



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 of Houston C/o Bose Consulting, LLC P O BOX 550496 Houston, Texas 77255	MDR Tracking No.: M5-06-0026-01
	Claim No.:
	Injured Employee's Name:
Respondent's Name and Address: Service Lloyds Insurance Company Box 42	Date of Injury:
	Employer's Name:
	Insurance Carrier's No.:

PART II: REQUESTOR'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

DOCUMENTATION SUBMITTED: DWC-60, explanations of benefits, CMS 1500s and medical documentation
 POSITION SUMMARY: "Necessary treatment" per the table of disputed services

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)
11-15-04 to 01-14-05	99212, 99214, 97032, 97110, 97116, 97140, 97750-FC, 97112, 97035, 97124 and DME E1399	<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.

On 10-12-05, 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 dates of service 12-10-04 and 01-12-05 denied with denial code "V" (unnecessary treatment with peer review). Per Rule 129.5 the DWC-73 is a required report and not subject to an IRO review. The Medical Review Division has jurisdiction in this matter. Reimbursement is recommended in the amount of **\$30.00 (\$15.00 X 2 DOS)**. A Compliance and Practices referral will be made as the carrier is in violation of Rule 129.5.

PART VI: GENERAL PAYMENT POLICIES/REFERENCES IMPACTING DECISION

28 Texas Administrative Code Sec. 133.308 and Rule 129.5

PART VII: DIVISION DECISION AND ORDER

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 entitled to reimbursement in the amount of \$30.00. The Division finds that the requestor was not the prevailing party and is not entitled to a refund of the IRO fee. 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.

Ordered by:

11-03-05

Authorized Signature

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.



CompPartners Final Report



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

Claimant Name:

Texas IRO # :

MDR #: M5-06-0026-01

Social Security #:

Treating Provider: William Hicks

Review: Chart

State: TX

Amended Date: 11/02/05

Review Data:

- Notification of IRO Assignment dated 9/16/05, 1 page.
- Receipt of Request dated 9/16/05, 1 page.
- Order of Payment of Independent Review Organization Fee dated 9/30/05, 1 page.
- Medical Dispute Resolution Request/Response dated 8/31/05, 1 page.
- Table of Disputed Services dated 1/14/05, 1/12/05, 1/10/05, 1/7/05, 1/5/05, 12/29/04, 12/29/04, 12/22/04, 12/20/04, 12/17/04, 12/15/04, 12/13/04, 12/10/04, 12/7/04, 12/6/04, 12/3/04, 12/1/04, 11/30/04, 11/18/04, 11/17/04, 11/15/04, 8 pages.
- Explanation of Review Audited on 2/4/05, 1/27/05, 1/26/05, 1/21/05, 1/19/05, 9 pages.
- Cover Sheet dated 9/28/05, 1 page.
- Letter Regarding Documents Enclosed dated 9/28/05, 2 pages.
- Medical Examination dated 1/22/05, 7 pages.
- Review of Medical Records dated 12/15/04, 6/27/03, 9 pages.
- Range of Motion Examination (date unspecified), 2 pages.
- Position Statement (date unspecified), 4 pages.
- Progress Note dated 1/17/05, 1/7/05, 1/5/05, 12/29/04, 12/22/04, 12/20/04, 11/8/04, 10/4/04, 8/25/04, 12 pages.
- List of Exhibits (date unspecified), 2 pages.
- Initial Medical Report dated 7/27/04, 3 pages.
- Lumbar Spine MRI dated 7/6/04, 2 pages.
- Lumbar Spine X-ray dated 8/9/04, 2 pages.
- Consultation dated 8/31/04, 3 pages.
- Orthopedic Consultation dated 9/15/04, 2 pages.
- Operative Report dated 10/22/04, 10/8/04, 9/24/04, 9 pages.
- Electrodiagnostic Evaluation dated 10/6/04, 3 pages.
- Functional Capacity Evaluation dated 12/7/04, 4 pages.
- Functional Capacity Evaluation Summary dated 12/7/04, 14 pages.
- Comprehensive Pain Consultation dated 12/9/04, 4 pages.
- Subsequent Medical Report dated 12/10/04, 2 pages.

