

February 4, 2004

Amended February 11, 2004

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TWCC Medical Dispute Resolution
MS-48
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MDR Tracking #: M2-04-0666-01
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 Doctor of Osteopathy with a specialty in Pain Management and board certification in Anesthesiology. 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

___ was injured when she slipped and fell while mopping a floor, injuring her right arm and neck. On initial evaluation, she complained of right elbow pain, neck pain and left foot pain. She was initially evaluated by ___ on 11/2/99. He referred her for an MRI of the lumbar spine which demonstrated a right foraminal stenosis at L1/2 with displacement of the exiting right nerve root, an L2/3 disc bulge, an L3/4 disc bulge and a left L5/S1 foraminal narrowing displacing the nerve root. ___ returned to ___ with complaints of lumbar pain that radiated into her left lower extremity. Electrodiagnostic studies, including EMG and nerve conduction studies demonstrated no clear evidence of radiculopathy, only left L5/S1 radiculitis. The patient had three lumbar epidural steroid injections in 1999 without significant relief.

A lumbar myelogram/CT performed on 3/29/00 demonstrated a small to moderate extradural filling defect at L1/2 with no abnormalities of any other discs or nerve root levels. The post myelogram CT scan demonstrated a small calcified density in the anterior aspect of the spinal canal at L1/2 with no abnormalities of the discs or nerve roots at L3/4, L4/5 or L5/S1, other than a conjoined right S1 nerve root.

On 3/31/00, this patient was evaluated by ____, an orthopedist who documented normal muscle strength, negative straight leg raising, normal sensation and normal reflexes. He stated that the patient was “completely neurologically intact.” She was then referred for a Work Hardening program that was completed in May of 2000. In July of 2000, ____ referred ____ to ____ for provocative discography and post discography CT scan at L1/2, L4/5 and L5/S1. None of the discs produced any pain with pressurization, although there was a posterior bulge at L1/2. At L4/5 and L5/S1 the disc morphology was normal. Post discogram CT scan confirmed no architectural abnormalities of the L4/5 or L5/S1 disc, normal L2/3 and L3/4 discs and a possible right disc herniation at L1/2, although again, there was no pain provocation.

Subsequently this patient was found to have supraspinatus and scapularis rotator cuff tears of the right shoulder for which she underwent arthroscopic surgical repair with ____ on 3/14/01. She has continued to complain of shoulder pain thereafter.

On 7/5/01 she began to complain of neck pain radiating into both upper and lower extremities, also radiating into the back. This had never before been documented. ____ was subsequently referred to ____ for her ongoing complaints of lumbar pain. He evaluated her on 2/26/03. A physical examination demonstrated the patient to be “in no apparent distress.” There was no pain with flexion or lateral bending of the lumbar spine. Upper and lower muscle strength and sensation were entirely normal. Her straight leg raising test was bilaterally negative. Reflexes were normal in upper and lower extremities. The only positive finding was diffuse trigger point tenderness in the lower back and buttocks. ____ requested a series of two lumbar epidural steroid injections. This was reviewed by two different physician advisors and denied.

The first denial was based upon the fact that this patient had had three previous lumbar epidural steroid injections in 1999 with no relief. The decision was appealed and again denied based on the patient’s failure to improve despite three prior lumbar epidural steroid injections and the reviewer’s opinion that she “no clear evidence of radiculopathy.” ____ apparently stated that the prior epidural steroid injections were done incorrectly, alleging this to be the reason for the patient’s lack of response to treatment. The physician reviewer felt there was no way to verify this claim, and no support for that claim in the records reviewed. The reviewer stated that there was no reason to repeat a treatment that had not provided any benefit in the past.

REQUESTED SERVICE

A series of two lumbar ESIs two weeks apart is requested for this patient.

DECISION

The reviewer agrees with the prior adverse determination.

BASIS FOR THE DECISION

___ has had three epidural steroid injections in 1999 with clear documentation of no benefit. There is nothing in the records to indicate that these procedures were done incorrectly. Moreover, electrodiagnostic studies have not clearly documented radiculopathy, only radiculitis, which, in fact, is not a valid electrodiagnostic diagnosis. EMG studies are capable of determining whether there is in fact radiculopathy. A diagnosis of radiculitis, however, can only be suggested, not proven, by EMG studies. Additionally, the patient has had three level provocative lumbar discography which clearly proves that neither L1/2, L4/5 nor L5/S1 is a pain generator. Finally, ___ himself on his initial evaluation documents no physical examination evidence of neurologic deficit, there were negative straight leg raising tests bilaterally, normal reflexes, normal sensation, and normal strength. Therefore, based on the objective tests performed, there is no valid diagnosis of radiculopathy or discogenic pain. The physical examination documents no radicular findings. The patient has had and failed three epidural steroid injections with no evidence of improper technique. There is no medical reason or necessity for additional epidural steroid injections to treat non-radiculopathic pain, especially when the physical examination demonstrates no neurologic abnormalities, lumbar discography clearly documents no discogenic pain, and prior identical procedures have failed to provide relief.

___ 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.