



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: Richard Stephenson, D.C. 322 N. Main Street Bryan, Texas 77803	MDR Tracking No.: M5-05-3307-01
	Claim No.:
	Injured Employee's Name:
Respondent's Name and Address: Liberty Insurance Corporation Box 28	Date of Injury:
	Employer's Name:
	Insurance Carrier's No.:

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

DOCUMENTATION SUBMITTED: DWC-60 package

POSITION SUMMARY: The carrier has not paid these claims due to a peer review which was based on the diagnosis of this patient having a simple lumbosacral sprain/strain with radiculitis but this patient had positive MRI findings along with documentation of radicular symptoms from other doctors past the eight week time window for a simple sprain/strain.

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

DOCUMENTATION SUBMITTED: Response to DWC-60

POSITION SUMMARY: No position summary submitted by Respondent

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

Date(s) of Service	CPT Code(s) or Description	Medically Necessary?	Additional Amount Due (if any)
01-11-05 to 04-11-05	97035, 99213, 97530, 97124, 97032, 97012, 97116 and 97024	<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 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 09-22-05, 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 99080-73 date of service 03-09-05 denied with denial code "V" (based on peer review further treatment is not recommended). The IRO reviewer concluded that the office visit (99213) on date of service 03-09-05 was not medically necessary. Based on Rule 133.308(p)(5) An IRO decision is deemed to be a commission decision and order, therefore no reimbursement is recommended for code 99080-73 either.

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

28 Texas Administrative Code Sec. 133.308, Rule 133.308(p)(5)

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

Findings and Decision by:

12-19-05

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

\_\_\_\_\_  
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.**



CompPartners Final Report.



CompPartners Peer Review Network  
Physician Review Recommendation  
Prepared for TDI/DWC

**Claimant Name:** \_\_\_\_\_  
**Texas IRO # :** \_\_\_\_\_  
**MDR #:** M5-05-3307-01  
**Social Security #:** \_\_\_\_\_  
**Treating Provider:** Richard Stephenson  
**Review:** Chart  
**State:** TX  
**Date Assigned:** 9/27/05  
**Amended Date:** 12/13/05

**Review Data:**

- Shipment Tracking Report dated 9/27/05, 2 pages.
- Notification of IRO Assignment dated 9/21/05, 1 page.
- Fax Cover Sheet dated 9/21/05, 1 page.
- Receipt of Request dated 9/21/05, 1 page.
- Medical Dispute Resolution Request dated 8/22/05, 1 page.
- List of Treating Doctors (date unspecified), 1 page.
- Table of Disputed Services dated 4/11/05, 4/8/05, 4/6/05, 4/1/05, 3/30/05, 3/28/05, 3/25/05, 3/23/05, 3/21/05, 3/16/05, 3/14/05, 3/11/05, 3/9/05, 3/4/05, 3/2/05, 2/28/05, 2/23/05, 2/21/05, 2/18/05, 2/16/05, 2/11/05, 2/9/05, 2/7/05, 2/4/05, 2/1/05, 1/24/05, 1/21/05, 1/19/05, 1/17/05, 1/11/05, 8 pages.
- Insurance Paid Services Reports dated 4/8/05, 4/6/05, 4/1/05, 3/30/05, 3/28/05, 3/25/05, 3/23/05, 3/21/05, 3/16/05, 3/14/05, 3/11/05, 3/9/05, 3/4/05, 3/2/05, 2/28/05, 2/23/05, 2/21/05, 2/18/05, 2/16/05, 2/11/05, 2/9/05, 2/7/05, 2/4/05, 2/1/05, 1/24/05, 1/21/05, 1/19/05, 1/17/05, 1/11/05. 29 pages.
- Operative Report dated 1/12/05, 2 pages.
- Physical Medicine Consultation Follow-up Visit dated 1/20/05, 1/4/05, 2 pages.
- Fax Cover Sheet dated 9/22/05, 1 page.
- Office Visit dated 4/22/05, 1 page.
- Request Received dated 3/23/05, 2 pages.
- Physical Medicine Consultation Follow-up Visit dated 1/4/05, 1 page.
- Physical Medicine Consultation dated 12/2/04, 2 pages.
- Functional Capacity Evaluation dated 2/22/05, 1 page.
- Functional Test Results dated 2/22/05, 6 pages.
- Lumbar Spine MRI dated 11/12/04, 2 pages.
- Disagreement with Impairment Rating dated 4/27/05, 1 page.
- Report of Medical Evaluation dated 4/8/05, 4/13/05, 6 pages.
- Review of Medical History and Physical Exam dated 4/8/05, 3 pages.
- Nerve Conduction Study dated 2/2/05, 11 pages.
- Initial Medical Narrative Report dated 11/10/04, 4 pages.
- Employee's Request to Change Treating Doctors dated 10/25/04, 1 page.
- Progress Notes dated 7/1/05, 5/13/05, 5/11/05, 5/9/05, 5/2/05, 4/27/05, 4/25/05, 4/15/05, 4/13/05, 4/11/05, 4/8/05, 4/6/05, 4/4/05, 4/1/05, 3/30/05, 3/28/05, 3/25/05, 3/23/05, 3/21/05, 3/17/05, 3/14/05, 3/11/05, 3/9/05, 3/4/05, 3/2/05, 2/28/05, 2/23/05, 2/21/05, 2/18/05, 2/16/05, 2/14/05, 2/11/05, 2/9/05, 2/7/05, 2/4/05, 2/2/05, 2/1/05, 1/28/05, 1/26/05, 1/11/05, 1/10/05, 1/7/05, 1/3/05, 12/31/04, 12/29/04, 12/27/04, 12/20/04, 12/17/04, 12/16/04, 12/13/04, 12/10/04, 12/6/04, 12/3/04, 12/1/04, 11/29/04, 11/24/04, 11/23/04, 11/22/04, 11/19/04, 11/17/04, 11/15/04, 11/12/04, 11/11/04, 1/24/04, 1/21/04, 1/19/04, 1/17/04, 34 pages.