- Progress Report dated 12/23/04, 3 pages.
- Comprehensive Pain Follow-up dated 2/8/05, 1/11/05, 4 pages.
- Designated Doctor Evaluation dated 1/19/05, 7 pages.
- Orthopedic Report dated 2/9/05, 2 pages.
- General Note dated 2/28/05, 2 pages.
- Daily SOAP Note dated 11/8/04, 11/3/04, 11/1/04, 10/29/04, 10/27/04, 10/25/04, 10/20/04, 10/18/04, 10/15/04, 10/13/04, 10/11/04, 10/6/04, 10/4/04, 10/1/04, 9/29/04, 9/27/04, 9/21/04, 9/20/04, 9/17/04, 9/13/04, 9/10/04, 9/8/04, 9/3/04, 8/31/04, 8/30/04, 8/27/04, 8/25/04, 8/23/04, 8/20/04, 8/18/04, 8/16/04, 8/13/04, 8/11/04, 8/9/04, 8/5/04, 8/2/04, 7/30/04, 7/28/04, 7/27/04, 39 pages.

Reason for Assignment by TDI/DWC: Determine the medical necessity for appeal of the previously denied office visits (CPT Codes 99212 & 99214), electrical stimulation, therapeutic exercises, gait training, manual therapy technique, functional capacity evaluation (FCE), neuromuscular re-education, ultrasound, massage, and unidentified miscellaneous durable medical equipment (DME) from 11/15/04 to 1/14/05.

Determination: UPHELD - previously denied office visits (CPT Codes 99212 & 99214), electrical stimulation, therapeutic exercises, gait training, manual therapy technique, functional capacity evaluation (FCE), neuromuscular re-education, ultrasound, massage, and unidentified miscellaneous durable medical equipment (DME) from 11/15/04 to 1/14/05.

Rationale:

Patient's age:

Gender:

Date of Injury: ____

Mechanism of Injury: 1) Lifting a bed of a truck off with other employees and felt low back pain. 2) Lifting a box from the floor. 3) Re-aggravation while driving to work on when he was released to light duty after being off work since the injury.

Diagnoses: Lumbar spine sprain/strain, multilevel degenerative lumbar disc disease, lumbar radiculitis, and lumbar disc herniation.

In summary, he has a past history of two herniated lumbar discs from an injury that occurred approximately 10 years prior, in 1994, with documented pre-existing degenerative changes. This patient has been treated ongoing since the new date of injury on _____. He was first treated with medications and physical therapy and had no improvements. He then came under the care of a chiropractor, Dr. Torres, and again began a passive then active physical therapy treatment plan with manipulations, again without significant documented improvements. He then had his case taken over by Dr. William Hicks, DC and continued with ongoing physical therapy both passive and active with chiropractic care and several referrals to pain management doctors, orthopedic doctors, medications, Three documented ESI procedures on 9/24/04, 10/8/04, and 10/22/04 with Dr. Aggarwal, MD and then subsequent facet joint injections from Dr. McKay, MD. He has had formal work hardening programs and had at least three FCE tests performed, with the latest one indicating that he was functioning at medium duty for a very heavy-duty demand level. There was indication that he was finally told to return to a light duty work, and when he attempted to go back to work while driving himself on the freeway, he had an

acute aggravation of low back pain on

with pain increased, now positive orthopedic

testing again and was placed back on five days per week passive modalities again by Dr. Hicks, DC.

This claimant's symptoms and objective findings have waxed and waned with no apparent consistency whatsoever between examinations from the treating medical doctors, treating chiropractors, therapists, chart review doctors, required medical examiners and even designated doctors. There were typos with dates, referrals to "she" instead of he, as well as wrongly stated findings on the EMG/NCV in the reports which, in fact, when read clearly indicate no radicular component and normal study.

