

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

SOAH DOCKET NO. 453-04-6044.M2

April 27, 2004

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MDR Tracking #: M2-04-0790-01
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 board certified and specialized 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 59-year-old truck driver who was in a motor vehicle accident on ___, in which a car pulled out in front of him. He attempted to avoid it, struck the car, crossed over into the opposing traffic, hit a guard rail and was struck by another vehicle coming from the opposite direction. His seat belt did not contain him, and he was thrown from the vehicle. Following the accident, he was taken to ___ by ___. He was found by a CT scan to have small interhemispheric subdural hematoma, multiple rib fractures on the right, T11 burst fracture compromising 50% of the spinal cord, T10 transverse process fracture on the right, and disc space narrowing at L5/S1. In addition he had a complex right scapular fracture, bilateral lung contusions and renal contusion.

On examination he was found to have no movement of his lower extremities. He was taken to the operating room and decompression of the spine was carried out. His surgery was prematurely stopped, secondary to pulmonary congestion and respiratory failure. An inferior vena cava filter for prevention of deep vein thrombosis was placed on November 3rd because he was not

anticoagulated He was managed in ICU for respiratory distress. On November 11th he underwent spine instrumentation and fixation from T8-L2 by ____.

His neurologic condition slowly improved and on November 15th the patient extubated himself and began communicating. On November 18th he was performing transfers to a chair. He was admitted to the ____ in ____ on 12/17/02 and discharged on 12/27/02. He was transferred to _____. In the course of his rehab, it was discovered that he had limited use of his right upper extremity, not only secondary to the scapular fracture but also to damage to the rotator cuff. He was transferred on 01/27/03 for colostomy for neurogenic bowel and was re-admitted to ____ on 01/30/03.

Since his house was not adequately arranged to care for someone with his handicaps, he was discharged from ____ to _____. He was supposed to have private nursing and therapists to assist him. _____ was not prepared for him. He required a great deal of care and assistance from his wife and hotel personnel, in transfers and in caring for his neurogenic bladder, just to get into his room. Arrangements for assistance were not made in a timely fashion and the assistance was limited, requiring that his wife care for him a good deal of the time in the hotel room. His wife had a full-time job but was only able to work part time because of the care that he required.

Transportation from the hotel to the hospital and doctor's offices proved to be difficult. A request for each event was required for transportation. There were delays in picking up, resulting in missed appointments and delays in returning to the hotel room, sometimes for hours.

_____ required several trips to the emergency room for treatment, one for blood clots and another for pain. During his recovery he had abdominal pain and required gallbladder ultrasound and gallbladder surgery. His therapist recommended a special cushion for his chair, but it was not obtained until after he had developed a pressure sore on his buttock.

_____ requested that _____ be provided a handicapped accessible van that had a lift, allowing him to enter and exit the van while seated in a power chair, lift remotely controlled so that the patient could lift independently. When inside the van, the wheelchair had tie downs for safety. The requested van should be arranged to be converted to hand controls so that he may eventually drive.

_____ attempted to make arrangements to have her house handicapped retrofitted to allow _____ to return home. She was under the impression that the remodeling construction costs would be covered by the carrier for _____ work-related injury. She obtained several estimates and started the remodeling on a verbal acknowledgment from the adjuster. Dispute arose over the amount that could be covered. _____ ran out of money during the remodeling and the house remains non-inhabitable while the dispute over what the carrier would cover continued. When _____ was unable to get the results she needed, she hired an attorney. However, after several attempts to help _____ get the results she needed, the attorney resigned.

_____, her current attorney, took over her case and attempted to gain resolution of the issues: (1) purchase of a handicapped van for _____ and (2) complete the remodeling required for _____ house for _____ to be able to return home.

After several delays, including denial that _____ sustained a head injury, an _____ representative recommended that the issue be resolved in a medical dispute resolution by TWCC. However,

there were not two medical doctors opinions from the self-insured ___ office that denied the necessity of a handicapped van and the remodeling of their home. To help resolve the dispute, the issues have been sent to an IRO.

The carrier states that their liability for the care of this individual is being met. They are not responsible for items that are not considered part of the entitlement under the Texas Labor Code section 408.021. Even though the carrier states that they are not under any obligation to provide transportation, they offered modification of existing vehicles and were declined. ___ presented two estimates from companies that remodel cars for handicapped, and neither of their vehicles were suitable to be modified for ___ needs. In addition, the carrier states that the requestor did not satisfy rule 133.308(), in which they did not file a request for prospective necessity within the time period required by law.

REQUESTED SERVICE

Purchase of a handicapped-accessible van and renovations of a home to make it handicapped-accessible are requested for this patient.

DECISION

The reviewer disagrees with the prior adverse determination.

BASIS FOR THE DECISION

___ is a 59-year-old gentleman who sustained closed head injury and injury to his spinal cord resulting in a T11 paraplegia. In addition, he sustained a complex fracture to the right scapula and later was discovered to have right rotator cuff tear. The injuries that occurred to ___ are injuries that result in this gentleman being unable to care for himself, and he requires 24-hour supervision. A proper living environment is essential for someone with ___ needs. He needs an environment that will allow him to function and allow the caregivers who are assisting him in his normal daily living activities to function. Therefore, accommodations do need to be provided for the person or persons that would be providing him with ongoing care to maintain his health. Since he will continue to need a considerable amount of medical care in the future and will continue to need a means of transportation to the medical care. The reviewer agrees with ___ that the properly fitted handicapped van would be important to his ongoing care and health. In addition, if he is to ever achieve any form of independence and be able to return to any kind of work at all, he will definitely need the ability to operate the van himself.

The standard of care for a closed head injury person, if that was his only problem, would include necessity of supervision 24 hours a day, seven days a week, whether it be a family member or another health care provider. In his particular situation, a place for him to stay, such as in his home, would be a reasonable method of arranging for that care.

In addition, a patient who has sustained a spinal cord injury that has resulted in a T11 paraplegia has serious physical needs that would require a considerable amount of equipment to assist him in his day-to-day functions in accommodating or coping with the injuries that he has sustained. Paraplegics quickly develop ulcers on their sacrum or buttock without a properly fitted cushion. Judging from the records provided, this is exactly what happened with ___.

___ was expected to care for himself or have his wife care for him with equipment that was not adequate, and he developed decubitus ulcers. The reviewer only mentions this to emphasize the

importance of the need for proper equipment to accommodate his handicaps. If this patient does not have such accommodations and equipment, then he will continue to deteriorate or have more health problems that will actually be more costly to treat in the future.

___ 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 27th day of April 2004.