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: Buena Vista Workskills 5445 La Sierra Drive # 204 Dallas, Texas 75231	MDR Tracking No.: M5-06-1444-01 Claim No.: Injured Employee's Name:
Respondent's Name and Address: American Casualty Rep Box # 47	Date of Injury: Employer's Name: Insurance Carrier's No.:

PART II: REQUESTOR'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

Requestor's Position Summary: "In summary, it is our position that CNA has established an unfair and unreasonable time frame in paying for the services that were medically necessary and rendered to Mr. ___".

Principle Documentation:

1. DWC-60/Table of Disputed Services
2. CMS 1500's
3. Explanation of benefits

PART III: RESPONDENT'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY

Respondent's Position Summary: "The carrier believes that the disputed treatments for dates of service 10/12/2005 through 12/13/2005 are unwarranted and medically unnecessary. Regarding the medical fee issue pertinent to 11-29-2005 date of service, the Carrier would point out that it appears that the provider has failed to submit documentation reflecting that the disputed service was submitted for consideration by the Carrier".

Principle Documentation: Response to DWC-60

PART IV: SUMMARY OF DISPUTE AND FINDINGS

Date(s) of Service	CPT Code(s) or Description	Medically Necessary?	Additional Amount Due (if any)
10-12-05	97750 (14 units @ $35.62 per unit)	☒ Yes ☐ No	$498.68
10-25-05 to 12-13-05	97545-WH-CA (1 unit @ $128.00 X 19 DOS) 97546-WH-CA (6 units @ $384.00 X 19 DOS)	☒ Yes ☐ No	$2,432.00 $7,296.00
	TOTAL		$10,226.68

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 **prevailed** on the disputed medical necessity issues.

Based on review of the disputed issues within the request, the Medical Dispute Resolution 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 05-31-2006, the Medical Dispute Resolution 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 code 97546-WH-CA is listed on the Table of Disputed Services as being billed on date of service 11-29-05 in the amount of $368.00. The Respondent submitted an explanation of benefits showing payment made of $320.00. The Requestor has listed an amount in dispute of $48.00. Per Rule 133.307(e)(2)(a) the Requestor did not submit a copy of the CMS 1500 to verify the amount billed. No additional reimbursement is recommended.

PART VI: GENERAL PAYMENT POLICIES/REFERENCES IMPACTING DECISION

28 Texas Administrative Code Sec. 133.308, 134.202 and 133.307(e)(2)(a)
Texas Labor Code 413.031

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 $10,226.68. In addition, the Division finds that the Requestor was the prevailing party and is entitled to a refund of the IRO fee ($460.00). The Division hereby **ORDERS** the Respondent 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:

		07-25-06
Authorized Signature	Typed Name	Date of Findings and Decision

Order by:

		07-25-06
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.

MEDICAL REVIEW OF TEXAS

[IRO #5259]
10817 W. Hwy. 71 Austin, Texas 78735
Phone: 512-288-3300 FAX: 512-288-3356

NOTICE OF INDEPENDENT REVIEW DETERMINATION

TDI-WC Case Number:	
MDR Tracking Number:	M5-06-1444-01
Name of Patient:	
Name of URA/Payer:	Buena Vista Workskills
Name of Provider: (ER, Hospital, or Other Facility)	Buena Vista Workskills
Name of Physician: (Treating or Requesting)	Rita Sealy-Wirt, DC

June 23, 2006

An independent review of the above-referenced case has been completed by a chiropractic doctor. The appropriateness of setting and medical necessity of proposed or rendered services is determined by the application of medical screening criteria published by Texas Medical Foundation, or by the application of medical screening criteria and protocols formally established by practicing physicians. All available clinical information, the medical necessity guidelines and the special circumstances of said case was considered in making the determination.