- **Texas Workers' Compensation Work Status Report** dated 5/2/05, 4/15/05, 3/28/05, 3/16/05, 3/9/05, 2/28/05, 2/9/05, 12/31/04, 12/13/04, 11/29/04, 11/15/04, 11/10/04, 12 pages.
- **Exam Sheet** dated 11/10/04, 4 pages.

**Reason for Assignment by TDI/DWC:** Determine the appropriateness of the previously denied 1) Ultrasound, 2) Therapeutic activities, 3) Massage therapy, 4) Electrical stimulation, 5, Mechanical traction, 6) Gait training, 7) Diathermy and 8) Office visits (99213) with dates of service from 1/11/05 to 4/11/05.

**Determination: UPHELD** - previously denied 1) Ultrasound, 2) Therapeutic activities, 3) Massage therapy, 4) Electrical stimulation, 5, Mechanical traction, 6) Gait training, 7) Diathermy and 8) Office visits (99213) with dates of service from 1/11/05 to 4/11/05.

**Rationale:**

**Injured worker's age:**

**Gender:**

**Date of injury:** \_\_\_\_

**Mechanism of injury:** Injured on the job when she was working as a cook, picked up a big pot filled with spaghetti.

**Diagnoses:** Lumbosacral sprain strain, right lower extremity radiculitis myositis, myalgia

This patient is a female who weighs 270 pounds and is five feet and six inches tall and right hand dominant. She was initially being treated by Dr. Welch and Dr. Allen whose specialties were not provided. The patient then changed her treating doctor to a chiropractor Dr. Richard Stephenson, on 11/4/04. She underwent 23 chiropractic sessions from 11/4/04 to 1/10/05, then another 35 visits from 1/22/05 to 4/11/05, for a total of 58 chiropractic sessions up to 4/11/05.

The patient had a MRI of the lumbar spine, performed on 11/12/04, which revealed L4-5 diffuse disc bulging and some bilateral facet arthrosis, resulting in mild canal stenosis and bilateral neural foraminal narrowing without herniated nucleus pulposus(HNP), as well as L5-S1 diffuse disc bulging and osteophyte complex resulting in left neural foraminal narrowing without significant canal stenosis or HNP, the anterior aspect of the inferior endplate of T4 vertebral body had decreased signal, most likely due to acute or sub acute injury of the T4 vertebral body endplate.

The physical medicine consults with Dr. Opersteny, on 12/2/04, indicated subjective complaints of low back pain with radiating right hip pain. He noted a positive straight leg raising at 90 degrees on the right and a Patrick's maneuver, which was positive. He noted decreased light touch in the right foot in a non-anatomic, stocking-glove distribution.

The patient had a consultation with orthopedic specialist, Dr. Opersteny, and on 1/4/05, had trigger point injections, which did not relieve her pain, and on 1/12/05 he did a lumbar ESI, which did not relieve her pain.

