



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 & Recovery Clinic C/O Bose Consulting, LLC P O BOX 550496 Houston, Texas 77255	MDR Tracking No.: M5-05-2997-01
	Claim No.:
	Injured Employee's Name:
Respondent's Name and Address: Fidelity & Guaranty Insurance Box 19	Date of Injury:
	Employer's Name:
	Insurance Carrier's No.:

PART II: REQUESTOR'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

Pursuant to TWCC Rule 133.307 and TWCC Rule 133.308, find the requisite documentation to be filed with an Independent Review Organization for medical review.

PART III: RESPONDENT'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

Based upon reviews from Aaron Combs, M.D. and Ronald Devere, M.D., Carrier asserts that the healthcare services provided by Provider are not medically reasonable or necessary to cure or relieve the effect of the compensable injury.

PART IV: SUMMARY OF DISPUTE AND FINDINGS

Date(s) of Service	CPT Code(s) or Description	Medically Necessary?	Additional Amount Due (if any)
07-14-04 to 09-07-04	99212, 97032, 97140, 97110 and 97112	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$0.00

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 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 Medical Dispute Resolution.

Dates of service 03-29-04 through 07-08-04 per Rule 133.308(e)(1) were not timely filed and are not eligible for review.

On 08-09-05, 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.

Review of HCPCS code E1399 dates of service 07-20-04, 07-27-04, 08-02-04, 08-18-04 and 08-31-04 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.

PART VI: GENERAL PAYMENT POLICIES/REFERENCES IMPACTING DECISION

28 Texas Administrative Code Sec. 133.308

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 not entitled to additional reimbursement for the services involved in this dispute and is not entitled to a refund of the paid IRO fee.

Findings and Decision by:

09-14-05

Authorized Signature

Typed Name

Date of Findings and Decision

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.

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:	M5-05-2997-01
Name of Patient:	
Name of URA/Payer:	Pain & Recovery Clinic c/o Bose Consult.
Name of Provider: (ER, Hospital, or Other Facility)	Pain & Recovery Clinic
Name of Physician: (Treating or Requesting)	William Hicks, DC

September 9, 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

Available documentation received and included for review consists of initial and subsequent reports and treatment records from Dr. Garner (DC), physical therapy records, consulting doctors reports from Drs. Mark MacDonald (MD), Richard Francis, (MD), Andrew McKay, (MD). MRI reports (lumbar spine) 5/26/04, discogram 1/7/04, electrodiagnostic studies 4/22/04. Peer reviews Ronald De Vere (MD) and Aaron Combs, (MD).

Mr. ____, a 37-year-old male, injured his lower back on ____ while lifting a 50 pound battery onto a pallet. He was in a flexed, bent over position at the time. He subsequently underwent extensive conservative treatment, which included chiropractic care from August – October 2003, epidural steroid injections (September and October 2003). The patient resumed care on 2/13/04 and continued with care, including physical therapy, through at least September 2004. The patient was placed on a treatment regime consisting of manual therapy with adjunctive electrical stimulation, exercise therapy and neuromuscular reeducation.

Discogram of the lumbar spine on 1/7/04 revealed abnormal L4/5 and L5/S1 discograms with positive provocative testing responses

Electrodiagnostic studies on 4/22/04 revealed EMG evidence most consistent with lumbar radiculopathy predominantly affecting the right and left L5 nerve roots and to a lesser extent the right S1 nerve root, indicated by positive sharp waves and fibrillation potentials recorded in the bilateral L5 and S1 innervated musculature.

Mark MacDonald, M.D. evaluated the patient on 4/8/04. His impression was HNP L4-5 and L5-S1 with post traumatic internal disc derangement. His recommendation was surgical intervention with posterior instrumentation and fusion at L4-5 and L5-S1.

A pain management consult occurred on 4/7/04 with Andrew McKay, M.D. His impression was of lumbar discogenic pain with radiculopathy and failed conservative treatment. Recommendation was for orthopedic spine evaluation and EMG. Prescriptions for Ultracet, Naprosyn were given. Recommendations continue working light duty.

MRI of the lumbar spine was obtained on 5/26/04 and revealed disc desiccation at L4-5 and L5/S1 with broad posterior disc bulging both levels, more prominent at the midline of L5/S1 level, with mild neural foraminal narrowing.