For the sake of completeness, this reviewer will outline the provided documentation in summary format given the information provided for this review of disputed items.

The first mentioned MRI of the lumbar spine without contrast was performed on 7/6/04. The impression from this radiologist Deborah Ancona-Schultz, MD indicated spondylotic bulging of the annulus/broad based protrusion lateralizing to the left, especially left foraminal of 4mm deforming the left greater than right S1 nerve root sleeve, and contacting resulting in a smaller degree of deformity of the left L5 nerve root sleeve in its neural foramina, without central stenosis. Bulging was also noted of the annulus of 3mm at L2-3 with minimal lateral recess narrowing and foraminal encroachment. There was mild bulging at L3-4 and L4-5.

A second MRI of the lumbar spine and lateral X-ray views of lumbar spine was performed on 8/9/04. The radiologist, K. Francis Lee, MD, interpreted this and the impression was documented as plain films indicated a 4mm retrolisthesis at L3-4 with anterior osteophytes noted at L5-S1 associated with 50% loss of disc height. The actual MRI findings were of disc protrusion with osteophytic ridge indenting upon the thecal sac at L5-S1, associated with foraminal stenosis, central disc protrusion with foraminal stenosis at L2-3, disc bulges at L3-4 and mild facet arthropathy involving L3-4 and L5-S1 bilaterally.

An initial report from Dr. Torres, DC on 7/27/04, indicated the patient was 275 pounds when all other doctors indicated he was at 207, 206 or 202 pounds. His pain was rated 8/10. His range of motion of the lumbar spine was 70 degrees flexion and 20 degrees extension with pain on flexion and all other ranges were normal. He had positive right straight leg raising at 40 degrees. Yeoman's was positive bilaterally, Nachlas was positive bilaterally, and muscle strength was 4/5 to muscle groups of the lumbar spine and loss of sensory in the right L4-5 and L5-S1 dermatome patterns, and he documented spasm. He recommended a home program, pain control, joint mobilization, stretching as well as continued passive physical therapy modalities and neuromuscular balance proprioceptive re-education as tolerated.

A report with Dr. Kenneth Berliner, MD on 9/15/04 indicated pain at 6/10, weakness in both legs with low back pain. He had diminished sensation along the right thigh, lateral leg, and foot region. Motor test was normal, straight leg raising was positive on the right and femoral stretch test was positive on the right.

The actual progress notes from Pain and Recovery Clinic of Houston are examined starting on 10/4/04 with positive straight leg raising on the right and positive Yeoman's test with no I

improvement from the first epidural steroid injection (ESI). Progress notes on 11/8/04 indicated a pain scale of 8/10 with weakness in both legs but documents 5/5-muscle strength.

An electrodiagnostic evaluation was performed on 10/6/04, by Jeffery R. Hamilton, DC certified in NCV and Needle EMG. Of special interest to this reviewer is that when examining the actual report of findings it gives normal ranges for both the EMG and the NCV study. This Dr. Hamilton, DC, however, speculated that the patient's current radicular symptoms are most likely due to chronic irritation of the proximal S1 nerve roots bilaterally, and the left L5 nerve root, which was causing irritation of the lower extremity sensory fibers distally, with intermittent irritation of motor fibers. He made this statement in his report, despite the fact, his summary of findings indicated all normal findings. Then he documented that the above electrodiagnostic study revealed no evidence of lumbar radiculopathy, peripheral neuropathy or presence of any motor neuron disease.

On 12/6/04, the patient had a pain consultation with Dr. McKay again, and there was inaccurate information about the mechanism of injury where he stated the patient lifted a box from a truck. On this date, he denied any pain radiating into the lower extremities but had 8/10 pain and Dr. McKay, MD documented that he weighed 206 pounds. He recommends facet joint injections be done. Range of motion was decreased with pain.

On the 12/7/04 FCE report, it was documented that he had clinically significant signs of anxiety and depression and 9/10 pain, and he had a sedentary light demand level capacity.

