



**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 Dispute**

**PART I: GENERAL INFORMATION**

<b>Type of Requestor:</b> (X) Health Care Provider ( ) Injured Employee ( ) Insurance Carrier	
Requestor=s Name and Address:  Buena Vista Workskills 5445 La Sierra Dr. #204 Dallas, Texas 75231	MDR Tracking No.: M5-06-0248-01
	Claim No.:
	Injured Employee's Name:
Respondent's Name and Address:  Liberty Mutual Fire Insurance, Box 28	Date of Injury:
	Employer's Name:
	Insurance Carrier's No.:

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

Documents include the DWC 60 form, Explanations of Benefits, medical documentation and CMS 1500's. Position summary states, "The services that were provided were medically necessary. Liberty Mutual has established an unfair and unreasonable timeframe in paying the services that were authorized and rendered to the injured worker."

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

Documents include the Explanations of Benefits. No position summary was submitted.

**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)
10-6-04 – 11-11-04	CPT codes 97545 WHCA, 97546 WHICA	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$8,992.00

**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 prevail on the majority of the disputed medical necessity issues. The amount due the requestor for the items denied for medical necessity is \$8,992.00.

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

28 Texas Administrative Code Sec. 133.308 and 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 carrier must refund the amount of the IRO fee (\$460.00) to the requestor within 30 days of receipt of this order. The Division has determined that the requestor is entitled to additional reimbursement in the amount of \$8,992.00. 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 by:

Donna Auby

12-12-05

Authorized Signature

Typed Name

Date of Finding and Decision

Order by:

Margaret Ojeda

12-12-05

Manager, Medical Necessity Team

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.**

November 16, 2005

TX DEPT OF INS DIV OF WC  
AUSTIN, TX 78744-1609

CLAIMANT: \_\_\_\_

EMPLOYEE: \_\_\_\_

POLICY: M5-06-0248-01

CLIENT TRACKING NUMBER: M5-06-0248-01-5278

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 Division of Workers Compensation 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 existing 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 RECEIVED FROM THE STATE:

Notification of IRO Assignment/EOB's for 10/07/04-10/21/05, 20 pages

RECORDS RECEIVED FROM GILBERT GONZALES DC:

Treatment/Evaluation Record, South Texas Chiropractic Pain Center/Gilbert Gonzales DC; 09/17/04-12/01/04, 7 pages

RECORDS FROM RESPONDENT:

Letter from Liberty Mutual to MRIoA dated 11/08/05, 3 pages

Handwritten summary of treatment, 1 page

Neurodiagnostic Record, Donald Dutra Jr. MD; 09/23/04, 2 pages

Treatment/Evaluation Record, Berney Keszler MD; 09/16/04-09/27/04, 3 pages

Evaluation Record, Peter B. Robinson MD; 06/09/04, 5 pages

Evaluation/Treatment Record, Buena Vista Workskills; 09/28/04-11/15/04, 146 pages

Treatment/Evaluation Record, Donald Dutra MD; 11/17/04, 2 pages

Review Record, Professional Review Inc./Thomas Sato DC/Glenn Marr DC; 11/17/04-07/08/05,  
6 pages

Treatment/Correspondence Record, South Texas Chiropractic Pain Center; 12/01/04-05/27/05,  
3 pages

Surgical Record, Michael Barrett DPM; 05/13/05, 2 pages

RECORDS FROM REQUESTOR:

*Duplicates of records from respondent:*

Letter from Liberty Mutual to MRIoA dated 11/08/05, 3 pages

Handwritten summary of treatment, 1 page

Neurodiagnostic Record, Donald Dutra Jr. MD; 09/23/04, 2 pages

Treatment/Evaluation Record, Berney Keszler MD; 09/16/04-09/27/04, 3 pages

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3 pages

Surgical Record, Michael Barrett DPM; 05/13/05, 2 pages

**Summary of Treatment/Case History:**

The claimant sustained a work related injury on \_\_\_ when she was employed as a waitress for Applebees. Claimant stepped over a dishwasher rack and twisted her left ankle; swelling was noted three days later. The incident was reported to her supervisor on the same day. Peter Robinson MD performed an evaluation of the claimant on 06/09/04 that revealed the claimant was at Maximum Medical Improvement with a whole person impairment of function of 0%. Claimant underwent a trial of passive/active chiropractic therapeutics with Gilbert Gonzales DC on/about 09/07/04. Berney Keszler MD consulted with the claimant from 09/16/04 through 09/27/04; an injection over the left lateral malleolus was performed on 09/16/04 that provided temporal pain reduction. The claimant had a neurodiagnostic study performed over the lower quarter on 09/23/04 that revealed evidence of a left neuropathy of the lateral plantar branch of the tibial nerve. Functional Capacity Evaluation was performed on 09/28/04 that revealed the claimant was capable of a return to light physical demands classification. Behavioral evaluation performed on 10/04/04 revealed a Global Assessment of Function of 59; a course of individual psychotherapy was advised. Becks Depression Inventory II administered by on 10/04/04 revealed a score of 34 equating to severe depression. A four week trial of work hardening was initiated on 10/06/04. The claimant consulted with Donald Dutra Jr. MD on 11/17/04 and a trial of chronic pain management application was advised. Michael Barrett DPM performed an arthroscopic debridement of the left ankle coupled with a repaired of the anterior talofibular ligament on 05/13/05.

**Questions for Review:**

1. Please review for medical necessity the Work Hardening Program from 10/6/04 - 11/11/04.

**Explanation of Findings:**

Claimant had surgical applications performed on 05/13/05. There exists rationale for a controlled trial of post-operative rehabilitation followed by a controlled trial of RTW therapeutics like work hardening over a 10 session trial.

1. Please review for medical necessity the Work Hardening Program from 10/6/04 - 11/11/04.

The provider has established that this claimant is a candidate for a 10 session trial of work hardening applications. FCE data from baseline evaluation on 09/28/04 reveal that the claimant was able to function within a light PDC. It is medically realistic for the claimant to make sufficient functional progress in 10 sessions to allow her a safe return to general industry in the capacity of a waitress. Rationale that also warrants the transition toward upper level therapeutics rests in the level of psychosocial dysfunction apparent in the BDI II administered on 10/04/04.

**Conclusion/Decision to Certify:**

The provider has established both qualitative/quantative clinical data that supports the implementation of upper level therapeutics in the management of this claimant's condition. It is clearly evident that the claimant would be capable of a return to general industry following a controlled 10 session trial upper level work hardening therapeutics.

**Applicable Clinical of Scientific Criteria or Guidelines Applied in Arriving at Decision:**

Ankle sprain. Institute For Clinical Systems Improvement (ICSI); 2002 Mar. 24 p.

Lechner DE. Work hardening and work conditioning interventions: do they affect disability? *Phys Ther.* 1994 May;74(5):471-93.

Myers, JB., et al. Effect of Peripheral Afferent Alteration of the Lateral Ankle Ligaments on Dynamic Stability. *The American Journal of Sports Medicine* 31:498-506 (2003).

Overview of implementation of outcome assessment case management in the clinical practice. Washington State Chiropractic Association. 2001. 54p.

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The chiropractor providing this review received his degree in chiropractic in 2000. The reviewer is a member of the American College of Sports Medicine, the Meckenzie Institute, the Occupational Injury Prevention and Rehabilitation Society, the International Association of Rehabilitation Professionals and the National Safety Council. The reviewer is pursuing additional qualifications as a diplomate in rehabilitation. They are also pursuing Occupational Health and Safety Technologist certification in preparation for their Certified Safety Boards. The reviewer also works as a review doctor for their state workers compensation commission in the medical dispute resolution process.

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 the DWC.