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:	MDR Tracking No.: M5-05-3262-01
David M. Griffith, DC 30525 Quinn Brace #A Tomball, TX 77375	Claim No.: Injured Employee's Name:
Respondent's Name and Address: TX Workers Compensation Sol, Box 19	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. Position summary stated, "Physical Therapy recommended by both orthopedic and pain management physicians. Treatment was delayed 4 ½ months due to the severity of his injury. Patient had complications which slowed his recovery but treatment allowed him to overcome it."

PART III: RESPONDENT'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

No position summary was received.

PART IV: SUMMARY OF DISPUTE AND FINDINGS - Medical Necessity Services

Date(s) of Service	CPT Code(s) or Description	Medically Necessary?	Additional Amount Due (if any)
9-24-04 – 4-29-05	CPT codes 99212, 99213, 99214, 97110, 97112, 97140, 97032	☐ 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 9-14-05 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 99213 on 3-16-05: Neither the carrier nor the requestor provided EOB's. Per Rule 133.307 (e)(2)(A) the requestor did not submit a copy of all medical bills as originally submitted to the carrier for reconsideration in accordance with 133.304. Recommend no reimbursement.

The carrier denied CPT code 99080-73 on 9-24-04, 11-9-04, 11-19-04, 12-13-04, 12-27-04, 1-10-05, 1-24-05, 2-21-05, `3-7-05, 3-14-05 and 4-25-05 as "50 - These are non-covered services because this is not deemed a medical necessity by the payer."; 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 $165.00 ($15.00 X 11 DOS).

PART VI: GENERAL PAYMENT POLICIES/REFERENCES IMPACTING DECISION

28 Texas Administrative Code Sec. 133.307, 133.308 and Rule 134.202(c)(1).

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 a refund of the paid IRO fee. The Division has determined that the requestor is entitled to reimbursement in the amount of $165.00. 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.

Findings and Decision and Order by:

		10-11-05
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 30, 2005

TX DEPT OF INS DIV OF WC
WORKERS COMPENSATION DIVISION
AUSTIN, TX 78744-1609

CLAIMANT: ___
EMPLOYEE: ___
POLICY: M5-05-3262-01
CLIENT TRACKING NUMBER: M5-05-3262-01/5278

AMMENDED REVIEW 11/10/05

Medical Review Institute of America (MRIoA) has been certified by the Texas Department of Insurance as an Independent Review Organization (IRO). The Texas Department of Insurance Workers Compensation Commission has assigned the above mentioned case to MRIoA for independent review in accordance with DWC Rule 133 which provides for medical dispute resolution by an IRO.

MRIoA has performed an independent review of the case in question 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. Itemization of this information will follow.

The independent review was performed by a peer of the treating provider for this patient. The reviewer in this case is on the DWC approved doctor list (ADL). The reviewing provider has no known conflicts of interest between that provider and the injured employee, the injured employee's employer, the injured employee's insurance carrier, the utilization review agent, or any of the treating doctors or insurance carrier health care providers who reviewed the case for decision before referral to the IRO.

Records Received:
Records from the State:
Notification of IRO Assignment, 9/13/05
Notice of Request for Medical Dispute Resolution, 9/13/05
Medical Dispute Resolution Request/Response form, 8/16/05
List of Providers
Table of Disputed Services
Explanation of Benefits

Records from Dr. Griffith
Medical Dispute Resolution Request/Response form, 8/16/05
List of Providers
Table of Disputed Services
Letter of Clarification, David Griffith, DC, 3/7/05
Initial Evaluation, 6/7/04
Follow Up Evaluations/Office Notes, 6/9/04, 6/29/04, 7/30/04, 8/13/04, 10/15/04, 10/26/04, 11/9/04, 11/12/04, 11/19/04, 11/29/04, 12/13/04, 12/15/04, 12/27/04, 1/10/05, 1/24/05, 2/3/05, 2/9/05, 2/15/05, 4/13/05, 4/25/05
Electrodiagnostic Consultation, 6/22/04
Radiology reports, 6/4/04, 8/2/04, 12/10/04
FCE Reports from TREK Mobile Diagnostics, 9/14/04, 1/13/05, 3/24/05, 4/28/05
Initial Office Consultation, San Antonio Orthopaedic Group, Sanjay Misra, MD, 6/17/04
Office notes, Sanjay Misra, MD, 8/12/04, 9/23/04
Prescription for PT, 8/12/04
Referral, 9/23/04
Consultation, Lawrence Lenderman, MD, 9/27/04
Office notes, Lawrence Lenderman, MD, 10/29/04, 1/7/05
MRI report, 10/22/04
Office note
Sadi/Pain Management Center, office and procedure notes, 6/30/04, 7/22/04, 8/2/04, 8/11/04, 11/19/04, 1/6/05, 1/13/05, 2/14/05, 3/15/05, 4/11/05, 4/18/05,
Evaluations, St. Mary's Behavioral Pain Mgmt, 1/3/05, 3/21/05
Work Hardening Assessment, St. Mary's Behavioral Pain Mgmt, 6/4/04
Daily notes, Pain & Recovery Clinic of San Antonio, 6/7/04 – 4/25/05

