

## NOTICE OF INDEPENDENT REVIEW DECISION

**Date:** October 30, 2003

**RE: MDR Tracking #:** M2-04-0104-01  
**IRO Certificate #:** 5242

\_\_\_ has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Texas Workers' Compensation Commission (TWCC) has assigned the above referenced 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, relevant medical records, any documents utilized by the parties referenced above in making the adverse determination and any documentation and written information submitted in support of the appeal was reviewed.

The independent review was performed by a Chiropractor who has a temporary ADL exemption. The Chiropractor has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians 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 this case.

### **Clinical History**

It appears the claimant was shoveling metal shavings that reportedly weighed around 30-40 pounds and as he was doing so, he was twisting to his right in order to place these shavings in a barrel when he felt sharp low back pain. The claimant presented for chiropractic evaluation and treatment on 3/14/03 complaining of low back pain and bilateral buttock pain. A lumbar MRI report from \_\_\_ revealed there to be 2mm broad based disc bulges at 2 levels including the L3/4 and L4/5 levels. There was some alleged foraminal stenosis reported to be 40% bilaterally at both of these levels. Given the size of the broad based bulges, it would be unlikely that this was causing 40% foraminal encroachment or stenosis. The L5/S1 level was reportedly normal. The claimant was seeing \_\_\_ for electrodiagnostic work ups and evaluations, and \_\_\_ clinical exam of 4/3/03 revealed there to be no neurological deficits whatsoever and the claimant's range of motion was actually reported to be normal. There was no evidence of nerve root tension and there was minimal tenderness reported in the paraspinal musculature of the lumbar spine. The electrodiagnostic studies were, however, reportedly positive for bilateral L4 and L5 radiculopathy. The claimant was documented to be working at the light duty level; however, the documentation seems to be conflicting with respect to whether or not the claimant was working. An functional capacity exam of 4/17/03, for example, revealed the claimant not to be working. The claimant was reportedly required by his employer to function at the medium duty level. The claimant's main complaints at the time of the functional capacity exam were constant neck pain, mid-back pain, left knee pain, low back pain and bilateral buttock pain. The claimant also saw \_\_\_ an orthopedist. \_\_\_ exam was also essentially normal with respect to adverse neurologic

findings. The claimant underwent epidural steroid injections on 6/13/03, 6/27/03 and 7/21/03. These reportedly resulted in some subjective improvement; however, the documentation does not reflect that they were effective. In fact, the claimant stated at one point that one of the injections caused an increase in his discomfort and reportedly caused symptoms in his hands. At any rate, the claimant underwent an independent medical exam as well and the independent medical exam physician at that time reviewed the MRI films and felt there was absolutely no evidence of nerve root impression or dural sac involvement. The claimant was felt to be at maximum medical improvement on 8/12/03 with 5% whole body impairment rating. It should be noted the claimant had a prior lumbar strain injury back on \_\_\_\_, which really did not result in the need for treatment and did not result in lost time from employment. There was really no evidence of anxiety or depression at all until the claimant saw a psychologist for his pre-work hardening program behavioral assessment. An 8/14/03 functional capacity exam report revealed there had essentially been no change for the better in the claimant's condition or abilities. There still appeared to be no evidence of neurological compromise. An 8/27/03 letter from the treating chiropractor was reviewed and I will address this later in the rationale portion of the report. The voluminous amounts of chiropractic documentation were reviewed revealing the claimant mainly only had spasm and tenderness about the lumbar spine and there was no prior mention of anxiety or depression.

### **Requested Service(s)**

The medical necessity of the services including 30 sessions of a work hardening program.

### **Decision**

I agree with the insurance carrier and find that the work hardening program services as rendered were or are not reasonable or medically necessary.

### **Rationale/Basis for Decision**

There was really no evidence in the documentation prior to the pre-work hardening program behavioral assessment that there was depression or anxiety. A work hardening program would therefore be considered too extensive and would essentially represent overkill given the nature of the injury and the claimant's condition. There was consistently no evidence of neurological compression and the clinical findings did not match the diagnostic work up including the MRI or the electrodiagnostic studies. The independent medical exam physician re-read the MRI films and felt there was no evidence at all of any type of neurological compression. It would also be highly doubtful that a 2mm broad based disc bulge would cause 40% foraminal encroachment. The functional capacity exams did not really meet the standards that are required for proper functional capacity exams. The amount of physical therapy and chiropractic care has far exceeded the amount usually required for this particular injury as described which mainly appears to be a sprain/strain type of injury. Treatment has also exceeded the natural history of the injury as well as the recommendations of the highly evidence based Official Disability Guidelines for treatment of lumbar sprain/strain injury. It should also be mentioned that \_\_\_\_ a and \_\_\_\_, 2 of the referral physicians, felt that there was no evidence whatsoever of neurological compression during their clinical exams. In fact, the claimant mainly had tenderness and mild

spasms in the lumbar spine area only. \_\_\_ the treating chiropractor, has submitted a letter of 8/27/03 which essentially states that further treatment is needed based on the fact that “if a limb is completely immobilized during the recovery process the tissues may emerge fully healed but poorly adapted functionally”. This claimant has not been rendered immobilized during his treatment so this does not apply. The letter also states that “true rehabilitation must focus on maintaining functional capabilities”. This claimant has had more than adequate physical therapy over a 4-5 month period to address the diagnosed condition. \_\_\_ also goes into a little detail with respect to the different phases of healing. In fact he states, “the 3<sup>rd</sup> phase of soft tissue healing includes the remodeling phase which lasts from 3 weeks to 12 months or more”. I will agree that there are several phases of healing; however, treatment during the entire phase of healing is just not reasonable or medically necessary and the treatment process goes on despite whether or not the claimant is receiving treatment. It is not reasonable for a claimant to undergo 1-2 years of treatment for a soft tissue injury.

### **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.