The independent review determination and reasons for the determination, including the clinical basis for the determination, is as follows:

See Attached Physician Determination

Medical Review of Texas (MRT) hereby certifies that the reviewing physician is on the Division of Workers' Compensation Approved Doctor List (ADL). Additionally, said physician has certified that no known conflicts of interest exist between him and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for determination prior to referral to MRT.

Sincerely,

Michael S. Lifshen, MD
Medical Director

cc: Division of Workers' Compensation

DOCUMENTS REVIEWED

Available documentation received and included for review consists of initial and subsequent treatment records, Dr. Jain (MD), Dr Stich (DC), psychiatric RME Dr. Ticknor (MD); orthopedic RME Dr. Kennedy (MD); MMI/impairment rating assessments, Dr. Dyess, (DC), Dr. Setliff (DC); psychiatric evaluation Dr. Ganc (MD); EMG/NCV report, MRI report; work hardening records from Buena Vista Workskills including sequential functional evaluations.

CLINICAL HISTORY

Mr. ___, a 35-year-old male, injured his neck, right shoulder and lower back after slipping and falling on an oily, wet floor. He was seen at on Concentra, & taken off work, had some physical therapy. Was followed until about February or March 2003, treated with medication as well. Lumbar MRI was performed on 1/30/03, essentially normal. Next saw Dr. Jain in September 2003, still off work. Medicated with Ultram and Naprosyn. FCE on 10/2/03 showed patient functioning at light PDL (job level requirement was medium PDL), work conditioning was recommended. Patient was seen for MMI and impairment rating assessment by Stephen Dyess (DC). Felt the patient was not at MMI, recommended evaluation with MRI/CT, EMG/NCV. Felt the patient needed an orthopedic consult for ESI consideration. Recommended work conditioning and/or work hardening if ESI's deemed unnecessary.

EMG/NCV electrodiagnostic (Dr. Jain) on 11/03/03 showed an abnormal study, with evidence of bilateral L5 / S1 nerve root irritation. Patient had a psychiatric evaluation on 12/17/03 with Dr. Ganc (MD). Test with Axis I adjustment disorder with mixed anxiety and depressed mood, Axis III chronic pain syndrome Axis V global assessment of function score of 52. Recommendations were for individual therapy and medication management. Request for change of treating doctor was placed on 4/23/04 to Dr. Stich (DC), who first saw the patient on 4/23/04. Impairment rating / MMI assessment was performed on 5/20/04 by Dr. Stich. He felt patient was at MMI with a 5% DRE category II disorder of the lower back. He noted that ESI's had been recommended but not performed. Patient returned to work on 4/24/04, working with lifting restrictions of 40 pounds for CiCi's pizza. Patient worked until July 2004, then sought retraining through TRC. Followed intermittently by Dr. Stich through the end of 2004, then referred for medication management when symptoms increased to Dr. Prassad (MD) on 1/17/05, when he was prescribed 600 mg Motrin and advised on home exercises.

Designated doctor appointment with Dr. Setliff on 2/3/05, agreed patient was at MMI with 5% whole person impairment, recommended for the EMG studies, felt that the patient would not improve with further care, but that ongoing care has medically necessary with appropriate. This would include medications as well as a chronic pain or similar program to address depression.

Patient continued with intermittent follow-up with Dr. Stich through 7/6/05, when he was released to full duty, without restrictions. Patient continued with 8/10 level pain. Dr. Stich made note of patient continued to have perception of pain elicited in nature, incongruent with the objective findings, and that the patient continued out of work.

Second opinion (orthopedic) / RME by Dr. Kennedy on 7/12/05 Notes limitations of sitting / standing / walking for two hours, limitation of lifting up to 35 pounds. Tenderness across the low back with flexion, fingertips to knee level. Reduced sensation lateral aspect left calf. Diagnosis lumbago without radiculopathy. Felt that the patient was at MMI with 5% whole person impairment. Recommendation for the patient to be placed on an active exercise program followed by a return to the workforce. Psychiatric RME on 8/4/05 by Dr. Ticknor, the patient was at MMI. Probable diagnosis of bipolar disorder, unrelated to ___ injury. Did not meet the diagnostic criteria for current diagnosis of depression, depression or anxiety disorder insufficient to impact ability to function.

