



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: Behavioral Healthcare Associates 2450 Fondren Suite 312 Houston, Texas 77063	MDR Tracking No.: M5-06-0944-01
	Claim No.:
	Injured Employee's Name:
Respondent's Name and Address: Zurich American Insurance Company Box 19	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: None submitted by Requestor

PART III: RESPONDENT'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

DOCUMENTATION SUBMITTED: Response to DWC-60
 POSITION SUMMARY: This medical dispute should be dismissed because the requestor has failed to abide by the requirements of 28 TAC 133.308. More specifically, the request for independent review must be filed in the form, format and manner prescribed by the commission (28 TAC 133.308(f) and the requestor has failed to do so.

PART IV: SUMMARY OF DISPUTE AND FINDINGS

Date(s) of Service	CPT Code(s) or Description	Medically Necessary?	Additional Amount Due (if any)
03-17-05	90885 and 90889	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$0.00
03-17-05	96150	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$133.40 *
	<ul style="list-style-type: none"> Amount in dispute per Requestor which is less than MAR 		

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 **majority** of the disputed medical necessity issues.

PART VI: GENERAL PAYMENT POLICIES/REFERENCES IMPACTING DECISION

28 Texas Administrative Code Sec. 133.308 and 134.202(c)(1)

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 entitled to reimbursement in the amount of \$133.40. In addition, the Division finds that the requestor was not the prevailing party and is not entitled to a refund of the IRO fee. 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.

Ordered by:

03-08-06

Authorized Signature

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.



Specialty Independent Review Organization, Inc.

March 7, 2006

DWC Medical Dispute Resolution
7551 Metro Center Suite 100
Austin, TX 78744

Patient: ____
DWC #: ____
MDR Tracking #: M5-06-0944-01
IRO #: 5284

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

Specialty IRO has performed an independent review of the care rendered 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.

This case was reviewed by a licensed Psychologist with a specialty in Psychology. The reviewer is on the DWC ADL. The Specialty IRO health care professional has signed a certification statement stating that no known conflicts of interest exist between the reviewer and any of the treating doctors or providers or any of the doctors or providers who reviewed the case for a determination prior to the referral to Specialty IRO for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to the dispute.

CLINICAL HISTORY

Ms. ____ was injured on ____ . Ms. ____'s work-related injury involved the cervical spine, right shoulder, and upper extremities. Ms. ____ was initially injured while performing her duties at the ____ . At that time, approximately five metal baskets hit her right side. Ms. ____ has undergone passive

interventions including acupuncture, massage therapy, and electrical stimulation. In addition, she has participated in physical therapy and aquatic therapy. She has undergone several injections including cortisone, sympathetic, and epidurals. She underwent a right shoulder surgery in 1993, carpal tunnel release in 1995, cervical fusion in 1996, and breast reduction surgery in 2003. A diagnostic exam conducted includes a cervical MRI study that was shown to be normal, right shoulder MRI study that was shown to be normal and a CT scan of the right shoulder and elbow which was shown to be normal. Electrodiagnostic studies were also performed. Cervical discograms were done in 1997, and degenerative changes were noted at that time. A cervical myelogram with CT scan performed in 1997 was conducted and the physician recommended anterior cervical discectomy and fusion. In 2002, Dr. Osborn evaluated Ms. ___ and assigned her a 17% whole person impairment rating. In 1997, Dr. Bauer performed an anterior cervical discectomy and fusion at C4-5, C5-6, and C6-7. In 2001, Dr. Zegarelli began to see Ms. ___ and recommended that she participate in a multidisciplinary treatment and pain management program.

With regard to psychological interventions, Ms. ___ participated in a pre-surgical educational program through Positive Pain Management. A psychological evaluation dated 09-24-97 suggested that Ms. ___ met the criteria for Atypical Depression (296.82) and Psychological Factors Associated with Diseases Classified Elsewhere (316). Global assessment of functioning indicated a current level of 60 with moderate psychosocial stressors. She was cleared for surgery at that time and completed the pre-surgical educational program.

A second psychological evaluation or health and behavior assessment (96150) was conducted approximately 8 years later by Juan Pablo Kalawski, M.A., under the supervision of Bob L. Gant, Ph.D., on March 17, 2005. At that time, Mr. Kalawski diagnosed the claimant with Major Depressive Disorder, Single Episode (injury related) (296.21), Psychosocial Problems Related to the injury including chronic pain syndrome, physical limitations, and ineffective coping skills to manage pain with a global assessment of functioning at 55 and an estimated pre-injury global assessment of functioning at 70. At the time of this evaluation, Ms. ___ denied previous psychological counseling, a history of psychological problems, or the use of psychotropic medications before her injury. Mr. Kalawski recommended an interdisciplinary chronic pain management program at the time of his evaluation. He acknowledged that conservative psychological treatment had not been attempted and, therefore, requested six sessions of psychotherapy to address symptoms of depression, fatigue, sleep disturbance, anxiety, psychophysiological distress, and pain intensity. It is unclear based on the records whether those sessions have been completed.