On 12/9/04 Dr. McKay saw the patient and all the objective orthopedic tests were negative and he had no subjective pain complaints, but then went on to recommend facet injections.

There was a subsequent report from the chiropractor Dr. Hicks, dated 12/10/04 and the patient had low back pain with no leg pain, and normal ranges of motion in the lumbar spine, but then Dr. Hicks recommended more therapy.

There was a review of records performed by Dr. Richard Chamblin, DC on 12/15/04, which determined the claimant at that point had completed approximately 37 visits from 7/27/05 to 11/5/04, and revealed an increase in pain after the third ESI to 8/10 from 6/10. He did not feel any further active or passive care was necessary. Another review was done by Dr. Chamblin, DC and was dated 6/27/03; however, this reviewer believes this was to read 6/27/05, as Dr. Chamblin referenced 6/24/05 notes. He did not recommend payment for the charges due to lack of medical necessity and lack of proper documentation to support this treatment.

On 12/22/04, Dr. Hicks claimed the patient had 8/10 pain and needed the facet injections, as the ESI injections did not help him.

On 12/23/04, one day later, Dr. Hicks indicated the patient said he had substantial relief with the ESI injections, but had rated his pain as up to 8/10 on that date, with decreased ranges of motion.

On 1/10/05, he saw Dr. McKay again and he reported lower back pain at 6/10 without radiation of pain into either leg, but had decreased range of motion.

On 1/19/05 he had his designated doctor examination with Walter Kane, MD and he presented with low back pain with right leg numbness with 8/10 pain, he normal gait and posture, denied depression, had all negative orthopedic test findings, had lumbar ranges of motion decreased without degrees mentioned had 5/5 muscle strength testing and could not perform heel and toe walk without difficulty. He was determined to be at maximum medial improvement.

The 1/22/05 medical examination from Bryan Drazner, MD revealed that an the claimant states to him that he did not ever receive the four-hour FCE test at the claimed facility but had it for 30 minutes at the treating chiropractic facility. Dr. Drazner wrongly documents that "she" not he can fully cooperate with toe and heel walking. Another contradictory documented statement was found on page 6 of 7 of this report that "the patient has no evidence of facet joint disease on either MRI scan and certainly not on physical examination". This reviewer would like to point out that on the 8/9/04 MRI it clearly stated clearly that he has "mild facet arthropathy involving L3-4 and L5-S1 bilaterally." The doctor documented negative orthopedic findings. This examiner indicated that the patient should have been at maximum medical improvement as of 9/15/04, and was capable of release for full duty and documented that he had resolved lumbar sprain/strain. He documented there was no need for any further chiropractic care, work conditioning, work hardening or multi-disciplinary chronic pain management programs.

On 1/10/05, Dr. McKay saw the patient and at that time the patient had 6/10 pain with low back and denied leg complaints, and he denied weakness, tingling or numbness in the legs.

On 2/8/05, he was evaluated by Dr. McKay again, and had almost full range of motion, negative straight leg raising and deep tendon reflexes and muscle strength documented as normal. He stated the patient had 50% pain relief after the injections, but failed to document a pain scale rating to confirm this.

On 2/9/05, the claimant was re-evaluated by an orthopedist, Dr. Kenneth Berlinger, and at that time, the patient had 6/10 pain scale which would not be 50% improvements as indicated a day earlier by Dr. McKay. He discussed surgical versus a work hardening program and possible referral to Texas Rehab Commission due to the permanent work restrictions.

On 2/28/05, the claimant was seen again by Dr. Hicks for an aggravation while driving to return to light duty work and was re-examined and documented as having positive straight leg raising again on the right at 45 degrees, with positive orthopedic findings of Yeoman's, Hibb's on the right and with weakness of the lumbar muscles at 4/5.

