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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 Orthopaedic 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 is a review on the medical necessity of repeat discography in a patient who has four level disease in his lumbar spine from a work related event that occurred on ___.

Medical records submitted for perusal are in reverse chronological order. ___ wrote a note on 1/29/04 stating that the patient continued to have back pain to the right thigh and that the repeat discogram had been denied and there had been a hearing in which the injury was deemed compensable. There was still tenderness over the L5 region, straight leg raise was negative, strength and sensation was intact. He opined that the discogenic back pain can cause pain in both thighs and that the patient was a surgical candidate and summarized that there was an abundance of medical literature that supports the use of discography as a pre-operative test to determine the extent of surgery. He again recommended discography to clarify and to add legitimacy to propose surgery that most likely would include a multilevel fusion.

There is a decision regarding this patient that was received by Worker's Compensation Commission on 12/5/03 regarding the L4-5 and 5-1 injuries as to be compensable. The findings were that the injuries were compensable to include 4-5 and 5-1.

The controversy most likely resulted in the concern of a peer-reviewing physician and/or independent medical examiner physician where this patient had the injury, returned back to work in two months, was subsequently let go a month afterwards. There was a five month hiatus before he sought medical care and the concern was that the current complaints of pain may not be related to the injury, if the injury had resolved and the patient had returned back to work only to seek care for continued pain after being let go from his job and unable to find another job. Nevertheless, on 8/12/03, ___ reviewed the discussions regarding this patient's care and clarified some of the statements in his prior reports and then invoked Texas Worker's Compensation rules and Texas labor law statutes as to why this patient is entitled to care under Worker's Compensation. On 8/2/03 ___ a doctor of chiropractic, reviewed the medical records and stated that there was a lumbar strain aggravation and pre-existing lumbar disease at the time of the injury; however, did not find that the current complaints were related to the injury due to the hiatus as discussed. An Orthopaedic report dated 11/03 stated that this patient had tenderness at L5, no loss of strength, normal sensation, negative straight leg raise. ___ reported that the discogram did not quite address all the issues that he had hoped for, and asked to repeat the discogram including all the levels of concern, but again, according to his exam on 8/11/03, although there was some tenderness to the low back, the physical findings were essentially normal. Nerve testing done by ___ on 3/19/03 suggested a chronic L4-5 and 5-1 radiculopathy. The designated doctors exam from that date, 3/10/03, found an obese gentleman whose physical findings only revealed diminished light touch and pin prick at the right L5-S1 dermatomal distribution. Orthopaedic report on 3/5/03 from ___ states that the nerve testing from 10/28/02 showed no abnormalities. The physical exam was negative straight leg raise, the physical exam was essentially improved and the patient had full range of motion of the lumbar spine. Despite the complaints of back pain, it appeared on 3/5/03 that the physical findings were within normal limits. ___ reported at that time, that the patient had significant low back pain without neurologic findings. He had had physical therapy, epidural injections and facet blocks. He recommended multilevel discography so that he could be a candidate for a posterior spinal fusion at the appropriate levels. Clinic note dated 1/20/03 stated that the exam was within fairly normal limits. The patient continued to have low back pain and recommendation was to continue with physical therapy. Clinic note dated 12/16/02 recommended continue with the epidural injections and physical therapy, the exam was normal except for tenderness throughout the lumbar spine. On 12/11/02 ___ reviewed the medical records and performed his own examination, discovered no symptom magnification or embellishment and opined that the patient had a lumbar strain/sprain with aggravation of pre-existing lumbar degenerative disc disease and opined that the complaints of back pain could not be directly related to the work injury of ___. An Orthopaedic report from 11/15/02 from ___ stated that the patient had levels of disc herniation at 4-5 and 5-1 with bulge at 2-3, 3-4 and recommended epidural injection.

An initial consultation on 10/18/02 the patient was seen at the referral of ___. ___ opined that this patient had low back strain/sprain and bulge at 2-3, 3-4 and herniation at 4-5, 5-1. At the time he recommended continued therapy and medication, consider epidural injection and may be a candidate for laminectomy, discectomy. A report from ___ dated 5/29/02 revealed that after the injury the patient was seen at ___ and returned to work. He apparently did not have any therapy or rehab, returned back to work for a couple of weeks and was then fired from the company. As the low back pain persisted, the patient sought legal advice at ___ office. Approximately five months later, on 5/29/02, he sought further care and has not been able to work since due to pain in his low back. The chiropractor then recommended passive modalities and appointment with ___ for medication management.

The remaining information submitted for perusal includes a letter from ___ regarding the legal aspect of this request dated 4/19/04, offering a rebuttal regarding the necessity of this request, including information from the medical literature that is incorporated in the report: The acute low back problems in adults, clinical practice guidelines #14 from the AHCPR that was authored by _____. The back letter, volume #6, June 2000 regarding the award winning study that current diagnostic techniques cannot identify pain of discogenic origin, as published by Dr. Caragee.

REQUESTED SERVICE

A lumbar discogram with CT scan is requested for this patient.

DECISION

The reviewer agrees with the prior adverse determination.

