



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: <b>Rehab 2112 PO Box 671342 Dallas TX 75267-1342</b>	MDR Tracking No.: M5-06-0225-01
	Claim No.:
	Injured Worker's Name:
Respondent's Name and Address: <b>Hartford Underwriters Insurance Box 27</b>	Date of Injury:
	Employer's Name:
	Insurance Carrier's No.:

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

DWC-60 package. Position summary: Services were medically necessary.

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

No response to DWC-60 package.

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

Date(s) of Service	CPT Code(s) or Description	Medically Necessary?	Additional Amount Due (if any)
10-11-04 to 1-12-05	97110, 97001, 97545-WH-CA and 97546-WH-CA	<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 10-27-05, Medical Review 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.

97110 on 11-1-04 was denied as F, documented submitted does not support one-on-one therapy. No documentation was submitted to support one-on-one therapy. Therefore, no reimbursement 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 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

12-16-05

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

# P-IRO

An Independent Review Organization  
7626 Parkview Circle  
Austin, Texas 78731  
**Phone: 512-346-5040**  
**Fax: 512-692-2924**

December 6, 2005

TDI-DWC Medical Dispute Resolution  
Fax: (512) 804-4868

Delivered via Fax

Patient / Injured Employee  
TDI-DWC #  
MDR Tracking #:  
IRO #:

M5-06-0225-01  
5312

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

P-IRO 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. This case was reviewed by a licensed Provider board certified and specialized in. The reviewer is on the DWC Approved Doctor List (ADL). The P-IRO 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 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 carriers health care providers who reviewed the case for decision before 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 The Requestor, Respondent, and Treating Doctor(s), including:

1. Medical Dispute Resolution Request.
2. Table of Disputed Services.
3. Explanation of Reimbursement.
4. Reports from J. Kelly, D.C., 1-14-04 and 2-4-04.
5. Medical Report from F. Mallou, M.D., 1-16-04.
6. Lumbar MRI, 1-19-04.
7. Medical Reports from S. Francois, D.C., 3-1-04, 3-26-04, 5-5-04, 7-13-04, 8-12-04,
8. NCV/EMG report, 3-24-04.
9. DD Evaluation by H. Bernstein, M.D., 3-25-04.
10. Medical report from M. Shah, M.D., 8-4-04.
11. DD Evaluation by D. Willhoite, M.D., 8-30-04.
12. Medical Reports from C. Fabacher, D.C. (Accident and Injury), 9-1-04,
13. X-ray report, 9-9-04
14. Lumbar MRI, 9-27-04.
15. FCE, 11-2-04.
16. Behavioral assessment by K. Wise, Psy.D., 11-2-04.
17. Psychological Group Note, 11-10-04 through 12-29-04.
18. FCE, 11-30-04.

19. Medical reports from M. Prince, M.D., 12-7-04, 12-21-04, 1-5-05, and 1-18-05.
20. FCE, 12-27-04.
21. FCE, 1-12-05.
22. DD Evaluation by D. Willhoite, M.D., 2-8-05.
23. Medical report from F. Batlle, M.D., 3-9-05.
24. Medical report from Nicole Tran, D.C., 4-13-05.
25. Physical Performance Evaluation (Positive Pain Management), 4-13-05.
26. Psychological Evaluation (Positive Pain Management), 4-13-05.
27. Impairment Rating/FCE (T. Bennett, D.C.), 6-9-05.
28. Letter of Medical Necessity for active rehabilitation (Accident and Injury), 7-15-05.
29. Letter of Medical Necessity for Work Hardening (Accident and Injury), 7-15-05.
30. Summary of Treatment Records (Accident and Injury), 7-27-05.

## CLINICAL HISTORY

The Patient sustained a low back injury on \_\_\_ after a lifting a piece of metal from the ground. The Patient was initially seen at Concentra and given prescription medication. On 1-14-04, The Patient presented to St. Johns Medical Center and was treated by J. Kelly D.C. The Patient reported sharp, constant low back pain rated 10/10 with intermittent bilateral lower extremity numbness. Physical evaluation demonstrated a forward, antalgic gait and reduced ROM. Multiple orthopedic tests reproduced his symptoms. X-rays denoted decreased lordotic curve, decreased disc space at L5-S1, anterior-olisthesis/grade II, and degenerative changes. Daily passive care was implemented. Dr. Mallou prescribed Neurontin, Lortab, Naprosyn, and Resoril. Treatment reduced his pain by "50%". He was returned to modified work and in-office treatment continued.