On 3/1/05, the claimant was evaluated by Denise Turboff, M.Ed., LPC and it was determined that there were no psychological issues that would hinder his participation in work hardening. Oddly, a note on 12/7/04 indicated the patient weighed 260 pounds and had significant signs of clinical anxiety and depression and pain was 9/10 and he could not complete the FCE test. On 12/6/04 he weighed 206 pounds.

Additional notes from the provider doing the therapy (of which there is no letterhead on these progress notes and they were not signed) were dated 10/18/04, and rated his pain at 8/10 and he was seen each time through 11/8/04 with same rating of 8/10 and minimal objective notes are made. These forms then changed to a type-written format with check offs and indicated Pain and Recovery Clinic-East, and were dated from 12/20/04 to 12/29/04. He was marked off as the

“same” on each form, with the same passive modalities and active therapy, and there was no other useful information with regard to pain scale ratings or objective orthopedic testing results, and no medical necessity proven for this continued excessive treatment protocol void any significant improvements.

The current request is to determine the medical necessity for office visits, electrical stimulation, therapeutic exercises, gait training, manual therapy technique, FCE, neuromuscular re-education, ultrasound, massage, and unidentified misc. DME disputed items from dates of service 11/15/04 through 1/14/05.

Dr. Chamblin’s review of records and recommendations were correct in that there was no current text or scientific literature that supports the use of passive modalities such as electrical stimulation, ultrasound, and massage therapy for more than 15 applications. This patient had 37 visits. This is also found with reference to the ACOEM Guidelines, Chapter 12 on page 300, which states that these passive modalities have no proven efficacy in treating acute low back symptoms. Additionally, the ACOEM Guidelines, Chapter 12 states that another form of passive care would not be found a medical necessity if it fails to improve the patient after a trial of care of 3-4 weeks. Therefore, given the fact that the patient had an excessive number of visits from 7/27/04 to 11/5/04, with approximately 37 visits without significant documented improvements, this reviewer did not find a medical necessity existed to continue this passive care approach. MERCY guidelines page 124, chapter 8 states that unresponsive acute, sub-acute or chronic repeated use of passive treatment or care should be avoided as it tends to promote physician dependency and chronicity. These disputed passive modalities of electrical stimulation; manual therapy, ultrasound and massage should be non-certified.

With regard to the FCE, this too, was not a medical necessity. The reference to the ACOEM Guidelines page 138, would uphold this adverse determination, in that, a FCE can be a deliberately simplified evaluation based on multiple assumptions and subjective factors that are not always apparent to the requesting physician. There was little scientific evidence confirming that FCE predicate an individual’s actual capacity to perform in a workplace. The FCE reflected what an individual can do on a single day at a particular time, under controlled circumstances that provide an indication of that individual’s ability. Therefore, this is non-certified.

With regard to the gait training from 11/15/04 to 1/14/05, this reviewer did not find documented evidence of gait deficit and, in fact, on the reports, gait was documented as normal. Therefore, this would not have been a medical necessity.

With regard to the DME charges, they are believed to be electrodes for the electrical stimulation provided from 11/15/04 to 1/14/05, and this would not be a medical necessity as the electrical stimulation was not a medical necessity, therefore this is non-certified. If this was a not electrode, the actual description of this coded charge would be needed to be reconsidered.

With regard to the charges from 11/15/04 to 1/14/05 for therapeutic exercises, and neuromuscular re-education, there was little documented evidence that this claimant had improved significantly, subjectively or objectively, with the previous active care provided, therefore, it was not found a medical necessity by this reviewer. This claimant was determined to most likely have been at maximum medical improvement on or about 9/15/04, therefore, to

continue this ongoing care was not appropriate. He should have been able to perform home exercises by that time

With regard to office visit, the medical necessity would not be found for the provided dates from 11/15/04 to 1/14/05 during the provided therapy dates. The medical necessity for the therapy was not found, therefore, the frequency and dates of service for the office visits being charged was not found a medical necessity.

Criteria/Guidelines utilized: TDI/DWC rules and regulations.
ACOEM Guidelines, 2nd Edition, Chapter 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.