



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

Type of Requestor: (X) Health Care Provider () Injured Employee () Insurance Carrier	
Requestor's Name and Address: South Coast and Spine Rehabilitation, P.A. 620 Paredes Line Road Brownsville, Texas 78521	MDR Tracking No.: M5-06-0848-01
	Claim No.:
	Injured Employee's Name:
Respondent's Name and Address: Box 29	Date of Injury:
	Employer's Name:
	Insurance Carrier's No.:

PART II: REQUESTOR'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

DOCUMENTATION SUBMITTED: DWC-60 dispute package
 POSITION SUMMARY: We have enclosed behind this section the TWCC-60A/B (Rev.08/2000) Form in accordance with the above rule. In addition, we have included complete details of the disputed issues.

PART III: RESPONDENT'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

No response received from Respondent

PART IV: SUMMARY OF DISPUTE AND FINDINGS

Date(s) of Service	CPT Code(s) or Description	Medically Necessary?	Additional Amount Due (if any)
04-06-05 to 04-14-05	97035, 97110 and 99213	<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.

PART VI: GENERAL PAYMENT POLICIES/REFERENCES IMPACTING DECISION

28 Texas Administrative Code Sec. 133.308

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 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:

02-23-06

Authorized Signature

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.



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

Patient Name: _____
Texas IRO # : _____
MDR #: M5-06-0848-01
Social Security #: _____
Treating Provider: Robert S. Howell DC
Review: Chart
State: TX
Date Completed: 2/21/06
Date Amended: 2/22/06

Review Data:

- Notification of IRO Assignment dated 2/2/06, 1 page.
- Request Receipt dated 12/30/05, 1 page.
- Medical Dispute Resolution Request / Response dated 12/30/05, 2 pages.
- Table of Disputed Services dated 4/14/05, 4/13/05, 4/11/05, 4/7/05, 4/6/05, 1 page.
- Request for Reconsideration dated 12/6/05, 1 page.
- Invoice dated 2/7/06, 1 page.
- Final Request for Medical Dispute Resolution dated 2/10/06, 14 pages.
- Fax Cover Sheet dated 2/3/06, 1 page.
- Initial Evaluation Narrative dated 12/9/04, 10 pages.
- Re-Evaluation dated 2/4/05, 3/18/05, 4/19/05, 17 pages.
- Referral Problems dated 4/20/05, 6 pages.
- Functional Capacity Evaluation dated 12/18/04, 12 pages.
- 2nd Functional Capacity Evaluation dated 1/18/06.
- 3rd Functional Capacity Evaluation dated 3/18/05.
- Office Visit dated 4/14/05, 4/13/05, 4/11/05, 4/7/05, 4/6/05 29 pages.
- Texas Workers Compensation Work Status Report dated 5/20/05, 4/19/05, 3/18/05, 3/9/05, 2/4/05, 1/18/05, 12/9/04, 7 pages.
- Report of Medical Evaluation dated 5/20/05, 1 page.
- Patient Information dated 5/20/05, 6 pages.
- Initial Examination dated 1/25/05, 4 pages.
- Orthopedic Visit dated 2/1/05, 2 pages.
- Prescription dated 2/1/05, 1 page.
- Office Visit Note dated 4/15/05, 2 pages

Reason for Assignment by TDI/DWC: Determine the appropriateness of the previously denied requests for: 1) Ultrasound (97035). 2) Therapeutic exercises (97110). 3) Office visits (99213). Dates of service: 4-6-05 to 4/14/05.

Determination: UPHELD -

- 1) Ultrasound (97035) on 4/6/05, 4/11/05, 4/13/05, 4/14/05.
- 2) Therapeutic exercises (97110) on 4/6/05, 4/7/05, 4/11/05, 4/13/05 and 4/14/05.
- 3) Office visits (99213) on 4/6/05, 4/11/05, 4/13/05 and 4/14/05.

Rationale:

Patient's age:

Gender:

Date of Injury: _____

Mechanism of Injury: He was in his classroom squatting down arranging materials on the lower part of a bookshelf, when he picked up a box with materials that weighed more

than 20 pounds, at which time he felt a sharp pain in his lower back.

Diagnoses: Lumbar sprain, lumbar herniated nucleus pulposus (HNP) and lumbar radiculitis.

This is a 5' 10" tall 260-pound male patient. On 12/9/04, he presented for chiropractic evaluation and treatment with Robert S. Howell, D.C. Please note that the actual initial evaluation narrative from this provider indicated a discrepancy with regards to the date of injury. Dr. Howell reported subjective complaints of severe and constant low back pain rated at 7/10, with radiating pain extending down the side and front of his left leg. He had normal muscle strength, rated at 5/5, normal reflexes and a normal dermatome examination. There was tenderness, but no spasms noted in the lumbar musculature. The orthopedic testing revealed a positive Kemp's test, bilaterally. He had decreased lumbar range of motion in all ranges. He was started on aquatic therapy, physical modalities of interferential, massage, and ultrasound therapy. He was provided an initial Functional Capacity Evaluation (FCE) to determine his work status, which was considered to be light duty.