Lumbar MRI dated 1-19-04 denoted:

1. 4 mm broad-based right paracentral discal protrusion at L2-L3.
2. 2 mm annular bulge with annular tear at L3-4 and L4-5.
3. 2 mm annular bulge with annular tear at L5-S1.
4. Anterior displacement of L5 on S1.

CT scan denoted:

1. Grade 1 spondylolisthesis at L5-S1 producing moderate-severe bilateral foraminal stenosis.
2. Mild-moderate 2 mm disc bulging at L2-3, L3-4 and L4-5.
3. Mild degenerative spondylosis throughout the lumbar spine.

The Patient changed treating doctors to S. Francois, D.C. and started chiropractic treatment in his office on 3-1-04. The patient reported a numerical pain scale of 7/10. Symptoms were reported as intermittent. The Patient was working with restrictions. The patient also reported bilateral lower extremity symptoms. Treatment plan included manipulation, aerobic exercise, and core stretching.

NCV/EMG testing dated 3-24-04 demonstrated evidence suggestive of a L5 radiculopathy on the left. The Patient attended a Designated Doctor Evaluation on 3-25-04. Dr. Bernstein did not believe The Patient was at maximum medical improvement and recommended epidural steroid injections. On 3-26-04, The Patient reported an exacerbation of symptoms after his supervisor asked him to shovel some dirt. The Patient reported a numerical pain scale of 8/10. Lumbar flexion was 51°, extension 22°, left lateral flexion 19°, and right lateral flexion 22°. Neuromuscular reeducation and therapeutic exercise was recommended.

On 5-5-04, The Patient was re-evaluated by Dr. Francois. The Patient reported a numerical pain scale of 5/10. Dr. Francois recommended a Work Hardening Program or Work Conditioning Program. On 7-13-04, The Patient was re-evaluated by Dr. Francois. The Patient reported a numerical pain scale of 4/10. Back and leg symptoms continued. Lumbar flexion was 56°, extension 20°, left lateral flexion 23°, and right lateral flexion 23°.

The Patient underwent two epidural steroid injections with significant temporary relief. Symptoms frequency reduced and symptom intensity reduced to 3/10. In fact, pain was intermittent, no longer constant.

On 8-30-04, The Patient participated in a Designated Doctor Evaluation by D. Willhoite, M.D. Numerical pain scale was 6/10. Back and leg symptoms continued. Lumbar flexion was 50°, extension 10°, and lateral flexion 10°. Dr. Willhoite recommended an orthopedic evaluation.

On 9-1-04, The Patient was evaluated by C. Fabacher, D.C. The Patient reported constant low back pain radiating into the legs bilaterally. Multiple orthopedic tests were positive. Lumbar flexion was 60°, extension 20°, left lateral flexion 50°, and right lateral flexion 15°. Manipulation, electrical stimulation, moist heat, and icepack application was recommended.

Lumbar x-ray dated 9-9-04 denoted:

1. Spondylolisthesis at L5-S1.
2. Retrolisthesis of L4.
3. Moderate spondylosis throughout the lumbar spine.

Lumbar MRI dated 9-27-04 denoted:

1. Desiccation of the discs from L2 through S1.
2. Grade 1 spondylolisthesis of L5 on S1.
3. Annular tears at L2-3, L3-4, L4-5, and L5-S1.
4. Facet arthrosis.
5. 1-2 mm disc protrusion at L4-L5.
6. 1-2 mm disc protrusion at L5-S1.

FCE (Dr. Ivey) was performed on 11-2-04. The Patient was functioning at a Medium physical demand level. Lumbar flexion was 43° and extension 16°. Walking tolerance, standing tolerance, and sitting tolerance were 30 minutes. Grip strength in the left was 40.6 pounds and 63.3 pounds on the right. Leg lift was 81.9 pounds, torso lift was 43.0 pounds, and arm lift was 58.5 pounds. Epic lift capacity demonstrated k-s ability of 50 pounds, f-k ability of 50 pounds, and f-s ability of 50 pounds.

