



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

<b>Type of Requestor:</b> (X) Health Care Provider ( ) Injured Employee ( ) Insurance Carrier	
Requestor's Name and Address:	MDR Tracking No.: M5-05-3188-01
<b>First Rio Valley Medical, PA</b> <b>620 Paredes Line Road</b> <b>Brownsville TX 78521</b>	Claim No.:
	Injured Worker's Name:
Respondent's Name and Address:	Date of Injury:
<b>Texas Workers Compensation Solutions</b> <b>Box 19</b>	Employer's Name:
	Insurance Carrier's No.:

#### PART II: REQUESTOR'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

TWCC-60 package, EOBs, CMS-1500s. We are officially notifying the Commission that First Rio Valley Medical is requesting that the Division adjudicate the payment using the appropriate medical dispute resolution actions given the relevant statutory provisions and commission rules.

#### PART III: RESPONDENT'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

None submitted.

#### PART IV: SUMMARY OF DISPUTE AND FINDINGS

Date(s) of Service	CPT Code(s) or Description	Medically Necessary?	Additional Amount Due (if any)
1-5-04 and 1-7-04	99213, 97113, 97124	<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.

On 8-15-05, the requestor withdrew date of service 1-8-04.

#### PART VI: GENERAL PAYMENT POLICIES/REFERENCES IMPACTING DECISION

28 Texas Administrative Code Sec. 133.308, 134.202

#### 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:**

\_\_\_\_\_, Medical Dispute Officer

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

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

\_\_\_\_\_  
Date

#### **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.**

# IRO America Inc.

An Independent Review Organization

7626 Parkview Circle

Austin, TX 78731

Phone: 512-346-5040

Fax: 512-692-2924

Amended November 1, 2005

Amended October 18, 2005

October 6, 2005

TWCC Medical Dispute Resolution

Fax: (512) 804-4868

Patient:

TWCC #:

MDR Tracking #:

IRO #:

M5-05-3188-01

5251

IRO America Inc. (IRO America) has been certified by the Texas Department of Insurance as an Independent Review Organization. The TDI, Division of Workers' Compensation (DWC) has assigned this case to IRO America for independent review in accordance with TWCC Rule 133.308 which allows for medical dispute resolution by an IRO.

IRO America has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, all relevant medical records and documentation utilized to make the adverse determination, along with any documentation and written information submitted, was reviewed.

The independent review was performed by a matched peer with the treating doctor; the Reviewer is a credentialed Panel Member of IRO America's Medical Knowledge Panel who is a licensed Provider, board certified and specialized in Chiropractic Care. The reviewer is on the TWCC Approved Doctor List (ADL).

The IRO America Panel Member/Reviewer is a health care professional who has signed a certification statement stating that no known conflicts of interest exist between the Reviewer and any of the treating doctors or providers or any of the doctors or providers who reviewed the case for a determination prior to the referral to IRO America for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to the dispute.

## RECORDS REVIEWED

Notification of IRO assignment, information provided by Requestor, Respondent, and Treating Doctor(s) including:

1. Medical Dispute Resolution Request/Response.
2. Table of Disputed Services.
3. Explanation of Benefits, 1-5-04, 1-7-04, and 1-8-04.
4. Initial Evaluation (15 pages) from Robert Howell, D.C., 6-3-02.
5. Interim Assessment Report (24 pages) from Allen Sam, D.C., 11-18-02.
6. Consultation Notes, 3-4-03, 3-25-03, and 4-23-03.
7. Interim Report (2 pages) from Robert Howell, D.C., 12-23-03.
8. Notice of Pre-Authorization, 4-23-03.
9. Office Visits, 1-5-04, 1-7-04, and 1-15-04.
10. IMO Response, 3-30-04.
11. Final Request for Medical Dispute Resolution (2 pages) from Robert Howell, D.C., 8-22-05.
12. Chronological Order of Case Management Report (14 pages) from Robert Howell, D.C./Barbara Overton.

## CLINICAL HISTORY

The patient reported the onset of moderate left knee pain, marked right knee pain, moderate low back pain, moderate left elbow pain, and moderate bilateral arm pain occurring after a work related incident on \_\_\_\_\_. The patient worked in food service for the \_\_\_\_\_.