An MRI of the lumbar spine was performed on 1/13/05, with findings at the L1-2 level of mild non-compressive arthropathy. At the L2-3 level, he had a right lateral disc herniation, measuring 5mm which was encroaching upon the right neural foramen, with high grade right neural foraminal stenosis due to facet arthropathy and prominent spondylosis with bony spurring. At the L3-4 level, there was mild neural foraminal stenosis due to degenerative arthropathy. At the L4-5 level, there was facet arthropathy with moderate bilateral neural foraminal stenosis. At the L5-S1 level, there was a central 2-3mm disc protrusion, minimally effacing the S1 nerve root, with mild facet arthropathy and mild neural foraminal stenosis.

On 1/25/05, he had an initial examination with Donald Kramer, M.D. and Karen Dickerson, M.D., pain management specialists, who documented that the claimant denied radiation to either leg, or that the lower back pain continued to wax and wane. His motor testing was 5/5 and reflexes were normal at 2+. On 2/1/05, he was referred for an orthopedic consultation with Dr. Jorge Tijmes, MD. Dr. Tijmes' examination revealed negative straight leg raising bilaterally, normal reflexes and normal muscle strength, rated at 5/5. Gait was normal and sensation was normal. He documented a positive Patrick Fabere test. There were no spasms noted, and he was given recommendations for rehabilitation, work hardening and for an oral medication, Ultracet. He documented that the patient did not have any indications for surgery at that time. By 2/4/05, his symptoms were reduced to 5/10, with moderate and constant low back pain. There was no left leg pain and range of motion was improving. On the 3/18/05 re-examination, his pain had reduced to 3/10.

A functional capacity evaluation (FCE) was performed on 3/18/05, which revealed improvement to a medium duty demand level. Range of motion was limited in lumbar flexion to 59/60 degrees, in extension to 18/25 degrees, in left lateral flexion to 20/25 degrees and in right lateral flexion to 21/25 degrees. The cardiovascular examination, posture and gait were normal. The patient demonstrated an inconsistent effort in his functional capacity evaluation (FCE). On page 2 of the stated FCE, it was documented that the patient did not exhibit any deficits in terms of strength and/or mechanics, and demonstrated adequate biomechanical tolerance for sustained activity. The daily notes from the date of service corresponding to 4/6/05, documented the pain to be minimal and was rated at 2/10. It was characterized as a dull ache. The lumbar ranges of motion were normal in flexion to 60/60 degrees, in extension to 25/25 degrees and in bilateral lateral flexion to 25/25 degrees. There were no deficits in strength nor were any muscular spasms noted. The foregoing was reflected in the last eight dates of service, ranging from 3/7/05 to 4/6/05. The notes further indicated that the therapeutic exercises were performed to help "restore strength and range of motion of the lumbar spine" Robert Howell, D.C. signed these notes. On 4/7/05, Dr. Howell reported minimal pain rated at 1/10 and, again, normal ranges of motion were documented with no strength deficits noted on this examination date, nor were muscle spasms noted. The 4/11/05 notes by Dr. Howell indicated normal ranges of motion and slight pain, rated at 1/10, and no deficits of strength with no muscular spasms.

On 4/13/05, Ray Strong, D.C., reported minimal pain rated at 1/10, with no documented deficits in ranges of motion, sensation, muscle strength or evidence of any spasms. On 4/14/05, he again reported minimal 1/10 pain scale, and there were still reported normal ranges of motion and continued and unchanged positive Kemp's test, bilaterally. There were no reported strength deficits nor spasms documented. No other complicating or new complaints were documented.

The current request is to determine the medical necessity for disputed services rendered from 4-6-05 to 4/14/05 consisting of:

- 1) Ultrasound (97035) on 4/6/05, 4/11/05, 4/13/05, 4/14/05. These dates of service were not found medically necessary at that time. This claimant had no muscle spasms, edema, sensory deficits, motor deficits, or reflex deficits documented on the dates corresponding to the dates in question hereunder. Moreover, the patient's pain was reported as minimal at an intensity level of 2/10. Therefore, clinically, there was no medical necessity to continue passive care modalities, and home exercises would have been appropriate. References used to support this determination were the ACOEM Guidelines, Chapters 6 and 12, The Blue Cross Blue Shield Providers Facts Sheet for CPT code 97110, and the Texas Labor Code 408.021.

- 2) Therapeutic exercises (97110) on 4/6/05, 4/7/05, 4/11/05, 4/13/05, 4/14/05. There were no reported muscular spasms nor deficits in ranges of motion, the sensory examination, the motor examination, nor the examination of the reflexes corresponding to these dates of service. Moreover, the cardiovascular examination and gait were unremarkable and the patient reported minimal pain, rated at 1-2/10. Therefore, it is this reviewer's opinion that the medical necessity of ongoing formal therapeutic exercises corresponding to the dates in question hereunder was not established. This patient should have been transitioned to a fully-independent program of home exercises by 3/18/05, the date of his re-examination. References used to support this determination were the ACOEM Guidelines, Chapter 6, the Blue Cross Blue Shield Providers Facts Sheet for CPT code 97110, and the Texas Labor Code 408.021.
- 3) Office visits (99213) on 4/6/05, 4/11/05, 4/13/05, 4/14/05. There was no medical necessity established for the office visits corresponding to these dates of service. The subjective pain reported was minimal, having been rated at 1-2/10. The objective findings corresponding to the dates in question hereunder documented normal reflexes, a normal sensory examination, a normal motor examination and normal ranges of motion. References used to support this determination were the ACOEM Guidelines, Chapters 6 and 12, the Blue Cross Blue Shield Providers Facts Sheet for CPT code 97110, and the Texas Labor Code 408.021.