RECORDS REVIEWED

1. *Motion to Dismiss Letter* to Amy Rich from Scott Bouton dated February 07, 2006.
2. *Supplemental Response Letter* to Wendy Perelli from Ronald M. Johnson dated February 16, 2006
3. *Letter* to Wendy Perelli from Steven S. Callahan, Ph.D., dated February 16, 2006.
4. *Health and Behavior Assessment* (96150) by Juan Pablo Kalawski, M.A., dated March 17, 2005.
5. *Right Upper Extremity Electrodiagnostic Study* by Jonathan E. Walker, M.D., dated November 26, 2002.
6. *CT of the Cervical Spine with Contrast and Sagittal Reconstruction* by Vee L. Martinez, M.D. dated November 26, 2002.
7. *Physical Performance Evaluation* dated July 25, 2005.
8. *Retrospective Peer Review* by K.L. Blanchette, M.D., dated March 25, 2004.

9. *Progress Note* by Jenny Sears, O.T.R., no date.
10. *Request for Benefit Determination Letter* by James W. Ward, M.D., dated June 19, 2003.
11. *Progress Note* by D.A. Boudreau, D.O., dated March 7, 1995.
12. *Impairment Rating* by Phillip Osborne, M.D., dated May 20, 2002.
13. *Progress Note* by C.M. Schade, M.D., Ph.D., dated December 13, 2001, August 28, 2001, July 25, 2001, June 8, 2001, and May 8, 2001.
14. *Response Letter* to Zurich U.S. by C.M. Schade, M.D., Ph.D., dated May 4, 2001.
15. *Progress Note* by Louis D. Zegarelli, D.O. dated March 18, 2005, February 15, 2005, January 13, 2005, November 15, 2005, January 13, 2005, November 29, 2004, August 27, 2004, May 27, 2004, April 27, 2004, April 9, 2004, March 25, 2004, February 17, 2004, January 29, 2004, January 22, 2004, January 5, 2004, December 5, 2003, September 29, 2003, November 4, 2003, August 21, 2003, August 11, 2003, June 14, 2003, April 25, 2003, March 24, 2003, February 28, 2003, January 23, 2003, January 9, 2003, December 12, 2002, December 10, 2002, November 22, 2002, October 23, 2002, September 23, 2002, August 26, 2002, August 2, 2002, and July 2, 2002.
16. *Follow-Up Office Visit* by Bruce S. Hinkley, M.D., dated June 28, 1994, May 20, 1997, March 25, 1997, February 25, 1997, January 28, 1997, November 25, 1996, October 15, 1996, August 19, 1996, September 5, 1995, August 15, 1995, July 18, 1995, June 6, 1995, April 25, 1995, March 21, 1995, January 31, 1995, October 18, 1994, September 20, 1994, August 5, 1994, May 24, 1994, and April 12, 1994.
17. *Provocative and Analgesic Cervical Discogram C3-4, C4-5, C5-6, C6-7* by Joseph E. Mouhanna, M.D., dated May 7, 1997.
18. *MRI of the Right Shoulder* by Robert L. Nelson, D.O., dated November 19, 1992.
19. *CT Right Elbow and CT Right Shoulder* by Robert L. Nelson, D.O., dated October 15, 1992.
20. *MRI of the Cervical Spine* by Anthony B. Brentlinger, M.D., dated September 24, 1992.
21. *Nerve Conduction Studies* by Roger S. Blair, M.D., dated May 12, 1994.
22. *Electromyogram Report* by M.W. Asfour, M.D., dated June 29, 1993.
23. *Whole Body Bone Scan with Spots of the Shoulders and Elbows Bilaterally* by Myron D. Jones, D.O., dated February 2, 1993.
24. *Operative Report* by Joseph E. Mouhanna, M.D., dated April 16, 1997.
25. *Operative Report* by Joseph E. Mouhanna, M.D., dated and March 5, 1997.
26. *Operative Report* by Joseph E. Mouhanna, M.D., dated February 12, 1997.
27. *Operative Report* by Joseph E. Mouhanna, M.D., dated January 29, 1997.
28. *Operative Report* by Joseph E. Mouhanna, M.D., dated January 10, 1997.
29. *Assessment of Psychosocial Progress* by Matt E. Jaremko, Ph.D., dated March 25, 1997, January 28, 1997, October 15, 1996, August 19, 1996, March 6, 1996, January 31, 1995, September 20, 1994, and August 5, 1994.
30. *Progress Note* by R. David Bauer, M.D., dated March 18, 1999, May 18, 1998, April 6, 1998, March 2, 1998, February 2, 1998, December 1, 1997, January 5, 1998, July 6, 1998, January 15, 1998, November 3, 1997, October 15, 1997, October 20, 1997, October 13, 1997, October 3, 1997, September 11, 1997, August 28, 1997, July 31, 1997, and June 26, 1997.
31. *Progress Note* by Allen J. Meril, M.D., dated November 21, 1997.
32. *Short Stay Summary* by C.M. Schade, M.D., Ph.D., dated May 3, 1999.
33. *Operative Report* by C.M. Schade, M.D., Ph.D., dated March 22, 1999.
34. *Operative Report* by C.M. Schade, M.D., Ph.D., dated October 23, 1998.
35. *Operative Report* by C.M. Schade, M.D., Ph.D., dated August 3, 1998.
36. *Operative Report* by R. David Bauer, M.D., dated October 14, 1997.
37. *History and Physical Examination* by R. David Bauer, M.D., dated October 14, 1997.

