



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**

<b>Type of Requestor:</b> ( ) Health Care Provider (X) Injured Employee ( ) Insurance Carrier	
Requestors Name and Address:  Rehab 2112 P. O. Box 671342 Dallas, TX 75267	MDR Tracking No.: M5-06-1766-01
	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**

Requestor's Position Summary: "Services are medically necessary. Carrier did not respond to Request for Reconsideration."

Principle Documentation:

- DWC-60/Table of Disputed Services/Position Summary
- CMS-1500's
- EOBs

**PART III: RESPONDENT'S PRINCIPLE DOCUMENTATION AND POSITION SUMMARY**

Respondent's Position Summary: "Per 28 TAC 133.308(c) a request for retrospective necessity dispute resolution of a medical bill shall be considered timely if it is filed with the division no later than one year after the date of service in question. Here, dates of service May 26, 2005 through June 9, 2005 must be dismissed.....Regarding the remaining dates of service, Carrier maintains its denial of payment...."

Principle Documentation:

- DWC-60/Table of Disputed Services/Position Summary

**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)
6-13-05 – 8-5-05	97750-FC, 97545-WH-CA, 97546-WH-CA	<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.

Per Rule 133.308(e)(1) dates of service May 26, 2005 through June 9, 2005 were not timely filed and are ineligible for review.

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

28 Texas Administrative Code Sec. 413.031

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

**Findings and Decision by:**

\_\_\_\_\_  
Medical Dispute Officer

\_\_\_\_\_  
8-7-06

\_\_\_\_\_  
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 esta correspondencia, favor de llamar a 512-804-4812.



July 20, 2006

Re: MDR #: M5 06 1766 01 Injured Employee: \_\_\_\_\_  
DWC #: \_\_\_\_\_ DOI: \_\_\_\_\_  
IRO Cert. #: 5340 SS#: \_\_\_\_\_

**TRANSMITTED VIA FAX TO:**

**TDI, Division of Workers' Compensation**

Attention: \_\_\_\_\_

Medical Dispute Resolution

Fax: (512) 804-4868

**RESPONDENT:** Zurich Insurance

**REQUESTOR:** Rehab 2112

**TREATING DOCTOR:** Larry Parent, DC

In accordance with the requirement for DWC to randomly assign cases to IROs, DWC assigned this case to ZRC Medical Resolutions for an independent review. ZRC has performed an independent review of the medical records to determine medical necessity. In performing this review, ZRC reviewed relevant medical records, any documents provided by the parties referenced above, and any documentation and written information submitted in support of the dispute.

I am the president of ZRC Medical Resolutions, Inc. and I certify that the reviewing physician in this case has certified to our organization that there are no known conflicts of interest that exist between him 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 Independent Review Organization. Information and medical records pertinent to this medical dispute were requested from the Requestor and every named provider of care, as well as from the Respondent. The independent review was performed by a matched peer with the treating health care provider. Your case was reviewed by a chiropractor who is currently listed on the DWC Approved Doctor List.

We are simultaneously forwarding copies of this report to the payor and the TDI, Division of Workers' Compensation. This decision by ZRC Medical Resolutions, Inc. is deemed to be a DWC decision and order.

#### 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 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.

Sincerely,  
Jeff Cunningham, DC  
President



**REVIEWER'S REPORT**  
**M5 06 1766 01**

**Information Provided for Review:**

1. Office notes from treating doctor
2. Office notes from the requestor
3. Medical records from the carrier

**Clinical History:**

Patient is 56-year-old male warehouse worker who had been working for his employer for only one day, when on \_\_\_\_, he attempted to lift and flip over a heavy cart full of shoes, that weighed an estimated 100 pounds. Upon doing so, he felt an immediate pain in his mid- and lower back, along with numbness and tingling into his left lower extremity. When the pain persisted over the next several days, he presented himself to a doctor of chiropractic (on 4/12/05) who immediately ordered x-rays of the cervical, thoracic and lumbar spine, along with a lumbar spine MRI. The treating doctor then began a regimen of chiropractic care, to include physical therapy and rehabilitation, and a work hardening program was then initiated on 5/18/05.

**Disputed Services:**

Functional capacity evaluation (97750-FC), work hardening (97545-WH-CA), and working hardening, each additional hour (97546-WH-CA) for dates of service 6/13/05 through 8/5/05.

**Decision:**

The reviewer agrees with the previous adverse determination.

**Rationale:**

The medical records failed to adequately provide a basis for why the treating doctor would suddenly shift the patient from therapeutic procedures to a much more aggressive work hardening program approximately 30 days after the initiation of treatment. In fact, the "daily progress notes" for dates of service 5/6/05, 5/9/05 and 5/11/05 all indicated that the patient was "progressing" with the care being given. Since the injured mesenchymal connective tissue would not have had sufficient time (6-8 weeks) to repair and regenerate, and since the records failed to document either that a sufficient reduction

in inflammation had occurred, or even the rationale for doing so, the more intensive work hardening regimen that began on 5/18/05 was medically unnecessary.

Furthermore, upon review of the pre- and post-functional capacity evaluations (dated 6/17/05 and 7/19/05, respectively) indicated that the patient's range of motion worsened overall in the lumbar spine, and remained essentially unchanged in the cervical spine between the two tests and while participating in the work hardening program. Upon review of the work hardening daily notes, the patient rated his pain at "6/10" on the very first date of service (5/18/05), where a "10" represented the worst pain possible, and on the last date of work hardening service (8/5/05), the patient still rated his pain at a "6/10." And, all functional capacity evaluations indicated that the patient had not returned to work. Therefore, the care provided also failed to meet the statutory requirements<sup>1</sup> for medical necessity since the patient did not obtain relief from the treatment, promotion of recovery was not accomplished, and the employee was not able to return to his employment.

Finally, the functional capacity evaluation performed on 6/17/05 – very near the dates of service in dispute here – indicated that the patient had already met a PDL of "light," which was the required level for his occupation. Therefore, the medical necessity for a work hardening program at that juncture was unsupported.

**Screening Criteria/Literature:**

Texas Labor Code/Good clinical practice/Mercy Center Guidelines/TCA Guidelines

---

<sup>1</sup> Texas Labor Code 408.021