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

Requestors Name and Address: Nestor Martinez, D.C. 6660 Airline Drive Houston, TX 77076	MDR Tracking No.: M5-06-0509-01 Claim No.: Injured Employee's Name:
Respondent's Name and Address: TX Mutual Insurance Company, Box 54	Date of Injury: Employer's Name: Insurance Carrier's No.:

PART II: REQUESTOR'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

Documents include DWC 60 package. Position summary states, "Attached herewith are two copies of the DWC-60 and documentation in accordance with DWC Rules."

PART III: RESPONDENT'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

Documents include DWC 60 response. Position summary states, "Texas Mutual requests that the request for dispute resolution filed be conducted under the provisions of the APA set out above."

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)
11-24-04 – 3-14-05	CPT code 97140 ($33.90 X 6 units) + ($33.94 X 42 units)	☒ Yes ☐ No	$1,628.88
3-1-05	CPT code 99212	☐ 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 prevail on the majority of the disputed medical necessity issues. The amount due the requestor for the items denied for medical necessity is $1,628.88.

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 12-12-04 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 codes 99212, 97110 and 97112 on dates of service 11-24-04, 11-29-04, 12-1-04, 1-6-05, 1-10-05, 1-12-05, 1-14-05, 1-17-05, 1-19-05, 1-25-05, 1-27-05, 1-31-05, 2-2-05, 2-7-05, 2-9-05 and 2-11-05 were withdrawn by the requestor and will not be a part of this review.

PART VI: GENERAL PAYMENT POLICIES/REFERENCES IMPACTING DECISION

28 Texas Administrative Code Sec. 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 carrier must refund the amount of the IRO fee ($650.00) to the requestor within 30 days of receipt of this order. The Division has determined that the requestor is entitled to reimbursement in the amount of $1,628.88. 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:

	Donna Auby	2-8-06
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.

January 17, 2006

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

CLAIMANT: ___
EMPLOYEE: ___
POLICY: M5-06-0509-01
CLIENT TRACKING NUMBER: M5-06-0509-01-5278

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 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. 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:

FROM THE STATE:
Notification of IRO assignment 12/12/05 1 page
Texas Department of Insurance Division of Workers' Compensation form 12/12/05 1 page
Medical Dispute Resolution Request/Response form 2 pages
Provider form 3 pages
Fax from Texas Mutual 11/30/05 1 page
Table of disputed services 5 pages
Explanation of Benefits from Texas Mutual 8 pages

FROM THE REQUESTOR/Nestor Martinez, DC:
Patient information sheet from Pain and Recovery Clinic North 1 page
Initial orthopedic evaluation 10/11/04 2 pages
Physician's orders 10/11/04 1 page
MRI lumbar spine report 10/14/04 2 pages
Nerve conduction study report 10/15/04 3 pages
Follow up orthopedic exam report 10/25/04 2 pages
Notification of first temporary income benefit payment from Texas Mutual 10/25/04 2 pages
Operative report 11/5/04 2 pages
Surgical pathology report 11/5/04 1 page
Radiology report 11/5/04 1 page
First preoperative follow up report 11/8/04 2 pages
Physician's orders 11/8/04 1 page
Follow up orthopedic examination report 11/15/04 2 pages
Physician's orders 11/15/04 1 page
Initial medical report 11/22/04 2 pages
Employee request to change treating doctor's form 11/22/04 1 page
Post-surgical evaluation report 11/24/04 3 pages
Letter from Dr. Esses, MD to Dr. Taylor, MD 12/2/04 2 pages
Texas Workers' Compensation work status report 11/19/04 1 page
Imaging report 12/3/04 2 pages
Subsequent medical report 12/6/04 2 pages
Letter from Dr. Esses, MD to Dr. Taylor, MD 12/9/04 2 pages
Texas Workers' Compensation work status report 12/6/04 1 page
Subsequent medical report 1/6/05 2 pages
Notice of disputed issue(s) and refusal to pay benefits from Texas Mutual 1/25/05 1 page
Texas Workers' Compensation work status report 1/6/05 1 page
Subsequent medical report 2/2/05 2 pages
Physical therapy progress note 2/7/05 3 pages