38. *Examination Report* by R. David Bauer, M.D., dated October 14, 1997, and July 24, 1997.
39. *Physical Therapy Progress Report* by P. Martinez, P.T.A., dated February 6, 1998 and February 27, 1998,
40. *Follow-Up Visit* by C.M. Schade, M.D., Ph.D., dated September 9, 1999.
41. *Discharge Summary* by R. David Bauer, M.D., dated September 30, 1997.
42. *Letter* by Ron Ziegler, Ph.D., dated October 15, 1997.
43. *Psychological Evaluation Report* by Ron Ziegler, Ph.D., dated September 24, 1997.
44. *Medical Report* by Joseph Mouhanna, M.D., dated May 7, 1997.

DISPUTED SERVICES

The items in dispute are the retrospective medical necessity of psychiatric evaluation of hospital records, other psychiatric records/reports tests and other accumulated data for medical diagnostic purposes (90885), preparation of report of patient's psychiatric status, history, treatment or progress for other physicians, etc (90889), and health and behavior assessment (EG, health focused clinical interview, behavioral observations, psychophysiological monitoring, health-oriented questionnaire) each 15 minutes face-to-face with the patient, initial assessment (96150) on 3/17/2005.

DECISION

The reviewer agrees with the previous adverse determination regarding 90885 and 90889 on 3/17/2005. The reviewer disagrees with the previous adverse determination regarding 96150 on 3/17/2005.

BASIS FOR THE DECISION

The reviewer states that Medicare Correct Coding Guide indicates that CPT codes 90885 and 90889 are considered bundled procedures with no separate payments allowed. These codes should not be billed separately, and no reimbursement for these two codes is recommended.

A review for the retrospective medical necessity of CPT code 96150 x 4 indicates that the procedure was indeed medically necessary given the patient's prolonged history of experiencing significant pain levels as a result of her work-related injury. Previous surgeries, injections, physical therapy, acupuncture, and medications have not significantly decreased the patient's report of her pain level. In addition, ongoing mental health symptoms have been noted by treating physicians since 1997. The first psychological evaluation of the patient was conducted by Dr. Ron Ziegler, Ph.D. in September 1997. At that time, Ms. ___ was diagnosed with an atypical depression as well as psychological factors associated with diseases classified elsewhere. It is reasonable and necessary to expect an additional psychological evaluation of the patient after approximately eight years of ongoing psychological symptoms and failed surgical and pain management interventions. In addition, CARF and TWCC guidelines require a psychological evaluation to determine the appropriateness of a patient for entering into an interdisciplinary chronic pain management program. An initial assessment was reasonable and necessary to determine the patient's appropriateness for the chronic pain program. Therefore, reimbursement for CPT code 96150 is recommended and is determined to be retrospectively medically necessary.

References:

CARF Guidelines
Medicare Correct Coding Guide

Specialty IRO has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. Specialty IRO has made no determinations regarding benefits available under the injured employee's policy. Specialty IRO believes it has made a reasonable attempt to obtain all medical records for this review and afforded the requestor, respondent and treating doctor an opportunity to provide additional information in a convenient and timely manner.

As an officer of Specialty IRO, Inc, dba Specialty IRO, I certify that the reviewing provider has no known conflicts of interest 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.

Sincerely,

Wendy Perelli, CEO

CC: Specialty IRO Medical Director

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.

Sincerely,

Wendy Perelli, CEO

I hereby certify, in accordance with DWC- Rule 102.4 (h), that a copy of this Independent Review Organization decision was sent to the Division via facsimile, U.S. Postal Service or both on this 7th day of March 2006

Signature of Specialty IRO Representative:

Name of Specialty IRO Representative: Wendy Perelli