



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

PART I: GENERAL INFORMATION

Type of Requestor: (X) Health Care Provider () Injured Employee () Insurance Carrier	
Requestor=s Name and Address: Horizon Health % Bose Consulting, L. L. C. P. O. Box 550496 Houston, Texas 77255	MDR Tracking No.: M5-06-0727-01
	Claim No.:
	Injured Employee's Name:
Respondent's Name and Address: Fidelity and Guaranty Insurance, Box 19	Date of Injury:
	Employer's Name:
	Insurance Carrier's No.:

PART II: REQUESTOR'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

Documents include the DWC-60 package.

PART III: RESPONDENT'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

Documents include the DWC-60 response. Position Summary states, "Attached is the peer review referenced in the EOB's."

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)
4-4-05 – 8-12-05	CPT codes 99212, 97110, 97112 and 97140	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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 not prevail on the disputed medical necessity issues.

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

Findings and Decision by:

Donna Auby

2-3-06

Authorized Signature

Typed Name

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.

February 1, 2006

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

CLAIMANT: ____

EMPLOYEE: ____

POLICY: M5-06-0727-01

CLIENT TRACKING NUMBER: M5-06-0727-01/5278

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:

RECORDS RECEIVED FROM THE STATE:

Notification of IRO Assignment dated 1/9/06, 44 pages

RECORDS RECEIVED FROM THE RESPONDENT:

Summary of Dispute from Flahive, Ogden & Latson dated 1/19/06, 2 pages

Carriers Manual Fee Schedule for Physicians' Service, 5 pages

SOAH Docket South Coast Spine and Rehab Center, 11 pages

Docket Fidelity & Guaranty In s Co, 14 pages

Docket Fidelity & Guaranty In s Co, 14 pages

Plan language, 24 pages

Texas Workers Compensation Act Chapter 401, 6 pages

Follow up note Regional Specialty Clinic dated 6/27/05, 4/29/05, 9/9/05, 5/25/05, 4 pages

Operative report, 7/15/05, 1 page

Nerve Conduction Study and EMG report, 4/29/05, 1 page

Procedure report, 9/9/05

Horizon Health office notes, 7/18/05-8/12/05, 4 pages

Prescription for post injection therapy dated 7/15/05, 1 page

The Doctors Center Physical Activity Status Report 1/16/06, 1 page

Return to Work Certificate dated 1/16/06

Letter from Brian Buck MD dated 3/30/05, 4 pages

Texas Workers Comp Work Status Report, 3/30/05, 6/3/05, 6/27/05, 3 pages

Report of Medical Evaluation, 5/26/05, 13 pages

Handwritten note, undated, 1 page

Initial Patient Consult Regional Specialty Clinic, 3/9/05, 3 pages

Letter from Flahive, Ogden & Patson dated 1/6/06, 2 pages

Peer review from Mark Carlson DC dated 3/7/05, 4 pages

RECORDS RECEIVED FROM THE REQUESTOR:

Bose Consulting report, Position statement, 5 pages

Imaging report, 3/14/05, 1 page

Nerve Conduction Study and EMG report, 4/29/05, 1 page

Letter dated 4/3/05 from Jeffrey Reuben MD, 2 pages

Prescription for post injection therapy dated 7/15/05, 1 page

Procedure note 9/9/05, 1 page

Follow up note, 9/9/05, 6/27/05, 4/29/05, 5/25/05 3 pages

Operative note 7/15/05, 4/14/05, 2 pages

Initial Exam Horizon Health dated 1/28/05, 2 pages

Subsequent report Horizon Health 5/2/05, 1 page

Horizon Health office notes 4/4/05-8/12/05, 8 pages

Summary of Treatment/Case History:

The claimant underwent MRI, EMG/NCV, left median branch blocks and physical medicine treatments after being injured in a motor vehicle accident on ____.

Questions for Review:

Dates of Service: 4/4/05 thru 8/12/05.

Services Disputed: Office Visits (99212), Therapeutic Exercises (97110), Neuromuscular Re-Education (97112) and Manual Therapy Technique (97140). Are services medically necessary?

Explanation of Findings:

Dates of Service: 4/4/05 thru 8/12/05.

Services Disputed: Office Visits (99212), Therapeutic Exercises (97110), Neuromuscular Re-Education (97112) and Manual Therapy Technique (97140). Are services medically necessary?