Letter to Dr. McMillan, MD from Texas Mutual 2/22/05 1 page
Designated doctor information from Texas Workers' Compensation Commission 3/2/05 1 page
Texas Workers' Compensation work status report 2/2/05 1 page
Imaging report 3/4/05 3 pages
Texas Workers' Compensation work status report 3/10/05 1 page
Subsequent medical report 3/10/05 2 pages
Physical therapy progress note 3/29/05 3 pages
Texas Workers' Compensation work status report 4/6/05 1 page
Subsequent medical report 4/6/05 2 pages
Individual psychotherapy progress note 4/12/05 1 page
Letter from Dr. Esses, MD to Dr. McMillan, MD 4/18/05 1 page
Individual psychotherapy progress note 4/26/05 1 page
Individual psychotherapy progress note 5/3/05 1 page
Texas Workers' Compensation work status report 5/5/05 1 page
Subsequent medical report 5/5/05 2 pages
Mental health evaluation report 5/5/05 6 pages
Chart note 5/12/05 1 page
Individual psychotherapy progress note 5/12/05 1 page
Summary report 5/13/05 3 pages
Physical therapy progress note 5/16/05 3 pages
Request for preauthorization and concurrent review from Texas Mutual 5/27/05 1 page
Texas Workers' Compensation work status report 6/2/05 1 page
Subsequent medical report 6/2/05 2 pages
Letter from Robin R. Walker/Texas Mutual to Pain and Recovery Clinic 6/2/05 2 pages
Concurrent report 6/16/05 3 pages
Request for preauthorization and concurrent review from Texas Mutual 6/7/05 1 page
Letter from Robin R. Walker/Texas Mutual to Pain and Recovery Clinic 6/22/05 2 pages
Texas Workers' Compensation work status report 7/7/05 1 page
Subsequent medical report 7/7/05 2 pages
Request for preauthorization and concurrent review from Texas Mutual 7/11/05 1 page
Concurrent report 7/11/05 3 pages
Letter from Robin R. Walker/Texas Mutual 7/14/05 2 pages
Consultative examination report from Dr. Terneny, MD 7/18/05 4 pages
X-ray lumbar spine report 7/18/05 1 page
Range of motion values evaluation report 7/18/05 2 pages
Texas Workers' Compensation work status report 8/16/05 1 page
Subsequent medical report 8/16/05 2 pages
Initial orthopaedic consultation report 8/30/05 4 pages
Texas Workers' Compensation work status report 9/15/05 1 page
Subsequent medical report 9/15/05 2 pages
Texas Workers' Compensation work status report 10/20/05 1 page
Subsequent medical report 10/20/05 2 pages
Functional capacity assessment 10/24/05 12 pages
Clinical interview 10/26/05 3 pages
Letter to Ms. Gomez/Texas Mutual from Dr. Martinez, DC 10/31/05 3 pages
Request for preauthorization and concurrent review from Texas Mutual 11/1/05 1 page
Letter to Nestor Martinez, DC from Robin R. Walker/Texas Mutual 11/4/05 2 pages
Letter to Nestor Martinez, DC from Robin R. Walker/Texas Mutual 11/7/05 2 pages
Group session monitoring form 11/11/05 1 page
Group session monitoring form 11/16/05 1 page
Group session monitoring form 11/22/05 1 page
Texas Workers' Compensation work status report 11/29/05 1 page
Subsequent medical report 11/29/05 2 pages
Group session monitoring form 11/30/05 1 page
Group session monitoring form 12/9/05 1 page
Group session monitoring form 12/14/05 1 page
Texas Workers' Compensation work status report 12/29/05 1 page

FROM THE RESPONDENT/Texas Mutual:
Letter from La Treace E. Giles, RN/Texas Mutual 12/27/05 3 pages
Daily progress note 1/6/05 1 page
Daily progress note 2/2/05 1 page
Daily progress note 3/1/05 1 page
Daily progress note 3/14/05 1 page