Patient transferred to Dr. Sealy (DC) in September 2005, and then was subsequently referred for work hardening to Buena Vista Work Skills, a CARF-accredited facility.

Behavioral assessment on 9/2605 revealed an Axis I impression of major depressive disorder, recurrent, severe without psychotic features, Axis V GAF 54. Beck depression inventory scored 40 (severe depression), Beck anxiety 35 (severe anxiety).

FCE performed on 10/12/05 showed the patient to be performing at a light physical demand level. Recommended chronic pain management program based upon patient's report of previous participation in four week work conditioning and two week work hardening programs. Although behavioral testing on 10/15/05 (MMPI, BHI, MBMD) provide the same axis I impression, with additional pain disorder, and Axis II disorder of schizotypal personality disorder. Recommendation was for individual psychotherapy sessions.

There was some confusion as to whether the patient should enter a chronic pain management program or work hardening program; he entered a work hardening program on 10/12/05 and underwent 30 sessions through 12/13/05. Physical performance evaluations revealed lifting strength increases of 20 pounds 12" to knuckle (30 pounds to 50 pounds), 25 pounds improvement overhead lift (25 pounds to 50 pounds) improvement in push/pull, improvement in an aerobic capacity. Subjectively the patient reports improved tolerance of pain and independence.

REQUESTED SERVICE(S)
Medical necessity of work hardening program, 97545-WHCA, 97546-WHCA, 97750 physical performance tests 10/12/05-12/13/05.

DECISION
Approved.

RATIONALE/BASIS FOR DECISION
The patient had undergone extensive conservative care measures. He remained off work for longer than two years. Although there had been intermittent attempts to return to work, these were mostly unsuccessful. It is unclear as to whether or not this was due to his continued disability secondary to his low back complaints, or to the simple non-availability of work. However, the documentation is fairly clear that this gentleman continued to suffer with high subjective complaint levels of pain (8/10), with some functional and strength deficits that could reasonably be presumed to have precluded a return to work.

Functional compromise was established in a functional capacity environment, along with anxiety and depressive disturbances identified with behavioral testing. These issues combined to be barriers to recovery unless addressed. Considering the length of time since his injury and the degrees of intervention, a more intensive multidisciplinary approach would appear to be viable in this case.

Work hardening is involves a multidisciplinary approach and is reserved typically for outliers of the normal patient population, i.e. poor responders to conventional treatment intervention, with significant psychosocial issues and extensive absence from work.

The standard of medical necessity in Workers Comp, according to the Texas labor code 408.021 (entitlement to medical benefits) is that an employee who sustained a compensable injury is entitled to all healthcare reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to healthcare that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment.

The patient entered the work hardening program and demonstrated improvement between the functional performance evaluations. Additionally the activity and treatment notes throughout this timeframe showed progress.

As such, medical necessity was established for work hardening,

References:
The Work Loss Data Institute's *Official Disability Guidelines, third edition 2005*
The American College of Occupational and Environmental Medicines *Occupational Medicine Practice Guidelines*,
The American Physical Therapy Association *Guidelines for Programs for Injured Worker's*, 1995
CARF Manual for Accrediting Work Hardening Programs
AMA Guides to the Evaluation of Physical Impairment, 4th Edition

Certification of Independence of Reviewer

As the reviewer of this independent review case, I do hereby certify that I have no known conflicts of interest between the 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.

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.

Chief Clerk of Proceedings
Division of Workers' Compensation
P.O. Box 17787
Austin, Texas 78744

Or fax the request to (512) 804-4011. A copy of this decision must be attached to the request.

The party appealing the decision shall deliver a copy of its written request for a hearing to the opposing party involved in the dispute.

Signature of IRO Employee: _____

Printed Name of IRO Employee: Cindy Mitchell