

April 27, 2004

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TWCC Medical Dispute Resolution  
MS-48  
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MDR Tracking #: M2-04-1156-01  
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 board certified and specialized 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 on \_\_\_ while lifting a cotton-candy machine at \_\_\_. She was initially evaluated by \_\_\_ on 04/27/01 complaining of lumbar pain and spasm. She was diagnosed with musculoskeletal strain injury.

A lumbar x-ray was performed on 07/17/01 that demonstrated a 5 mm L5/S1 retrolisthesis as well as degenerative changes in the L5/S1 disc. On initial physical examination, the patient was noted to be obese, though no weight was listed.

A lumbar MRI was then ordered and performed in mid-August 2001. It demonstrated central bulging of the L5/S1 disc but no disc herniation or neural compression. Also noted were dehydration changes in the L3/4, L4/5 and L5/S1 discs. No spinal stenosis, nerve root compression or significant annular bulge was seen at any level.

The patient received two lumbar epidural steroid injections by \_\_\_ on 10/30/01 and 11/12/01, receiving no benefit from the first one and increased pain from the second. A third lumbar epidural steroid injection was then performed on 11/20/01.

An IME was performed on 12/06/01 by \_\_\_, who documented the patient's weight at 285 pounds and height at 65 inches. Blood pressure was elevated at 160/90.

\_\_\_ was then referred to \_\_\_ for neurosurgical evaluation on 01/14/02. He recommended CT myelogram that was performed on 02/13/02. It demonstrated insensitive findings at L4/5 and L5/S1 on the myelogram. The CT scan demonstrated narrowing of the L5/S1 disc space, mild enlargement of the left L5/S1 facet joint, and mild narrowing of the L5/S1 foramen. No other significant findings were seen at any other levels, nor was any evidence of nerve root filling defects found.

On 02/26/02 the patient then returned to \_\_\_ who recommended decompressive laminectomy and fusion using pedicle screws. Authorization for this procedure was denied, with denial subsequently upheld in a Benefit Review conference.

A repeat MRI dated 01/27/03 demonstrated a moderate left disc herniation at on 02/26/02,, minimal facet arthropathy at L4/5 and on 02/26/02,, and degenerative disc disease at on 02/26/02, and L1/2.

The patient was subsequently referred for a Designated Doctor Evaluation on 01/02/03 with \_\_\_, who awarded the patient a 10% whole person impairment rating with statutory MMI as of 04/23/03. The patient's follow-up evaluations documented continuing lumbar pain radiating into both legs.

On 08/27/03 she was evaluated by \_\_\_, a pain specialist, who stated that she should be reconsidered for surgery. He noted positive straight-leg raising tests bilaterally and failure of epidural steroid injections to provide any relief. He also noted that the patient had a history of non-insulin dependent diabetes and was still obese.

On 11/03/03, \_\_\_ was evaluated by \_\_\_ neurosurgeon, who recommended repeating her imaging studies. She complained of lumbar pain and bilateral leg pain radiating down to the toes, with the right being worse than the left on 02/09/04. Her physical exam demonstrated weight of 285 pounds, positive bilateral straight-leg raising producing lower back and leg pain, and nonspecific decreased range of motion. \_\_\_ recommended lumbar facet injections with phenol, with this request denied twice by physician advisors. In his letter of rebuttal, \_\_\_ stated that the patient had lumbar pain. He referred to his 02/09/01 evaluation, which was actually performed by \_\_\_ physician assistant. That evaluation demonstrated flexion of 30 degrees, not zero degrees, normal motor strength, positive straight-leg raising bilaterally, and no mention whatsoever of "facet rocking signs."

REQUESTED SERVICE

Lumbar facet injections are requested for this patient.

DECISION

The reviewer agrees with the prior adverse determination.

BASIS FOR THE DECISION

As \_\_\_ himself documents, the patient's complaints are not of lumbar pain only. In fact, as he and all the other physicians who have evaluated this patient clearly document, this patient has consistently complained of lumbar pain radiating down both legs as far as the toes. The objective studies performed do not demonstrate any significant facet pathology related to the work injury, only mild degenerative changes in the facet joints, which, in all medical probability, are due to the patient's morbid obesity.

\_\_\_ 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 27<sup>th</sup> day of April 2004.**