On 11-2-04, Dr. Wise reported depression, anxiety, irritability, absence of coping skills, sleep disturbance, muscle tension, headaches, and difficulty with ADL's, high pain focus, dependent coping, stress symptoms; high reported pain levels, and social isolation. The Patient participated in group therapy from 11-10-04 through 12-29-04.

FCE dated 11-30-04 (Dr. Ivey) demonstrated the patient was functioning in the Medium-Heavy physical demand level. Lumbar flexion was 63° and lumbar extension was 24°. Leg lift was 73.6 pounds, torso lift was 48.3 pounds, and arm lift was 69.6 pounds. Epic lift capacity demonstrated k-s lift of 60 pounds, f-k lift of 70 pounds, and f-s lift of 60 pounds.

The patient was managed medically by M. Prince, M.D. from 12-7-04 through 1-18-04. Treatment included Naproxen, Neurontin, Nortriptyline, Hydrocodone, Vioxx, Flexeril, Lodine, Zanaflex, Baclofen, TP injections, and SI injections.

FCE (Dr. Ivey) on 12-27-04 demonstrated The Patient was functioning in the Medium-Heavy physical demand level. Lumbar flexion was 59° and lumbar extension was 21°. Leg lift was 76.7 pounds, torso lift was 43.1 pounds, and arm lift was 62.0 pounds. Epic lifting demonstrated the ability to lift 80 pounds from k-s, 80 pounds from f-k, and 80 pounds from f-s.

FCE on 1-12-05 demonstrated a physical demand ability of Heavy. Floor to shoulder lift was 100 pounds, floor to knuckle lift was 100 pounds, and floor to shoulder lift was 100 pounds.

On 2-8-05, The Patient attended a Designated Doctor Evaluation with Dr. Willhoite. He felt The Patient was at maximum medical improvement and assigned 5% WPI.

The Patient was evaluated by F. Batlle, M.D. on 3-9-05. The Patient reported no significant improvement in his symptomatology despite the medications, injections, therapy, and return to work programs. He did not believe The Patient was a surgical candidate. He felt he would benefit from a chronic pain management program.

On 4-13-05, The Patient was evaluated by N. Tran, D.C. The Patient reported ongoing back pain and leg symptoms rated 6/10. Symptoms were constant. Sitting tolerance was 30 minutes and walking tolerance was 60 minutes.

On 4-13-05, The Patient participated in a Physical Performance Evaluation at the Positive Pain Management Clinic. The Patient reported difficulty with sitting greater than 30 minutes, standing greater than 30 minutes, and walking greater than 60 minutes. He reported a numerical pain scale of 5/10. He specifically indicated most of his pain was with working. Lumbar flexion was 58° and lumbar extension was 15°. Leg Lift was 74 pounds and Arm Lift was 61.5 pounds. He was able to pull 88 pounds and push 90 pounds. Dynamic floor to waste lift was 50 pounds, dynamic waste to shoulder lift was 40 pounds, and dynamic floor to shoulder lift was 30 pounds. The therapist indicated The Patient had "significant functional deficits." BDI was 20. The Patient felt he needed to be re-trained in a less physically demanding type of work.

A Psychological Evaluation was performed on 4-13-05. The Patient reported constant low back pain with bilateral leg symptoms. Numerical pain scale was 7/10. Current medications included Hydrocodone, Naproxen, Metformin, Glyburide, Simvastatin, and Ranitidine. The Patient was very worried about his physical condition and pain. He was fearful that his physical

condition was not going to improve. He rated his depression and anxiety a 6/10. Dr. Ziegler felt The Patient was having difficulties coping and the chronic pain was significantly interfering with his activities of daily living as well as his return to productivity. GAF was 55.

An Impairment Rating was performed by Dr. Bennett on 6-9-05. The Patient was assigned 10% WPI.

On 7-15-05 a Letter a Medical Necessity was performed by M. Ivey, D.C. regarding the necessity of Active Rehabilitation and Work Hardening.

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

Under dispute is the retrospective medical necessity of therapeutic exercises-97110, physical evaluation-97001 and work hardening/work hardening each additional hour-97545-W-CA and 97546-WH-CA. Date of service 10-11-04 thru 1-12-05.

