, dated 11/19/04
4. MRI report, lumbar spine, dated 7/15/03
5. Arthrogram report of left shoulder, with contrast, dated 7/18/03
6. Copy of TWCC-53 form, approved on 11/18/04
7. Copies of CMS-1500 forms
8. Treating doctor examination notes and narratives, as well as "daily sign in sheets" and "physical therapy treatment notes," multiple dates
9. Designated doctor examination and report, dated 2/24/05
10. Copies of TWCC-73s

Patient is a 64-year-old motel maintenance worker who, on ____, injured his neck, lower back and left shoulder upon hoisting and lifting air conditioning units. He kept working despite the pain, but eventually had to submit to the pain and was referred by his employer to Concentra Medical Center. He treated with medications and physical therapy, and was deemed at clinical MMI on 8/6/03 with an 8% whole-person impairment initially by the then-treating doctor. On 10/16/03, he was seen by the initial designated doctor, and was awarded a 7% whole-person impairment, without a change in the date of MMI.

On 5/11/04, the initial treating doctor then recommended a work hardening program and in July of 2004, he received individual sessions of psychotherapy and six biofeedback sessions. By 11/10/04, he received a discharge examination for a chronic pain management program. On 11/17/04, he was returned to work with light-duty restrictions but reportedly had no job to return to due to a lay-off. Then on 11/18/04, he secured a change of treating doctor to a doctor of chiropractic. The doctor of chiropractic on 1/26/05 performed an additional impairment rating, and the patient was awarded a 24% whole-person impairment with the date of MMI backdated to 11/10/04. The patient was finally seen by a second designated doctor on 2/24/05 who awarded him a 5% whole-person impairment and provided an MMI date of same.

REQUESTED SERVICE(S)
New patient office visit, detailed (99204), physical therapy evaluation (97001), therapeutic exercises (97110), range of motion testing (95851), and unlisted special service (copying records, 193 pages, reported as 99199) for dates of service 12/9/04 through 3/3/05.

DECISION
The new patient detailed office visit (99204) is approved.

All remaining services and procedures are denied.

RATIONALE/BASIS FOR DECISION

In this case, the records adequately reflected that the patient secured a properly executed and signed TWCC-53, authorizing him to change to a doctor of chiropractic. Therefore, it was both medically necessary and appropriate that the new doctor take an appropriate case history, review the medical records that had been generated to date, and perform his own initial examination (99204).

However, in terms of the physical therapy evaluation (97001) performed on 1/31/05, the medical necessity of this service was unsupported because records demonstrate that the referral to therapy was made by the treating doctor of chiropractic who had just performed his own evaluation on the patient. Therefore, it would have been a duplication of services for a physical therapist to perform yet another evaluation before rendering services already ordered by the doctor of chiropractic.

Insofar as the therapeutic exercises (97110), Physical medicine treatment requires ongoing assessment of a patient's response to prior treatment and modification of treatment activities to effect additional gains in function. Continuation of an unchanging treatment plan, performance of activities that can be performed as a home exercise program and/or modalities that provide the same effects as those that can be self applied, are not indicated. In fact, services that do not require "hands-on care" or supervision by a health care provider are not considered medically necessary services *even if* the services were performed by the health care provider. Therapeutic 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. Even the designated doctor (report of 2/24/05) opined that a home exercise program would be beneficial for this patient in this case. But on the most basic level, the provider failed to establish why the continuing services were required to be performed one-on-one, particularly when current medical literature states, "…there is no strong evidence for the effectiveness of supervised training as compared to home exercises."1 And certainly after over 18 months of monitored instruction, the claimant should have certainly been able to perform the exercises on his own. In addition, any gains that were obtained during this time period would have likely been achieved through performance of a home program. Besides, even if the extensive one-on-one therapy had been medically necessary at some point in this patient's care, it would not have been needed for the duration of time in this case.

And finally, regarding the range of motion testing (95851) performed on 2/7/05, according to CPT2, this procedure is normally a component of an Evaluation and Management (E/M) service. The records clearly show that a 99213 E/M service was already performed and reported on this patient on 2/7/05, so – also according to CPT – absent specific medical rationale in the documentation necessitating the additional performance of a separate and distinct range of motion test, performing one was duplicative and therefore unsupported as medically necessary. In addition, CPT also requires that when this code is reported, a specific recording of the values achieved, along with a comparison to normal values, must be documented. Statements in the record such as "Range of motion is restricted at end range flexion and abduction in the left shoulder" and "The range of motion is severely guarded and limited in all planes of the lumbar spine" (direct quotes from the treating doctor's notes, dated 2/7/05) is insufficient documentation for the reporting of this service, *even had* its performance been medically necessary.

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1 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.
2 *CPT 2004: Physician's Current Procedural Terminology, Fourth Edition, Revised.* (American Medical Association, Chicago, IL 1999),