The patient was initially evaluated by Robert Howell, D.C. on 6-3-02. The initial report was 15 pages long. Symptoms apparently began after attempting to prevent 12 cookie sheets from falling. Low back pain increased over the course of a few hours and neck and mid back pain increased over the next 24 hours. She ingested some Celebrex that she had from a previous injury. Provocative activities included standing for more than 30 minutes, walking for more than 30 minutes, bending at the waist, occasional lifting, sitting for more than 30 minutes, getting dressed in the morning, brushing her teeth, performing recreational activities, driving for more than 30 minutes, performing household tasks, and getting in and out of her vehicle. Reflexes were normal. 4+/5 strength was noted in her upper and lower extremities, cervical region and lumbar region. Right grip testing was 23 pounds and left grip testing was 25 pounds. Tenderness was noted in the cervical region, lumbar region, hip region, shoulder region, elbow region, and knee region. Multiple cervical, lumbar, shoulder, knee and elbow orthopedic tests were noted to be positive. Cervical range motion was restricted in all planes. Right elbow range motion was restricted with flexion and pronation. Knee range of motion was restricted with flexion and extension. Lumbar range motion was restricted with flexion, extension, right lateral flexion, and left lateral flexion. Shoulder range of motion revealed restrictions with flexion, abduction, external rotation, and internal rotation. Oswestry questionnaire was 62% and Neck Disability Index was 48%. Cervical x-ray demonstrated pre-existing degeneration including disc space narrowing, osteophytes, and foraminal encroachment at multiple levels. Lumbar x-ray demonstrated moderate to severe intervertebral disc space narrowing at L5-S1, mild to moderate intervertebral disc space narrowing at L4-5, anterolisthesis at L4-L5, degenerative joint disease anteriorly at L1, L4, and L5, and foraminal encroachment at the L5-S1 level. These x-rays were read by Dr. Howell. Impression was acute sprain/strain to the cervical spine, thoracic spine, lumbar spine, and extremities. Initial treatment included massage, phonophoresis, whirlpool, mobilization, and aquatic therapy.

The documentation did not include any of the treatment provided between 6-4-02 and 11-17-02, nearly 5 1/2 months.

The next piece of documentation included a 24 page Interim Assessment Report by Allen Sam, D.C. dated 11-18-02. Again, this is nearly 5 1/2 months after the initial evaluation. This report indicated the patient underwent left knee surgery on 6-14-02. No additional specifics were included in the documentation provided. This report also mentioned previous left knee surgery in August of 1999. Again, no additional specifics were included in the documentation provided. The patient reported ongoing right knee pain and ongoing moderate low back pain with radiation into the right leg. Provocative activities included standing for more than one hour, walking for more than one hour, bending at the waist, occasional lifting, sitting for more than one hour, getting in and out of her vehicle, driving for more than 60 minutes, brushing her teeth, getting dressed in the morning, working in the yard or garden, performing recreational activities, and performing household tasks. The patient was taking Celebrex, Ultracet, and Norvas. Regarding the lumbar region, there was continued weakness with hip flexion, extension, abduction, and adduction; muscle testing was noted to be weak and painful in the lumbar musculature; palpation elicited tenderness in the lumbar and hip musculature; and positive orthopedic tests included Kemp's, Nachlas, Ely's, Yeoman's, and SLR. Lumbar flexion was 50°, extension 15°, right lateral flexion 20°, and left lateral flexion 20°. Oswestry questionnaire was 28%. Treatment recommendation included additional massage, aquatic therapy, and therapeutic exercise.

According to the "Chronological" report, the patient was discharged on 12-23-02 and did not seek additional treatment for 2 1/2 months when she re-presented on 3-4-03 complaining of low back pain.

The next piece of documentation was a Consultation Note dated 3-4-03, nearly 4 months after the last documented evaluation. The patient reported frequent and moderate low back pain rated 6/10. The patient denied any interim accidents. Kemp's and Yeoman's were positive. There was moderate tenderness in the lumbar region. Lumbar flexion was 55°, extension 16°, left lateral flexion 20°, and right lateral flexion 20°.

The next piece of documentation was a Consultation Note dated 3-25-03. The patient reported "continued" moderate and frequent low back pain rated 5/10. Orthopedic evaluation was unchanged. Lumbar flexion was 55°, extension 18°, left lateral flexion 20°, and right lateral flexion 20°.

