

NOTICE OF INDEPENDENT REVIEW DETERMINATION

MDR Tracking Number: M2-04-1499-01-SS
IRO Certificate Number: 5259

July 12, 2004

An independent review of the above-referenced case has been completed by a medical physician board certified in neurosurgery. The appropriateness of setting and medical necessity of proposed or rendered services is determined by the application of medical screening criteria published by Texas Medical Foundation, or by the application of medical screening criteria and protocols formally established by practicing physicians. All available clinical information, the medical necessity guidelines and the special circumstances of said case was considered in making the determination.

The independent review determination and reasons for the determination, including the clinical basis for the determination, is as follows:

See Attached Physician Determination

___ hereby certifies that the reviewing physician is on Texas Workers' Compensation Commission Approved Doctor List (ADL). Additionally, said physician has certified that no known conflicts of interest exist between him and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for determination prior to referral to ___.

Sincerely,

CLINICAL HISTORY

This is a 35-year-old woman who injured her back on ____. At that time she was apparently pulling merchandise. She picked up a box of shoes and then immediately felt a popping sensation in her low back. She developed back pain as well as what she describes as numbness down the back of her leg. This started a long succession of physicians and interventions which have included chiropractic management, localized chiropractic treatments; she has had sacroiliac joint injections

and epidural injections as well as a work hardening program without substantial improvement are her chief complaints.

Currently she is complaining predominantly of back and radiating left leg pain. She states intermittently throughout the last six months that she has been having numbness and weakness of the left leg. She has been evaluated by independent medical personnel who have disagreed with the status of maximum medical improvement.

As far as imaging studies, she has had plain x-rays, an MRI and a CT discogram. The plain x-rays find some mild narrowing of the disc space at L5 and S1. The MRI scan finds her to have a tiny disc bulge at L4 and a small disc bulge at L5 which is effacing the ventral thecal sac and apparently the origins of the S1 nerve roots, although the radiologist's description of this study is extremely scant. She has also had a discogram which showed concordant pain only at L4, not at L5, but the post-CT discogram did show significant fissuring of the L5 disc space. She has had an EMG which is essentially normal. It is being read as abnormal. However, that abnormality is seen only in the paraspinal muscles, and these abnormalities being limited to polyphasic units and increased interference, it is noted to be abnormal in the left S1 root and the right L5 root distribution. Of note is that the EMG's within the actual limb groups are within normal limits and none of the pathologic reflexes were either performed or reported. Her treating physician states that she now has 1 cm of atrophy in her left calf although this is not confirmed by any other examiner. With regards to the remainder of her neurologic exam, we have some difficulties because only one comprehensive neurologic exam has been performed on this patient since she has been evaluated, that being done by an independent medical examiner, specifically ___ on 2/17/04, which found her to have a reduced lumbar range of motion, no evidence of nerve root tension signs, no evidence of weakness or atrophy, no reflex changes, no sensory changes with the exception of a non-dermatomal stocking glove distribution in her left leg. ___, her treating physician, states that she has up to 1 cm atrophy of her left calf muscle, dermatomal loss and intermittently describes nerve root tension signs. Based upon all of this, he has recommended an anterior/posterior procedure involving L4 and L5, presumably an instrumented fusion.

REQUESTED SERVICE(S)

Anterior/posterior two level fusion L4 and L5.

DECISION

Denied. It would be inappropriate to proceed on with such a large procedure.

RATIONALE/BASIS FOR DECISION

What is being proposed here is not an inconsiderable procedure. Lumbar surgical fusions should be a procedure that needs to be respected and done only under the most extreme and limited conditions. Certainly ___ does not meet those.

The decision to perform this surgical procedure is based on a discogram which shows concordant pain only at L4, but on MRI scan that disc looks relatively preserved. Certainly the discogram following that shows some abnormalities. However, the entire focus of this woman's problem has been at L5 which would involve the S1 nerve root which on discogram were found to be non-concordant. It did show some fissuring. However, without the concordant production of her low back pain it would be excluded from any consideration from surgery based solely on the discogram results. This procedure is also based upon the MR findings. She is noted to have a 1-2 mm L4 bulge. Bulges are normal; they are the natural process of aging and are not pathologic. She is also noted to have a 4 mm posterior disc herniation effacing both S1 nerve roots, but apparently she is symptomatic only on the left. Of all of the studies that have been performed, this is the most telling for a surgical procedure, but obviously it would only be limited as a discectomy at L5 and possible foraminotomies over her S1 nerve roots. As far as the EMG, if one reviews the actual raw data mentioned above, there are no abnormalities on the EMG within the limb muscles. Certainly polyphasic activity in the paraspinal muscle is at very best a soft call and should not be a significant contributor to the decision to perform an extensive two level procedure in a relatively young person. With regards to her physical exam, there is significant disparity between what the treating physician is seeing as well as an independent medical examiner. Normally weight is given to the treating physician who has developed a relationship with a patient. However, ___'s physical exams are at best scant and certainly do not carry the weight of a fully documented physical exam performed by ___ on 2/17/04, at which time the only abnormality found was reduced lumbar range of motion.

Standard of care would be for all of the remediable factors in this woman to be addressed prior to considering this procedure. In looking through the extensive chart, this woman weighed 175 pounds after a similar injury in 2001. She has actually gained weight since that time despite the fact that she has been put through work hardening. Obviously, the work hardening did not achieve the results that would be preferred. Standard of care would dictate that a progressive weight loss program be administered and that this patient have a goal of losing from 15 to 30 pounds. This will obviously substantially offload her discs and with the acquisition of cardiovascular conditioning she will better perfuse the area, making it less prone to spasm which is a state that ___ has found her back to be in. There is no discussion whether this patient is a smoker. Certainly nicotine has a deleterious effect on the vasculature, causing vasospasm and impairment of all reparative processes. The use of Vicodin would also be discouraged. She is on escalating doses of Vicodin with decreasing levels of function. Adherence to the guidelines developed by the various pain management boards state that long-term use of narcotics is appropriate so long as the dosage is not escalating and there is a documented improvement in functional state. ___ does not meet either of these criteria.

YOUR RIGHT TO REQUEST A HEARING

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

This decision is deemed received by you 5 (five) days after it was mailed or the date of fax (28 Tex. Admin. Code 102.4(h) or 102.5(d)). A request for a hearing and a **copy of this decision** must be sent to:

Chief Clerk of Proceedings/Appeals Clerk
Texas Workers' Compensation Commission
P.O. Box 17787
Austin, Texas 78744

Or fax the request to (512) 804-4011. A copy of this decision must be attached to the request.

The party appealing the decision shall deliver a copy of its written request for a hearing to the opposing party involved in the dispute.

In accordance with Commission Rule 102.4(h), 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 this 13th day of July 2004.