

THIS DECISION HAS BEEN APPEALED. THE FOLLOWING IS THE RELATED SOAH DECISION NUMBER:

SOAH DOCKET NO. 453-04-1589.M2

NOTICE OF INDEPENDENT REVIEW DETERMINATION

MDR Tracking Number: M2-04-0242-01
IRO Certificate Number: 5259

November 7, 2003

An independent review of the above-referenced case has been completed by a medical physician board certified in physical medicine and rehabilitation. 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

___ hereby certifies that the reviewing physician is on Texas Workers' Compensation Commission 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 ___.

Sincerely,

CLINICAL HISTORY

This is a gentleman who sustained a lumbar injury on ____. Plain radiographs completed May 2001 noted "multilevel disc dessication" without spinal stenosis. Initial treatment was conservative, ESI. In June 2001 ___ evaluated the subject, noted multilevel symptoms and

attempted to isolate the pain generator. Three level symptoms were noted on EMG. As noted by ____, when an attempt was made to have the claimant return to work, there was a change of primary treating physician to chiropractic care. This plan did not ameliorate the symptomology and after discography, surgical intervention ensued (4/24/02). The surgery did not alter the pain complaints and added a sensory loss to the problem list. There is a gap in the notes from January 2002 through December 2002. A chiropractic FCE was completed in February 2003. it was reported that a valid effort was made. However, the veracity is questioned as eight of nine heart rate predictors did not reach the expected increase in heart rate after varied testing. Lumbar pain continued to be a problem, judged by the spinal cord stimulator removal noted in the June 26, 2003 operative note.

According to the progress notes from ____, after undergoing a three level fusion with instrumentation is 200, a program of spinal manipulation was re-initiated in January 2003. Joint mobilization of the fused lumbar spine was reported. The daily and weekly chiropractic progress notes indicate "immediate relief" in the area of 40% - 89% and then complete recurrence of the pain levels.

In April 2003 a psychological evaluation noted that the claimant would benefit from a pain management program. In June 2003 the program had been initiated. The June 11 summary note states that there were inconsistencies between objective findings and subjective complaints.

In July 2003 a Designated Doctor assessment was made noting maximum medical improvement and impairment rating. In August 2003 a request was made for a chronic pain management program.

REQUESTED SERVICE(S)

30 days of a chronic pain management program

DECISION

Deny the request.

RATIONALE/BASIS FOR DECISION

This is a gentleman who underwent an extensive surgical procedure, had multilevel instrumentation of the spine, this was chiropractically manipulated post-operatively and continues to have complaints. There

has not been any significant improvement in the complaints of pain after the first attempt of a CPMP. Moreover, the documentation of the program itself noted inconsistencies between the subjective and objective; leading one to believe that there are wholly unrealistic expectations. In a claimant who routinely noted a 50% reduction in pain after chiropractic manipulation, after the first ten-day trial the pain level went from 5/10 to 4/10. This is hardly any improvement. Moreover, this gentleman had been in an extensive biofeedback program without success, had undergone extensive physical therapy, and the vocational aspect is not considered to be reasonable and necessary care for the post-operative rehabilitation of a three level spine fusion. Repeating the unsuccessful treatment modalities to marginal, if any, improvements is not reasonable and necessary care. Given the anatomical changes surgically induced, the compromise to the activities of daily living, the pain program would not overcome those functional limitations. Noting the lack of response after the first ten days is a significant indicator that there is little to no chance of success. Achieving pre-injury status is not, and could not be a goal in this case. With the inconsistencies between the subjective complaints of pain and the objective assessments, with the FCE denoting a significant lack of effort there is no realistic expectation of any change in this case. Accordingly, there is not clinical indication to pursue this treatment plan.

YOUR RIGHT TO REQUEST A HEARING

Either party to this 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 (20 Tex. Admin. Code 142.5©).

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 148.3).

This decision is deemed received by you 5 (five) days after it was mailed or the date of fax (28 Tex. Admin. Code 102.4(h) or 102.5(d)).

A request for a hearing and a **copy of this decision** must be sent to:

Chief Clerk of Proceedings/Appeals Clerk
Texas Workers' Compensation Commission
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.

In accordance with Commission Rule 102.4(h), I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to the carrier, the requestor and claimant via facsimile or U.S. Postal Service from the office of the IRO on this 10th day of November 2003.