The next piece of documentation was a Consultation Note dated 4-23-03. The patient reported "continued" pain in her low back. Her overall pain was 5/10. Lumbar flexion was 56°, extension 20°, left lateral flexion 22°, and right lateral flexion 22°. Treatment plan included one hour of aquatic therapy, additional massage therapy, stretching, and whirlpool.

There was an eight-month gap in documentation between 4-24-03 and 12-22-03.

The patient re-presented to Dr. Howell again on 12-23-03. The patient reported increased low back pain due to the "cold weather". Dr. Howell called this a re-exacerbation. She specifically denied any interim accidents. Numerical pain scale was 7/10.

Pain was moderate and frequent. Mild sensory deficit was noted in both of her lower extremities in the L5 dermatome. Positive orthopedic tests included Kemp's and Valsalva's. Lumbar flexion was 30°, extension 15°, left lateral flexion 15°, and right lateral flexion 15°. Treatment plan included 1 1/2 hours of aquatic therapy.

Office visit dated 1-5-04 demonstrated moderate, constant low back soreness. Numerical pain scale was 6/10. Provocative activities include bathing, putting on her socks, getting dressed, sweeping the floor, and cleaning the bathroom. Lumbar flexion was 50°, extension 20°, left lateral flexion 20°, and right lateral flexion 20 degrees. Dr. Howell's report indicated the patient's injury classification was a "re-exacerbation." He then lists recommended acute-care guidelines (Texas Chiropractic Quality Assurance Guidelines, North American Spine Society, and Spine Treatment Guidelines). Treatment plan included massage and 1 1/2 hours of aquatic therapy. The patient was treated with massage therapy and aquatic therapy from 1-5-04 through 1-15-04. According to the Explanation of Benefits, billing included E&M, two units of massage, and six units of aquatic therapy.

The documentation also included Dr. Howell's Chronological Case Management report. This report included some references regarding the uncomplicated case, the initial phase of care, medical rationale for massage, and therapeutic benefits of aquatic therapy. The provider also indicated land-based therapy was not appropriate for this patient because "her subjective pain was higher than expected and combined with the amount of muscle spasms in her lumbar spine. Also, her range of motion was not adequate enough in her lumbar spine."

### **DISPUTED SERVICE(S)**

Under dispute is the retrospective medical necessity of aquatic therapy, office visits, massage for the dates 1/5/04 thru 1/7/04.

### **DETERMINATION/DECISION**

The Reviewer agrees with the determination of the insurance carrier.

### **RATIONALE/BASIS FOR THE DECISION**

According to the Mercy Guidelines, the uncomplicated sprain/strain injury is expected to improve significantly within 6-8 weeks with or without treatment. This patient sustained a lumbar sprain/strain injury complicated by a pre-existing degenerative spine including "disc space narrowing, osteophytes, and anterolisthesis." Additionally, other delayed recovery factors existed. For this reason, a more protracted course of care beyond the typical 6-8 weeks was certainly reasonable in this case.

The treatment in question was performed on 1-5-04 and 1-7-04, \_\_\_ months after the initial injury. The patient previously participated in a great deal of supervised treatment to include a plethora of passive interventions and an exorbitant amount of one-on-one based therapeutic exercise. At no point was it specifically indicated that the patient was given a home exercise program. In the Reviewer's medical opinion, the treatment performed on 1-5-04 and 1-7-04 was not reasonable or necessary.

Again, the patient previously participated in a great deal of supervised treatment. The documentation does not indicate the patient was discharged from care independent with a home exercise program. In fact, the treatment plan emphasized aquatic therapy. For this reason, the patient was dependent upon the chiropractor for each "re-exacerbation" of symptoms. Aquatic therapy is only indicated when there is specific weight-bearing intolerance with such diagnoses as hip replacement and knee replacement and some neurologic diagnoses. Even with such diagnoses, the patient should be eventually transitioned into a land-based program within 6-8 weeks. Dr. Howell indicated the patient was "not an appropriate candidate" for land-based therapy due to her subjective pain, amount of muscle spasms, and decreased range of motion. This statement is illogical and not supported by the documentation reviewed. In other words, this is not sufficient to establish medical necessity of aquatic therapy. Dr. Howell's documentation specifically indicates the patient was experiencing "moderate" low back pain. There was no mention of the degree of muscle spasms. And the patient's range motion was only moderately restricted. A land-based program would have been far superior to the aquatic program because it can easily be performed at home and performed on a daily basis. Additionally, most spinal conditions actually therapeutically benefit from loading activities. The reviewer believes the documentation does not support the necessity of aquatic therapy.

