

September 16, 2003

David Martinez
TWCC Medical Dispute Resolution
MS-48
7551 Metro Center Drive, Suite 100
Austin, TX 78744-1609

MDR Tracking #: M2-03-1748-01
IRO #: 5251

___ has been certified by the Texas Department of Insurance as an Independent Review Organization. The Texas Worker's Compensation Commission has assigned this case to ___ for independent review in accordance with TWCC Rule 133.308 which allows for medical dispute resolution by an IRO.

___ 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.

The independent review was performed by a matched peer with the treating doctor. This case was reviewed by a licensed Medical Doctor with a specialty and board certification in Physical Medicine and Rehabilitation. The reviewer is on the TWCC Approved Doctor List (ADL). The ___ 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 ___ 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

___ is a 37-year-old male who injured his back at work as a result of lifting a heavy steel bar. He was evaluated by ___ who identified a lumbosacral radiculopathy, sacroiliac dysfunction and sacroilitis on the left side. Electrodiagnostic studies confirmed this. He was treated conservatively without improvement and consultation was seen from ___.

___ underwent multi-level spinal surgery on 4/2/96 by ___ with instrumentation at L3/4, L2/3 and L5/S1. Postoperatively he continued to have pain. He was given epidural spinal injections to help relieve his pain, and he also had physical therapy. Epidural steroid injections did not relieve symptomatology.

In October of 1996 a CT scan was recommended. The CT scan identified post-operative changes plus a pseudoarthrosis at the L2/3 level and epidural fibrosis at L3/4 and moderate spondylitic facet arthropathy. A spinal cord stimulator was recommended in December of 1996 and repeat EMG studies identified mild to moderate left L5/S1 radiculopathy in January of 1997. He was given a 17% whole person impairment in June of 1997. In May of 1997 ___ proposed a discogram to determine if the segments adjacent to the fusion had deteriorated. The CT lumbar myelogram was suggestive of a slight clumping of the nerve roots at L4/5 or mild arachnoiditis in July of 1997. Botox injections were recommended.

In September of 1997 ___ recommended a chronic pain management program, and ___ participated in the program. A prescription from ___ for a muscle stimulator was recommended and the unit was purchased in July of 1999. He was followed by ___ between October 1999 and January of 2002.

He was seen by ___, who recommended posterior hardware removal, exploration for fusion mass for pseudoarthrosis and posterior lateral arthrodesis of L1/2 and L3/4 and anterior interbody arthrodesis of the L1/2, L3/4 and L4/5 with pedicle screws if needed.

In January of 2000 he underwent the proposed surgery by ___, but continued to have pain and was treated with caudal epidural steroid injections in October of 2000. ___ proposed permanent spinal cord stimulator placement, which was done in January of 2001.

In November of 2001, removal of the spinal cord stimulator was proposed and it was removed in November for malfunctioning. The FCE test in December states that this patient was qualified for medium work category or he could lift up to 50 pounds maximally occasionally and 40 pounds frequently. He was placed in a work hardening program.

In October of 2002 ___ was treated with manipulation under anesthesia. He states that made him more sore. He was provided with Duragesic patches. In November of 2002 he underwent hardware blocks to determine if the pedicle screws from the previous lumbar instrumentation were the source of his pain. In February of 2003 ___ did a summary of his treatments and categorically disagreed with the evaluations and treatments of his previous doctors. He did acknowledge that the patient was depressed and that there was adequate documentation. He opened that further treatment depended on the hardware blocks on November 7, 2002.

In June of 2003, ___ recommended a home therapy program with the RS-4i muscle stimulator. He states on follow-up on June 19th, 2003 that the patient was improving. His muscle strength had increased. He was able to intensify his physical activities and decrease his pain medication, though the exact amounts were not indicated. The unit was recommended for permanent purchase. The carrier and its legal department provided documentation that disagrees with the use of the RS-4i stimulator.

REQUESTED SERVICE

The purchase of an interferential muscle stimulator is requested for this patient.

DECISION

The reviewer disagrees with the prior adverse determination.

BASIS FOR THE DECISION

The muscle stimulator remains a controversial treatment for patients. The use of the electrical stimulators in chronic pain has been controversial in the literature. There is scientific evidence that establishes that the muscle stimulator has been beneficial to patients with chronic pain. The reviewer finds that the clinical response that this patient has had – increased function, increased physical activity, decreased use of pain medication – far outweighs the reviewed literature studies in treating patients. Although the spinal care guidelines only go to a category of tertiary care, this gentleman is more appropriately in a quaternary care level. He has had several major surgeries with ongoing treatment for pain, including insertion of the electrical stimulator, etc., One of the reasons that the carrier's legal department recommended that the requested device was not medically necessary was that the patient would be undergoing further surgery. From the medical

documentation provided, surgery has been neither decided nor approved. From the literature provided by the carrier, the electrical stimulator devices are approved for acute pain (post-op pain) which he would have if another surgery was carried out.

___ has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. ___ has made no determinations regarding benefits available under the injured employee's policy.

As an officer of ___, I certify that there is no known conflict between the reviewer, ___ and/or any officer/employee of the IRO with any person or entity that is a party to the dispute.

___ is forwarding by mail and, in the case of time sensitive matters by facsimile, a copy of this finding to the treating doctor, payor and/or URA, patient and the TWCC.

Sincerely,

YOUR RIGHT TO REQUEST A HEARING

Either party to medical dispute may disagree with all or part of the decision and has a right to request a hearing.

If disputing a spinal surgery prospective decision, a request for a hearing must be in writing, and it must be received by the TWCC Chief Clerk of Proceedings within **10** (ten) calendar days of your receipt of this decision (28 Tex. Admin. Code 142.5(c)).

If disputing other prospective medical necessity (preauthorization) decisions, a request for a hearing must be in writing, and it must be received by the TWCC Chief Clerk of Proceedings within **20** (twenty) calendar days of your receipt of this decision (28 Tex. Admin. Code 142.5(c)).

This decision is deemed received by you 5 (five) days after it was mailed or the date of fax (28 Tex. Admin. Code 102.5(d)). A request for a hearing and a **copy of this decision** must be sent to:

Chief Clerk of Proceedings / Appeals Clerk
P.O. Box 17787
Austin, Texas 78744
Fax: 512-804-4011

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

I hereby certify, in accordance with TWCC Rule 102.4 (h), that a copy of this Independent Review Organization decision was sent to the carrier, requestor, claimant (and/or the claimant's representative) and the TWCC via facsimile, U.S. Postal Service or both on this 16th day of September 2003.