BASIS FOR THE DECISION

This patient recovered from his injury, returned back to work, was terminated from his job. There was a five-month hiatus before he sought medical care. There was a contested hearing regarding this patient's benefits subsequent to that event in which the Texas Worker's Compensation Commission agreed with the patient that his L4-5 and 5-1 discs were indeed compensable injuries (ignoring the two bulging discs above at 2-3, 3-4). According to the MRI, this patient has two level non-compressive disc protrusions at 4-5 and 5-1 that appears to have been appropriately managed conservatively with medication, injection, therapy and time. The recent physical findings were non-focal and non-specific and did not clearly reveal any active radiculopathy or motor or sensory deficits. The lumbar spine mobility was felt to be full and no radiographs or documentation was submitted for perusal that this patient has instability. The general acceptable indications for lumbar fusion (excluding trauma, scoliosis, infection, tumors, etc.) are progressive intractable pain of spinal instability and/or degenerative disease requiring decompression, ie. Recurrent herniated disc after decompression

The requestor wished to repeat a discogram to justify a spinal fusion. A spinal fusion in retrospect review of the records does not appear justified and therefore the request to repeat discography does not appear to be medically necessary. During this claim, it appeared that the benefits were questioned per a peer review opinion that the patient no longer had an issue regarding his work injury, and resulted in an administrative law judge's opinion that the 4-5 and 5-1 alone were compensable. These levels were tested and therefore the request to test above levels would include levels that were not deemed compensable by the Worker's Compensation Commission. However, to get a control level based on the MRI findings, one may have to go all the way to the thoracolumbar junction which would be beyond the compensable levels and the risk of false positive outcomes go way up in this litigated case, in which it behooves this patient to have positive findings to justify further treatment and protection of benefits. The Carragee studies clearly expose the concerns regarding false positive pain reports. There is no information submitted regarding physical therapy, activities, compliance and levels of function. There is no FCE report. There is no indication in the records submitted for perusal that this patient requires a decompression based on his physical exam. There is no information from the medical records submitted for perusal that this patient requires a lumbar fusion. The issue at hand is back surgery for back pain and the vehicle to get to that point is to have a valid discogram to support this surgery request. This patient's discography will be abnormal based on the MRI findings at these two levels and therefore the structural discovery of these discs will only be redundant. Pain provocation may not be reliable; plus, in the first test the abnormal 5-1 disc was not painful and therefore a control as far as pain provocation has already been obtained.

There is no indication that this patient requires a four level lumbar fusion and the basic issue is treating this patient's back pain. Back surgery for back pain is not as successful as one would hope. Using evidenced based medicine guidelines, particularly those published by the Cochran's Collaboration, authored by Waddell and Dr. Gibson, the benefits of back surgery for back pain do not outweigh the natural history of conservative care. Lumbar surgery carries significant risk, possibly up to 10% of complication rate, both intraoperative and perioperatively. The use of instrumentation for spinal fusions can cause further problems down the road, resulting in the need for additional surgeries. With the multilevel degenerative disease present already, there appears to be a probability that any surgery attempt in this patient would result in failure to achieve the desired outcome of back pain relief and result in a request for additional surgery.

To recapitulate, this patient is a middle aged gentleman. There is no history regarding co-morbidities, previous back problems or how long he had been working on the job when as part of his normal duties carrying a 200 lb marble slab he developed back pain. The back pain referred down to his left leg at first. His diagnostic imaging showed some right-sided findings, but he had multilevel disease. He was determined to be morbidly obese based on his body weight and height and there were concerns of psychosocial motivation. After the patient returned back to work from a short period of treatment, he was terminated from his job. A five-month hiatus occurred before there was any request for further treatment of back pain.

Opinions were rendered that maybe the current complaints were not related to his job due to the time interval, and an appeal process through the TWCC Commission resulted in confirming that the L4-5, 5-1 levels were compensable injuries and thus started the treatment to date.

For an adequate review to absolutely confirm medical necessity of spinal surgery, the results of an FCE and/or supervised physical therapy including a strengthening program was not made available. Passive modalities only would not suffice in the recovery of a lumbar strain. The literature supports active exercise as the most effective means to control chronic back pain

In this case, the only opinion for surgery comes from two partners at _____. All independent examining physicians and/or reviewing physicians have not seen medical necessity for further treatment at the level that was proposed. There is no information submitted to this reviewing physician that this patient requires an operation for recovery. He will most likely have back pain, regardless of surgery or not. Although there are some studies that show that back surgery may hasten recovery to get a patient back to work, working is not an issue at this time according to the latest information. Discography is controversial and is becoming more so due to the work of Dr. Caragee and Bigos, and with discography having already been performed at the 'certified levels of injury' the request to perform discography at the levels above for control is unlikely to find a non-painful or non-pathologic disc until the L1-L2 level. The means to obtain a surgery recommendation is the proposed discography; however, surgery in itself based on the information to date is unlikely to be medically necessary.

In conclusion, the request to repeat discography does not appear to be needed if it is unlikely to change management recommendations and treatment options. With a relatively normal physical exam of the spine and extremities, the issue at hand is predominantly back pain. It is unlikely that this patient will require surgical treatment regarding his back for back pain alone. Alternative treatments can further improve this patient's outcome by obtaining validity studies regarding where the deficiencies are, what the safe levels of function are and pursue activities along those lines.

___ 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 5th day of May 2004.