

July 29, 2004

MDR #: M2-04-1339-01

IRO Cert. #: 5055

In accordance with the requirement for TWCC to randomly assign cases to IROs, TWCC assigned your case to ___ for an independent review. ___ has performed an independent review of the medical records to determine medical necessity. In performing this review, ___ reviewed relevant medical records, any documents provided by the parties referenced above, and any documentation and written information submitted in support of the dispute.

I am the Secretary and General Counsel of ___ and I certify that the reviewing physician in this case has certified to our organization that there are no known conflicts of interest that exist between him and any of the treating physicians or other health care providers or any of the physicians or other health care providers who reviewed this care for determination prior to referral to the Independent Review Organization.

Information and medical records pertinent to this medical dispute were requested from the Requestor and every named provider of care, as well as from the Respondent. The independent review was performed by a matched peer with the treating health care provider. Your case was reviewed by a physician who is Board Certified in Pain Management and is currently listed on the TWCC Approved Doctor List.

REVIEWER'S REPORT

Information Provided for Review:

TWCC-60, Table of Disputed Services, EOB's

Information provided by Respondent: correspondence and designated doctor exam.

Information provided by Orthopedic Surgeon: office notes, FCE and radiology reports.

Information provided by Spine Surgeon: office notes and radiology reports.

Clinical History:

This claimant was injured at work on ____. He developed pain in the neck and low back as well as radiation into the right shoulder, right arm, and right leg. Cervical MRI on 12/18/01 was entirely normal. The claimant was then evaluated by the spine surgeon on 1/17/02 at the request of his treating doctor. Physical examination demonstrated no focal neurologic deficit. The claimant complained of lumbar pain radiating into the lower extremities, as well as neck pain radiating to the upper extremities. The spine surgeon noted that the MRI was "not of good quality" and recommended that the claimant undergo myelography. The claimant then underwent 2 lumbar epidural steroid injections, but continued to have the same degree of pain. He had also undergone a work-hardening program, which also provided him no relief. At one point, the surgeon was recommending that the claimant undergo 360 degree fusion at L3-L4 and L4-L5 based on the MRI results, although he clearly termed that MRI of being of poor quality.

In January of 2003, the claimant was referred by his treating doctor for an orthopaedic evaluation. The orthopedic surgeon noted failure of physical therapy and 2 epidural steroid injections.

The claimant continued to complain of neck pain radiating to the right shoulder and arm as well as lumbar pain radiating to the right leg. Physical examination demonstrated negative straight leg raising tests and no focal neurologic deficits. Multiple physical examinations were documented by the surgeon throughout 2003 and into 2004, none of which demonstrated any focal neurologic findings with continued negative straight leg raising tests. A repeat lumbar MRI was performed on 1/23/04 demonstrating dehydration of the L3-L4 and L4-L5 discs with 2-3 mm central disc herniations at L3-L4 and L4-L5 slightly touching the thecal sac with no spinal stenosis or neural compression. The claimant also underwent a repeat cervical MRI on 1/23/04, which was also normal. An MRI of the right shoulder was also performed on 1/27/04, which was also normal. The claimant also has lumbar x-rays demonstrating no evidence of subluxation or facet pathology, nor any evidence of lumbar spine instability. Those x-rays were performed on 1/28/03 and interpreted by the surgeon.

The claimant has had 2 independent medical evaluations performed, the first on 7/11/02 and the second on 4/24/03. In the most recent evaluation on 4/24/03, the claimant's complaints are listed as headaches, thoracic spine pain, right shoulder pain, lumbar pain, right and left leg pain, right and left arm paresthesia, and right groin pain. On physical examination, he noted no focal neurological deficits of the lumbar spine with normal reflexes, sensation, and negative straight leg raising tests. The claimant was noted to have 8 out of 8 positive Waddell signs. It was noted that physical therapy had made no difference in the claimant's overall clinical progress, and that there was evidence of heightened somatization and positive Waddell signs. He noted the claimant had "no intention of undergoing any type of operative procedure" and stated that the claimant was at MMI with a 5% whole person impairment rating. Requests for lumbar discography at the L2-L3, L4-L5, and L5-S1 level have been denied twice by the carrier as being medically unreasonable and unnecessary. The treating doctor has written rebuttal letters regarding these denials on 3/5/04 and 3/17/04, stating that the suspect discs at L3-L4 and L4-L5 needed to be tested, as well as the adjacent disc at L2-L3 and L5-S1 as controls.

Disputed Services:

L3-4, L4-5 and L5-S1 discogram

Decision:

The reviewer agrees with the determination of the insurance carrier and is of the opinion that the discogram in dispute as stated above is not medically necessary in this case.

Rationale:

This claimant has stated that he has absolutely no intention of undergoing any surgical procedure. There is no evidence of any spinal instability or significant pathology of lumbar discs to justify his undergoing 2-level radical 360 degree fusion, which he is clearly not interested in pursuing.

The claimants ongoing, unchanging complaints, of right leg pain and numbness exclude him from candidacy for the IDET procedure, and he has no evidence of significant disc herniation that would justify discectomy, whether open, percutaneous, or endoscopic. Moreover, and quite significantly, the claimant has clear evidence of symptom magnification in the independent medical evaluation,

which demonstrated 8 out of 8 positive Wadell signs as well as multiple high co-efficiency of variation in a functional capacity evaluation performed on June 4, 2003.

Therefore, since the claimant is not interested in pursuing any surgical procedure, his symptomatology excludes candidacy for IDET, his physical examination clearly demonstrates symptom magnification and functional overlay, and his MRI demonstrates nothing more than ordinary disease of life degenerative disc changes, and there is no evidence of spinal instability to justify consideration for fusion (in which the patient is clearly not interested), there is no medical reason or necessity for this claimant to undergo any discography. The discogram, if performed, would not offer any treatment options for which the claimant is a candidate, nor would the procedure alter his clinical course. He has already failed injection therapy, extensive physical therapy, and work-hardening, and has been rated at MMI. Discography for all of the reasons above is, therefore, not medically reasonable or necessary as related to this claimant's work injury of ____.

We are simultaneously forwarding copies of this report to the payor and the Texas Workers' Compensation Commission. This decision by ____ is deemed to be a Commission decision and order.

YOUR RIGHT TO REQUEST A HEARING

Either party to this medical dispute may disagree with all or part of this 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 ten (10) days** of your receipt of this decision (28 Tex. Admin. Code 142.5©)

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 twenty (20) days** of your receipt of this decision (28 Tex. Admin. Code 148.3)

This Decision is deemed received by you **five (5) days** after it was mailed (28 Tex. Admin. Code 102.4(h) or 102.5 (d)). A request for a hearing should be sent to:

Chief Clerk of Proceedings
Texas Workers' Compensation Commission, MS-48
7551 Metro Center Dr., Ste. 100
Austin, TX 78744-1609

A copy of this decision should be attached to the request. The party appealing the decision shall deliver a copy of its written request for a hearing to all other parties involved in the dispute.

I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to the carrier, the requestor and claimant via facsimile or U.S. Postal Service from the office of the IRO on July 29, 2004.