

April 12, 2004

MDR Tracking #: M2-04-1026-01-SS

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 Orthopedic Surgery. 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

This case is in regard to an approximately 53-year-old patient who had a manifestation of back pain and leg pain attributable to work activities. He ultimately underwent a laminectomy and discectomy, foraminotomy and medial facetectomy for progressive disc protrusion and L5 radiculopathy on a surgical date of 2/02. The medical records submitted for perusal show that by April 2002, the patient returned back to work. Over the following year there have been suggestions of progressive pain in the back and lower extremity. The attending physician recommended repeat MRI for further assessment. It is unclear if this MRI was carried out; it appears that it was not, and it appears that it was not confirmed to be medically necessary. In what appears to be monthly follow-ups with his surgeon, there are reports of doing fairly well. On June 26, 2003, "The patient comes in for follow up evaluation, doing relatively well and working regular duty," yet in the following month, on July 24, 2003, the attending reported "The patient is having continued complaints of pain getting very severe over the past couple of months." The attending physical exam was extremely sparse, yet reported no change, and recommended on this date a repeat MRI.

On August 28, 2003 the attending reported that the patient continued to have complaints of pain, and that a second opinion with the carrier selected RME, was pending. In November 2003 the attending reported that the patient continued to have back pain and extremity pain. The MRI was not approved. He reported strength 4/5 in the lower extremity on the left and 5/5 on the right extremity. There are no other details or objective findings on that date. On November 20, 2003 the attending did not report any progressive objective findings, and recommended surgical decompression and fusion.

The RME submitted by the second opinion summarized that no further supervised therapy, diagnostic testing or surgery was needed. Rather than a home exercise program, weight loss and over the counter medication should be sufficient in this patient.

A letter dated January 16, 2004, from the requestor summarized that the patient continued to have severe lumbar back pain radiating to bilateral lower extremities, strength loss was non-focal and that there was pain and burning in the plantar aspect of both feet. He also reported an MRI showed a herniated disc at L4-5 with modic changes. It is unclear to this reviewer when that MRI was done and whether it is a recent MRI or a preoperative MRI, nevertheless, there were no MRI results submitted for this review. The attending also reported that the x-ray showed breakdown at the 4-5-disc space with greater than 70% narrowing. Two preauthorization reviews were carried out with the opinions that the requested surgery was not medically necessary for critical information to meet criteria for the proposed surgery was not met, including but not restricted to motion segment instability, progressive neurologic findings, and/or clear objectivity regarding the patient's complaints. It is also reported in both reviews that the requesting surgeon was never available to speak to a reviewing physician regarding the necessity of the surgery, which appears to be critical in this particular case due to the paucity of objective findings on the documentation of clinical records.

REQUESTED SERVICE

L4/5 lumbar fusion with decompression of left L5 nerve root with discectomy is requested for this patient.

DECISION

The reviewer agrees with the prior adverse determination.

BASIS FOR THE DECISION

The primary reason for the adverse determination is not due to compensability or causation issues, and is not because this patient's complaints are not verified, but it is somewhat surprising that the recommendations of surgery are based on subjective complaints only. It is clear in the spine surgery literature that the decompression of disc space after surgical decompression can lead to progressive degenerative disease, and if there is development of intractable unrelenting pain, with or without spinal instability, the risk and benefits of surgery can be reviewed and result in a surgical arthrodesis. An attending physician requestor has every obligation to be a patient advocate and pursue the treatment that he or she feels is best for his patient with the information provided.

In this particular case the neurologic complaints are unclear to be related to the back complaints, and there appears to be no effort to pursue these complaints with further diagnostics and/or treatment. There is no physical exam to isolate out the neurologic complaints of burning pain, particularly in the plantar aspect of both feet, which very well may be unrelated to a degenerative disc at 4-5. The attending physician does not review the medical history and/or offer objective findings to support that the proposed surgery will alleviate all the subjective complaints. He does mention strength 4 out of 5 on the left, 5 out of 5 on the right, but doesn't isolate out what muscles were tested and there is no documentation of objective findings on physical exam to help isolate out nerve root involvement. It appears that the surgery recommendation now two years post-operative decompression is based on subjective findings other than radiographic findings. There appears to be no updated diagnostics regarding this patient's situation to confirm that the surgery level proposed is indeed the correct level. It is unclear why an MRI was denied when requested for increased symptoms for the reasoning was not submitted.

In review of the acceptable medical literature regarding spinal surgery there is information that supports almost all schools of thought. Evidenced based medicine suggests that back surgery for back pain does not offer an advantage over natural history or conservative care. Other literature suggests that spinal surgery carries up to 10% risk of significant morbidity, mortalities and then

again other studies suggest that the best treatment for chronic back pain is an active exercise program tailored to the patients needs. Unfortunately in this case the attending physician does not document any activities that the patient is or is not doing. There is no discussion regarding any exercise effort, supervised physical therapy.

The only thorough evaluation that this patient is presented by the carrier selected RME, which does review a medical history and a more complete physical exam and the opinion was that surgery, supervised therapy and further testing was not necessary and that based on the findings on August 2003 that weight reduction, modified activities and a good exercise program should suffice.

References materials for this review include the following: Cochran's Collaboration, Philadelphia Panel Study, literature published by the American Academy of Disability Evaluating Physicians, literature published by the North American Spine Society, Peer Review articles submitted in the Spine Journal, Journal of Bone and Joint Surgery, etc.

___ 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 ___, Inc, dba ___, 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 12th day of April 2004.