The documentation specifically indicated the patient reported "continued" low back pain on multiple occasions. Increased back pain due to "cold weather" does not constitute an exacerbation. In fact, the patient specifically indicated on numerous occasions that she "denied" any interim events or trauma. This patient obviously had continued low back pain. For this reason, acute-care guidelines cannot be applied in this case. Acute-care is defined as pain complaints < 2-4 weeks, depending upon the source. Passive modalities such as massage are only indicated in the initial phase of care and cannot be supported nearly 2 years after the onset of symptoms. Furthermore, the Philadelphia Panel of Physical Therapy found insufficient medical evidence to support passive procedures in the treatment of chronic low back pain. In fact, there is "good" scientific evidence of no therapeutic benefit.

The report of increased low back pain with “cold weather” is more consistent with a degenerative disease of life. The x-ray findings clearly demonstrate pre-existing spinal degeneration. In all medical probability, the patient's “continued” back pain is related to a degenerative process of life and not directly related to the work event in question.

There is no documentation demonstrating the patient was prescribed an independent land-based home program. Self-management is a critical element and therefore a strong home-based exercise program is essential to secure long-term benefits of treatment and reduce reoccurrence rates. Again, the chiropractor emphasized aquatic therapy, thus fostered in-office dependency.

To the Reviewer’s knowledge, there is no well accepted medical guideline to support aquatic therapy and passive care 20 months after the onset of symptoms following a lumbar sprain/strain. The ACOEM guidelines specifically indicate patients should avail themselves of such in-office treatment. The guidelines also recognize a variety of factors shown to delay functional recovery including excessive and inappropriate use of passive procedures and excessive in-office therapeutic exercise. Excessive treatment creates a belief that the patient is truly disabled and a belief that they “require” additional treatment.

The importance of an independent home program is clearly supported by a 1999 Volvo award study by Mannion et al. The subjects in this study reported low back pain and were discharged after 24 sessions with instructions to continue an independent home program. Improvements in regard to pain intensity, pain frequency, disability, and fear-avoids beliefs were “maintained” over the subsequent six months after discharge. This study demonstrates the importance of in-office care followed by an independent home program as opposed to creating in-office treatment dependency by emphasizing a program that could not be easily performed at home such as aquatic therapy.

The patient’s physical, functional, and symptomatic status today is virtually no different than it was on 11-18-02. The reviewer believes the documentation indicates the chiropractic treatment performed has not resulted in lasting therapeutic benefit.

#### **Screening Criteria**

1. Specific:

Mercy Guidelines

ACOEM

2. General:

In making his determination, the Reviewer had reviewed medically acceptable screening criteria relevant to the case, which may include but is not limited to any of the following: Evidence Based Medicine Guidelines (Helsinki, Finland); Texas Medical Foundation: Screening Criteria Manual (Austin, Texas); Texas Chiropractic Association: Texas Guidelines to Quality Assurance (Austin Texas); Texas Medical Foundation: Screening Criteria Manual (Austin, Texas); Mercy Center Guidelines of Quality Assurance; any and all guidelines issued by TWCC or other State of Texas Agencies; standards contained in Medicare Coverage Database; ACOEM Guidelines; peer-reviewed literate and scientific studies that meet nationally recognized standards; standard references compendia; and findings; studies conducted under the auspices of federal government agencies and research institutes; the findings of any national board recognized by the National Institutes of Health; peer reviewed abstracts submitted for presentation at major medical associates meetings; any other recognized authorities and systems of evaluation that are relevant.

#### **CERTIFICATION BY OFFICER**

IRO America has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. IRO America has made no determinations regarding benefits available under the injured employee’s policy.

As an officer of IRO America Inc., I certify that there is no known conflict between the Reviewer, IRO America and/or any officer/employee of the IRO with any person or entity that is a party to the dispute.

IRO America is forwarding by mail or facsimile, a copy of this finding to the TWCC, the Injured Employee, the Respondent, the Requestor, and the Treating Doctor.

Sincerely,

**IRO America Inc.**



Dr. Roger Glenn Brown

**President & Chief Resolutions Officer**