Overall, this claimant did improve with the treatments provided from the initial onset, up through at least 3/18/05, at which time, the documentation reflected minimal complaints of 1-2/10 pain scale, normal graded muscle/motor testing, normal reflexes, normal sensation, and normal ranges of motion in the lumbar spine, since at least 3/7/05. The foregoing were all documented in the progress notes from 3/7/05 to 4/14/05. Accordingly, this claimant could have been on a fully-independent home exercise program as opposed to ongoing in-house therapeutic exercises from 4/6/05 to 4/14/05. Furthermore, the notes from 4/6/05 to 4/14/05 documented that the patient's goals had been achieved and that the patient's functionality had been restored to being able to perform normal activities of daily living (ADL). Therefore, the disputed services were not found medically necessary from 4/6/05 to 4/14/05. The ACOEM Guidelines, Chapter 12 do not support passive treatment interventions including, but not limited to, the interventions in dispute hereunder beyond the first six (6) weeks of symptoms in the Management of low back complaints. It is presumed that, thereafter, the clinical benefit that could be afforded by such passive treatment interventions would not be superior to that of a fully-independent home exercise program. The ACOEM Guidelines, chapter 6, page 116, under end points and outcomes section sets out that, "The desired end point in pain management is to return to function rather than a complete or immediate cessation of pain. Patients may be reassured that with increasingly normal physical function, pain will become increasingly more manageable." (The claimant's ranges of motion were normal from 3/7/05 to 4/14/05). The Blue Cross Blue Shield Provider Facts on page 6 was referenced, which advances the position that therapeutic exercises are only necessary when there are documented deficits. During the period extending from 3/7/05 to 4/14/04, this claimant's lumbar ranges of motion were normal, as were the reflexes, motor and sensory examinations. Furthermore, the TDI and TWCC rules and regulations, specifically, Texas Labor Code 408.021, *Entitlement to Medical Benefits*, would support this determination, in that the patient was provided an appropriate course of conservative, passive and active care, with good response(s) to treatments, as evidenced by the documented normal ranges of motion, reflexes, gait, sensory and motor examinations. Moreover, no new complaints were recorded in the notes from 4/6/05 to 4/14/05. Based upon all of the foregoing, the disputed services in question cannot be recommended and, therefore, the prior determinations corresponding to these disputed services should be upheld.

Criteria/Guidelines utilized:

- 1) Texas Department of Insurance rules and regulations (TWCC rules and regulations) Labor Code 408.021.
- 2) The ACOEM guidelines chapter 12, page 298 and chapter 6 page 116 regarding end points and outcomes.
- 3) Provider facts from blue cross blue shield, page 6 regarding therapeutic procedures and exercises CPT code 97110. Services for therapeutic procedures and exercises are covered if they require the skill and expertise of a covered provider and are diagnosis related. Here are the guidelines to follow:
 - Therapeutic exercises may be reasonable and necessary for a documented loss of restriction of joint motion, strength, functional capacity, or mobility, which has resulted from specific a disease or injury.
 - Documentation for therapeutic exercise must show objective loss of joint motion, strength, and mobility, e.g., degrees of motion, strength grades, levels of assistance.
 - Only the actual time of the provider's one on one contact with the patient may be billed. After a patient has been instructed in an exercise or exercise program, the repeated performance of the exercise in the clinic, even under the supervision of a covered provider, are considered non-skilled and non-covered.
 - Patients exercising independently and using exercise equipment not requiring hands on treatment and the skill and expertise of the covered provider are non-covered (e.g. treadmill, exercise bicycle, Stairmaster, nautilus, Cybex, etc).

- Exercises to promote overall fitness, flexibility, endurance enhancement, aerobic conditioning, weight reduction, and maintenance exercises to maintain a range of motion and or strength are non-covered.
- Passive exercises not related to restoring specific loss of function are not covered.

Documentation requirements are stated as:

- Objective measurements of strength and range of motion and mobility to support the use of Physicians Current procedural terminology CPT code 97110.
- Specific exercises performed purpose of the exercises as related to function, instruction given, and or assistance needed and documentation to support the skills and expertise of the covered provider are required.
- Functional limitations and deficits as a result of the strength range of motion, and or flexibility deficits.
- Response of the patient to treatment.

Physician Reviewers Specialty: Chiropractic

Physician Reviewers Qualifications: Texas Licensed DC, BSRT, FIAMA Chiropractor and is also 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.