DWC –69 Report of medical evaluation 3/23/05 1 page
Report of medical evaluation from Dr. Brannan, MD 3/23/05 2 pages
Supplemental information on ___ coversheet 1 page
Review of medical history and physical exam 3/23/05 2 pages
Copy of check from NM Health Services North PA to MRIoA 1/10/06 1 page

Summary of Treatment/Case History:
The patient is a 54-year-old male bulldozer operator with a prior lower back injury in ___ that resulted in a lumbar laminectomy at L4-5, who lifted a heavy toolbox on 10/4/04 and developed immediate pain in his lower back and into his legs, particularly on the left side. He first presented to a medical orthopedist who diagnosed a lumbar HNP and performed L4-5 left-sided lumbar laminectomy and diskectomy on 11/5/04. On 11/22/04, he presented to a doctor of chiropractic who began his post-operative physical therapy and rehabilitation. Soon thereafter, his wound became infected and he had to undergo reopening, exploration and debridement.

Questions for Review:
1. ITEM(S) IN DISPUTE: Dates of service 11/24/04 through 3/14/05: Manual therapy technique - #97140 and office visits. Do not review services on table noted to be fee issues.

Explanation of Findings:
The manual therapy techniques (#97140) are overturned; the level II established patient office visit (#99212) on date of service 3/1/05 is denied.

In this case, the records adequately documented that there were range of motion deficits in the lumbar spine that warranted the application of joint mobilization techniques (#97140) as an important component of the post-surgical rehabilitation protocol. Therefore, the inclusion of this procedure was supported as medically necessary.

However, in terms of the established patient office visit (#99212), nothing in either the medical records or the specific diagnosis supported the necessity for performing this level Evaluation and Management (E/M) service on each and every patient encounter, and particularly not during an already-established treatment plan. Additionally, this service was also unnecessary as duplicative, since at the time, the patient was under the concurrent care of many other physicians.

Conclusion/Partial Decision to Certify:
1. ITEM(S) IN DISPUTE: Dates of service 11/24/04 through 3/14/05: Manual therapy technique - #97140 and office visits. Do not review services on table noted to be fee issues.

The manual therapy techniques (#97140) are overturned, as the records adequately documented that there were range of motion deficits in the lumbar spine that warranted the application of joint mobilization techniques.

Conclusion/Partial Decision to Not Certify:
The level II established patient office visit (#99212) on date of service 3/1/05 is upheld, as nothing in either the medical records or the specific diagnosis supported the necessity for performing this level Evaluation and Management (E/M) service on each and every patient encounter, and particularly not during an already-established treatment plan.

References Used in Support of Decision:

_____

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 given numerous presentations with their field of specialty. This reviewer has been in continuous active practice for over twenty years.
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 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. 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.
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, and the DWC.

It is the policy of Medical Review Institute of America to keep the names of its reviewing physicians confidential. Accordingly, the identity of the reviewing physician will only be released as required by state or federal regulations. If release of the review to a third party, including an insured and/or provider, is necessary, all applicable state and federal regulations must be followed.

Medical Review Institute of America retains qualified independent physician reviewers and clinical advisors who perform peer case reviews as requested by MRIoA clients. These physician reviewers and clinical advisors are independent contractors who are credentialed in accordance with their particular specialties, the standards of the American Accreditation Health Care Commission (URAC), and/or other state and federal regulatory requirements.

The written opinions provided by MRIoA represent the opinions of the physician reviewers and clinical advisors who reviewed the case. These case review opinions are provided in good faith, based on the medical records and information submitted to MRIoA for review, the published scientific medical literature, and other relevant information such as that available through federal agencies, institutes and professional associations. Medical Review Institute of America assumes no liability for the opinions of its contracted physicians and/or clinician advisors. The health plan, organization or other party authorizing this case review agrees to hold MRIoA harmless for any and all claims, which may arise as a result of this case review. The health plan, organization or other third party requesting or authorizing this review is responsible for policy interpretation and for the final determination made regarding coverage and/or eligibility for this case.

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Case Analyst: Cherstin B ext 597