Summary of Treatment/Case History:
Patient underwent extensive physical medicine treatments and ESI after sustaining injury at work on ___ when he fell 15 feet from a ladder landing on his right side.

Questions for Review:

1. Were the office visits (#99212, #99213 and #99214), therapeutic exercises (#97110), neuromuscular reeducation (#97112), manual therapy technique (#97140), and electrical stimulation manual (#97032) - not marked as "fee" items - medically necessary to treat this patient's injury?

Explanation of Findings:
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) Home care programs should be initiated near the beginning of care, include ongoing assessments of compliance and result in fading treatment frequency. (B) 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. (C) 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 records also fail to substantiate that the disputed services fulfilled statutory requirements (ref. 1) for medical necessity since the patient obtained no relief, promotion of recovery was not accomplished and there was no enhancement of the employee's ability to return to or retain employment. In fact, the claimant's lumbar ranges of motion did not improve from the examinations performed on 01/13/05 to 04/28/05. Moreover, the patient's pain rating was 5/10 on 11/01/04 (near the initiation of the disputed treatment) and remained at 5/10 on 05/04/05 (shortly after the termination of the disputed treatment.)

Specifically in regard to the office visits and based on CPT (ref. 2), there is no support for the medical necessity for the high level of E/M service (#99212, #99213 and #99214) on most every visit during an established treatment plan.

Specifically in regard to manual therapy technique (#97140), it is unclear precisely what was performed under the umbrella of services represented by this code. Again, according to CPT (ref. 2), this service might represent manual traction, joint mobilization, myofascial release, or a number of other services. Therefore, it is incumbent upon the provider to specify which specific service was performed when this code is reported. Since the records were devoid of any mention of the particular service that was provided on any of the various dates of service that #97140 appeared, its medical necessity is without support.

Specifically in regard to the therapeutic exercises (#97110), active therapy can 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 continuing services were required to be performed one-on-one when current medical literature states, "…there is no strong evidence for the effectiveness of supervised training as compared to home exercises." (ref. 3)

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 (ref. 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.

Conclusion/Decision to Not Certify:

1. Were the office visits (#99212, #99213 and #99214), therapeutic exercises (#97110), neuromuscular reeducation (#97112), manual therapy technique (#97140), and electrical stimulation manual (#97032) - not marked as "fee" items - medically necessary to treat this patient's injury?

No. The office visits (#99212, #99213 and #99214), therapeutic exercises (#97110), neuromuscular reeducation (#97112), manual therapy technique (#97140), and electrical stimulation manual (#97032), were not medically necessary to treat this patient's injury.

References Used in Support of Decision:

1. Texas Labor Code 408.021
2. *CPT 2004: Physician's Current Procedural Terminology, Fourth Edition, Revised.* (American Medical Association, Chicago, IL 1999),
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.
4. HGSA Medicare Medical Policy Bulletin, Physical Therapy Rehabilitation Services, original policy effective date 04/01/1993 (Y-1B)

This review was provided by a chiropractor who is licensed in Texas, certified by the National Board of Chiropractic Examiners, is a member of the American Chiropractic Association and has several years of licensing board experience. This reviewer has written numerous publications and given several presentations with their field of specialty. This reviewer has been in continuous active practice for over twenty-five years.

MRIoA is forwarding this decision by mail, and in the case of time sensitive matters by facsimile, a copy of this finding to the treating provider, payor and/or URA, patient and DWC.

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