Richard Francis, M.D. evaluated the patient on 4/24/04, 5/18/04, 6/1/04 and 6/8/04. He was not convinced that the patient was a surgical candidate, believing instead that weight loss and strengthening the abdominal/low back musculature would get rid of most pain. He believed that the MRI showed essentially normal discs with a central bulge at L5/S1. He believed that there should be emphasis on low back and abdominal strengthening, over two week period, followed by gym membership. He recommended return to work for eight hours per day, limiting heavy lifting to two hours per day as of 6/8/04.

REQUESTED SERVICE(S)

Medical necessity of therapeutic exercises (97110), electrical stimulation (97032), office visits (99212), manual therapy (97140), neuromuscular re-education (97112) for dates of service 7/14/04 through 9/7/04.

DECISION

Denied.

RATIONALE/BASIS FOR DECISION

The standard of medical necessity in Workers Comp, according to the Texas labor code 408.021 (entitlement to medical benefits) is that an employee who sustained a compensable injury is entitled to all healthcare reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to healthcare that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment.

Unfortunately, at a point some two years post injury, in order for a patient to be receiving care in such an ongoing, undeviating fashion, there needs to be some supporting evidence as to why this particular care is required and why the patient falls outside of the "average" expected care time frame that is usually attributed to such injuries. Eighty-five percent of mechanical pain patients are better in six weeks⁽³⁾, therefore less than 15% of patients should receive care which outlasts natural history. In order to receive care which is reimbursable, history and examination should identify and document risk factors defending further care necessity.

Unfortunately, in this case no progression / response / deviation to the program is indicated by the documentation to support continuing care and the disputed timeframe (July 14th 2004 – September 7, 2004). The last available assessment appears to be in June 2004, at which time the patient was being returned to work and by all accounts appeared to be relatively stable. I can appreciate perhaps the requirement for some monitoring in a transition period while the patient returns to work, however this should have been easily accomplished in the intervening period between 6/8/04 and 7/14/04.

The records for the disputed timeframe are repetitious, contain minimally clinically useful information and do not show significant progress / substantive change in treatment. Unfortunately this provides precious little clinical insight as to the patient's status, his progression or improvement/response to care. The supplied documentation and clinical record in this timeframe demonstrates a paucity of information in terms of reasonable outcome assessment measures, or of any level of descriptive, quantifiable objective data subsequently per date of encounter. The available records did not demonstrate any degree of objective improvement with care,

Any continuing care is not warranted unless justified by appropriate clinical evidence of deterioration from an established baseline with subsequent necessity determined by measuring standardized and objective standards of improvement demonstrating the requirement for continued, ongoing care.

Continuing (chiropractic) care appears to therefore be beyond accepted clinical standards and does not appear to satisfy any of the above three mandates of medical necessity, with no documented indication that continued care is providing any dramatic change to the clinical picture.

References:

1/ Hansen DT: Topics in Clinical Chiropractic, 1994, volume one, No. 4, December 1994, pp. 1-8 with the article "Back to Basics: Determining how much care to give and reporting patient progress".

2/ The U.S. Department of Health and Human Services Agency For Health-Care Policy and Research (AHCPR), publication No. 95-0643 entitled Acute Low Back Problems in Adults: Assessment and Treatment. This publication provides valuable information regarding appropriate and necessary initial assessment information, medical history, physical examination, pain behavior, initial care plan, special studies and diagnostic tests, and additional management considerations.

3/ Haldeman S., Chapman-Smith D, Peterson DM., eds. Guidelines for Chiropractic Quality Assurance and Practice Parameters, Aspen: Giathersburg, MD, 1993;

(a) Chapter 8, pp. 115-129.

(b) Frequency and duration of care.

4/ Shekelle PG, Adams AH, Chassin MR, et al: The Appropriateness of Spinal Manipulation for Low Back Pain, Indications and Ratings of a Multidisciplinary Expert Panel, Santa Monica, California: RAND; 1991

5/ Souza T: Differential Diagnosis for a Chiropractor: Protocols and Algorithms, 1997; chapter 1, pp. 3-25.

6/. Liebenson C. Commentary: Rehabilitation and chiropractic practice. JMPT 1996; 19(2):134140

7/ Québec Task Force on Spinal Disorders. Scientific approach to the assessment and management of activity-related spinal disorders: a monograph for clinicians. Spine. 1987;12:51-59.