There was a nerve conduction latency study performed on 2/2/05, by Dr. Stephenson, DC, which was interpreted as "impingement of the left deep peroneal motor nerve and left sural sensory nerve."

There was a Functional Capacity Evaluation (FCE) performed on 2/22/05, in which she was determined to be functioning at a light duty capacity for a medium duty job demand level, as interpreted by Kelli Thornton, PT. This examination from Mr. Thornton also revealed lumbar range of motion as flexion 18 degrees, extension 10 degrees, and side bending was 10 degrees bilaterally, all with pain.

Manual muscle testing, on that date, revealed hip flexors on the right and left to be 3/5, 4+ on left ankle dorsiflexors, 4+ on the right knee flexor, shoulder external rotation was 4 bilaterally, shoulder internal rotation was 4 bilaterally, and shoulder flexors were 4+ on the right. Straight leg raising was 18 degrees on the right, and 25 degrees on the left, with positive dural tension test.

The patient had a designated doctor examination on 4/13/05 by John Kirkwood, DO, who felt the patient to be at maximum medical improvement and rated her impairment at 5%. Dr. Kirkwood noted that the patient stated that her symptoms had essentially remained the same throughout the course of her treatments and care. His examination on that date, revealed negative straight leg raising, normal pinwheel test, no weakness or atrophy noted, deep tendon reflexes were 2+/4, muscle tone was normal, and Patrick Fabere was positive on the right, and tenderness as noted on the right sacroiliac joint. The claimant reiterated to him those sentiments on that date, stating that she has essentially had "no relief".

Dr. Stephenson, DC has disputed this impairment and claim of maximum medical improvement, as she was to undergo micro decompression surgery on 5/4/05, as was recommended by the consult with Mukund Gundanna, MD, a spine surgeon on 4/22/05. The notes from Dr. Stephenson, on 5/9/05, indicated that the surgery was denied by the insurance company. The patient notes from Dr. Stephenson indicated that the patient reported a grade 8 to 7 pain scale with lower back pain and intermittent right leg pain from 11/11/04 through 12/16/04. On 12/17/04, the pain scale was graded at a 6 and the orthopedic tests remained unchanged and positive.

It appeared that the claimant reached a plateau with the chiropractic treatments on or around 12/17/04 with a grade of pain scale rated at 6 and this was carried through until at least 3/30/05, when she rated a grade 5 of pain. The orthopedic tests were unchanged from positive. As of the 4/11/05 date of service, she remained with positive orthopedic test findings, including Minors sign, Kemps test bilaterally, Lewin's test, and Ely's test with restricted ranges of motion and she was having depression.

The ongoing chiropractic treatments had not had a curative or long-term relief effect from the 58 sessions provided. Overall, objectively, she had not had appreciable documented improvements and was scheduling surgery for her low back. The documentation only reflected that this surgical procedure was denied, and it is not known if she has had the surgery to date.

The current request is to determine the medical necessity for retrospective chiropractic sessions from 1/11/05 to 4/11/05 was not found as a medical necessity. There were no co morbid factors. The patient has stated to the designated doctor on 4/13/05 that she has had "no relief" with the treatments.

The ACOEM Guidelines would also apply and would not support this ongoing passive chiropractic care with claims of "no relief" with the treatments after a trial of care of 3-4 weeks. The reviewer concurs with the previous determination which denied ultrasound, office visits, therapeutic activities, massage therapy, electrical stimulation, mechanical traction, gait training and diathermy.

**Criteria/Guidelines utilized:** TDI/DWC rules and regulations.  
The ACOEM Guidelines, 2<sup>nd</sup> Edition, Chapters 6 and 12.

**Physician Reviewers Specialty:** Chiropractic

**Physician Reviewers Qualifications:** Texas licensed DC, BSRT, FIAMA Chiropractor, and is currently listed on the TDI/DWC ADL list.

**CompPartners, Inc. hereby certifies that the reviewing physician or provider has certified that no known conflicts of interest exist 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 the decision before the referral to CompPartners, Inc.**

### Your Right to Appeal

If you are unhappy with all or part of this decision, you have the right to appeal the decision. The decision of the Independent Review Organization is binding during the appeal process.

If you are disputing the decision (other than a spinal surgery prospective decision), the appeal must be made directly to a district court in Travis County (see Texas Labor Code § 413.031). 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. If you are disputing a spinal surgery prospective decision, a request for a hearing must be in writing and it must be received by the Division of Workers' Compensation, Chief Clerk of Proceedings, within ten (10) days of your receipt of this decision.