No. Physical medicine is an accepted part of a rehabilitation program following injury. However, for medical necessity to be established, there must be an expectation of recovery or improvement within a reasonable and generally predictable time period. In addition, the frequency, type and duration of services must be reasonable and consistent with the standards of the health care community. General expectations include: (A) As time progresses, there should be an increase in the active regimen of care, a decrease in the passive regimen of care and a decline in the frequency of care. (B) Home care programs should be initiated near the beginning of care, include ongoing assessments of compliance and result in fading treatment frequency. (C) Patients should be formally assessed and re-assessed periodically to see if the patient is moving in a positive direction in order for the treatment to continue. (D) Supporting documentation for additional treatment must be furnished when exceptional factors or extenuating circumstances are present. (E) Evidence of objective functional improvement is essential to establish reasonableness and medical necessity of treatment. Expectation of improvement in a patient's condition should be established based on success of treatment. Continued treatment is expected to improve the patient's condition and initiate restoration of function. If treatment does not produce the expected positive results, it is not reasonable to continue that course of treatment. In this case, there is no documentation of objective or functional improvement in this patient's condition and no evidence of a change of treatment plan to justify additional treatment in the absence of positive response to prior treatment.

Specifically in regard to the joint mobilization service (97140), mobilization has been shown to be ineffective for patients with low back pain and the *Guidelines for Chiropractic Quality Assurance and Practice Parameters* Chapter 8 under "Failure to Meet Treatment/Care Objectives" states, "After a maximum of two trial therapy series of manual procedures lasting up to two weeks each (four weeks total) without significant documented improvement, manual procedures may no longer be appropriate and alternative care should be considered." In reviewing the records provided by the treating doctor, there was no documentation to support improvement.

Specifically in regard to the therapeutic exercises (97110), active rehabilitation may be performed in a clinic one-on-one, in a clinic in a group, at a gym or at home with the least costly of these options being a home program. A home exercise program is also preferable because the patient can perform them on a daily basis. On the most basic level, the provider has failed to establish why the continuing services were required to be performed one-on-one when current medical literature states, "...there is no strong evidence for the effectiveness of supervised training as compared to home exercises."

Specifically in regard to the established patient office visits (99212) and per CPT, nothing in either the diagnosis or medical records in this case supported the medical necessity of performing this level of Evaluation and Management (E/M) service routinely on each and every encounter and particularly not during an already-established treatment plan.

Specifically in regard to the neuromuscular reeducation services (97112), there was nothing in either the diagnosis or the physical examination findings on this patient that demonstrated the type of neuropathology that would necessitate the application of this service. According to a Medicare Medical Policy Bulletin, "This therapeutic procedure is provided to improve balance, coordination, kinesthetic sense, posture, motor skill, and proprioception. Neuromuscular reeducation may be reasonable and necessary for impairments which affect the body's neuromuscular system (e.g., poor static or dynamic sitting/standing balance, loss of gross and fine motor coordination, hypo/hypertonicity). The documentation in the medical records must clearly identify the need for these treatments." In this case, the documentation failed to fulfill these requirements, rendering the performance of this service medically unnecessary.

And finally, the records fail to substantiate that the disputed services fulfilled the statutory requirements for medical necessity since the patient obtained no relief, promotion of recovery was not accomplished and there was no enhancement of the employee's ability to return to or retain employment. In fact, except for one date of service, the patient's pain rating remained constant at "4-5/10" on every recorded date (07/20/05, 07/27/05, 08/01/05, 08/03/05, 08/08/05 and 08/10/05).

Conclusion/Decision to Not Certify:

Dates of Service: 4/4/05 thru 8/12/05 for office visits (99212), therapeutic exercises (97110), neuromuscular re-education (97112) and manual therapy technique (97140) are not medically necessary for this patient.

References Used in Support of Decision:

Frost H, Lamb SE, Doll HA, Caner PT, Stewart-Brown S. Randomized controlled trial of physiotherapy compared with advice for low back pain. *BMJ*. 2004 Sep 25;329(7468):708. Epub 2004 Sep 17

Haldeman, S; Chapman-Smith, D; Petersen, D *Guidelines for Chiropractic Quality Assurance and Practice Parameters*, Aspen Publishers, Inc.

Ostelo RW, de Vet HC, Waddell G, Kerchhoffs MR, Leffers P, van Tulder M, Rehabilitation following first-time lumbar disc surgery: a systematic review within the framework of the cochrane collaboration. *Spine*. 2003 Feb 1;28(3):209-18.

CPT 2004: Physician's Current Procedural Terminology, Fourth Edition, Revised. (American Medical Association, Chicago, IL 1999),

HGSA Medicare Medical Policy Bulletin, Physical Therapy Rehabilitation Services, original policy effective date 04/01/1993 (Y-1B)

Texas Labor Code 408.021

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.

1203797.1

Case Analyst: Stacie ext 577