### **DETERMINATION / DECISION**

The Reviewer agrees with the determination of the insurance carrier.

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

The therapeutic exercise (97110) was not reasonable or necessary. The documentation fails to demonstrate adequate and lasting subjective, objective, and/or functional improvement as a result of the one-on-one based therapeutic exercise performed from 10-11-04 through 11-1-04.

The Work Hardening/Conditioning program performed through 1-12-05 cannot be supported. There is extreme documentation inconsistency in regards to The Patient's subjective reports of pain and functional status.

In May of 2004, the VAS was 5/10. The functional capacity evaluation dated 11-2-04 (performed by Michelle Ivey, D.C.) indicated The Patient was functioning at a Medium physical demand level. Lumbar flexion was 43°, lumbar extension was 16°, left lateral flexion 35°, and right lateral flexion 38°. Left SLR was 68° and right SLR was 73°. Sitting tolerance was 30 minutes and standing tolerance was 30 minutes. Leg lift was 81.9 pounds, torso lift was 43.0 pounds, arm lift was 58.5 pounds, and high near lift was 70.7 pounds. Dynamic knuckle-to-shoulder lift was 50 pounds, floor-to-knuckle was 50 pounds, and floor-to-shoulder was 50 pounds. The repeat functional evaluations dated 11-30-04, 12-27-04, and 1-12-05 (also performed by Michelle Ivey, D.C.) demonstrated functional improvement; however, this was completely inconsistent with the most recent functional capacity evaluation performed on 4-13-05 at a different facility (Positive Pain Management).

VAS on 4-13-05 was 7/10. The Physical Performance Evaluation dated 4-13-05, performed after the Work Hardening Program, indicated The Patient was still functioning at the Medium physical demand level despite the WHP. More specifically, lumbar flexion was 58°, lumbar extension 15°, left lateral flexion was 24°, and right lateral flexion was 28°. Left SLR was 60° and right SLR was 60°. Sitting tolerance was 30 minutes and standing tolerance was 30 minutes. Leg lift was 74 pounds, arm lift was 61.5 pounds, and high near lift was 73.5 pounds. Dynamic floor-to-waist lift was 50 pounds, dynamic waist-to-shoulder lift was 40 pounds, and dynamic floor-to-shoulder lift was 30 pounds. His ability to carry was only 20 pounds.

After reviewing all the documentation supplied, one can clearly see there is a complete lack of inter-tester consistency demonstrating lasting therapeutic benefit in regards to pain, ROM, or functional abilities as a result of the Work Hardening Program. In fact, The Patient's subjective reports of pain and physical demand abilities are not adequately different than they were on 11-2-04, prior to the Work Hardening Program. In some regards, physical abilities appear worse.

Additionally, it does not appear the Work Hardening Program enhanced the ability of The Patient to "maintain" employment. The Patient is currently not working despite the return to work program and in fact a CPMP is now being requested

### **Screening Criteria**

#### **1. 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 DWC 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.

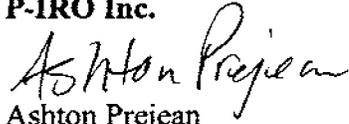
### CERTIFICATION BY OFFICER

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

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

P-IRO is forwarding by mail or facsimile, a copy of this finding to DWC.

Sincerely,  
P-IRO Inc.



Ashton Prejean  
**President & Chief Resolutions Officer**

### 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.

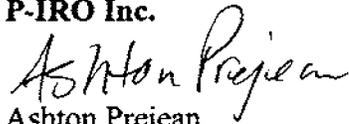
If you are disputing the decision (other than a spinal surgery prospective decision), the appeal must be made directly to a district court in Travis County (see Texas Labor Code §413.031). An appeal to District Court must be filed not later than 30 days after the date on which the decision that is the 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.

The party appealing this decision shall deliver a copy of its written request for a hearing to other party involved in this dispute.

I hereby certify, in accordance with DWC Rule 102.4 (h), that a copy of this Independent Review Organization decision was sent to DWC via facsimile on this 6th day of December 2005.

Name and Signature of P-IRO Representative:

Sincerely,  
P-IRO Inc.



Ashton Prejean  
**President & Chief Resolutions Officer**