

NOTICE OF INDEPENDENT REVIEW DECISION

Date: August 4, 2004

MDR Tracking #: M2-04-1658-01

IRO Certificate #: 5242

___ has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Texas Workers' Compensation Commission (TWCC) has assigned the above referenced 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, relevant medical records, any documents utilized by the parties referenced above in making the adverse determination, and any documentation and written information submitted in support of the appeal was reviewed.

The independent review was performed by a Psychiatric reviewer (who is board certified in Psychiatry) who has an ADL certification. The physician reviewer has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians 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 this case.

Submitted by Requester:

- Assessment from ___ dated 4/22/04
- Note from ___ dated 5/11/04
- Psychiatric evaluation by ___ dated 4/22/04
- Reconsideration appeal from the _____ dated 4/22/04

Submitted by Respondent:

- Letter of adverse determination dated 5/30/04
- TWCC-69 report of medical evaluation dated 1/31/03
- Letter from ___ dated 11/6/03
- MRI of the thoracic spine dated 7/3/03
- Progress notes from ___ from July 2003 through November 2003
- FCE dated 10/7/03
- MRI dated 12/2/02 of the lumbosacral spine
- Evaluation from ___ dated 3/28/03
- Non-authorization for work hardening program dated 12/5/03
- Designated doctor examination dated 1/31/03 performed by ___
- RUR by ___ dated 10/22/03
- Adverse determination dated 12/2/03 for an EMG/NCV
- Physician advisor referral form dated 12/1/03
- Pre-certification request for EMG dated 11/26/03 by ___
- TWCC work status reports over the duration of the injury

- Non-authorization for work hardening program dated 11/17/03
- Pre-certification request from ___ for work hardening program dated 11/12/03
- Work hardening program request from ___ dated 9/3/03
- FCE dated 9/3/03
- Comprehensive medical analysis dated 10/22/03
- Request for reconsideration of denial of charges dated 9/19/03
- NCV study dated 8/27/03
- Letter of medical necessity for electrical muscle stimulator unit dated 8/25/03
- Sensory nerve conduction threshold test
- Physician advisor referral dated 7/24/03
- Physician advisor referral dated 8/21/03
- Operative report on lumbar epidural steroid injection dated 4/22/03
- Notes from ___ spanning the time period from February 2003 through June 2003
- Treatment notes from ___ of individual psychotherapy from 5/12/03 through 6/2/03
- Behavioral assessment from ___ evaluation dated 4/3/03
- Notes from ___ spanning the time period of November 2002 through April 2003
- RUR dated 2/21/03 by ___, orthopedist
- Denial for chronic pain management program dated 4/10/03
- Letter from ___ dated 4/8/03
- Operative report on epidural steroid injection dated 2/25/03
- Operative report dated 1/15/03 on epidural steroid injection
- Treatment notes from ___.
- Checks from RGV All Tune and Lube for medical expenses
- Note from ___ dated 10/18/02 and evaluation dated 11/4/02
- Letter from ___ dated 2/17/03
- Approval for an epidural steroid injection
- Bills of services from ___
- ___ explanation of reimbursement dated 12/3/02
- Notification of designated doctor exam dated 1/15/03
- Employers First Report of Injury
- Letters from the ___ dated 12/28/02, 11/19/02 and one that is not dated

Clinical History

The claimant injured his back while working at the ___ on ___. Subsequent to this, he underwent chiropractic care and physical therapy and received pain medications. The notes from time period initially reflected progress in the physical therapy, and in fact one of the status reports indicated that there was going to be a return to duty with modifications in late 2002; however, it appears this did not occur. The claimant underwent a designated doctor examination in January 2003 and was given a 0% impairment; however, the claimant continued to report persistent pain and was continued in treatment. He switched chiropractors in April 2003. He continued under the care of ___ and received lumbar epidural steroid injections. He has had a lumbar MRI on 12/2/02 which indicated hypertrophy of the ligamentum flavum and a slight stenosis of the central spinal canal. ___ indicated on a note from 3/21/03 that the claimant was exhibiting some signs of stress, anxiety and depression and referred him for a behavioral health assessment that

was accomplished at the _____. There he was diagnosed with an adjustment disorder and a pain disorder, and it appears that a chronic pain management program may have been requested, but subsequently this was modified to include individual therapy that was accomplished by _____ in May and June 2003. She indicates in her notes some improvement in the claimant's anxiety and depressive symptoms. He was also placed at the time on _____, though apparently this was only continued for approximately 8 weeks. There was a thoracic MRI accomplished on 7/3/03 that indicated a T7/8 disc herniation effacing the ventral spine cord. The claimant has had persistent pain despite all these interventions. An RUR dated 2/21/03 indicates that an orthopedist, _____, felt that no further care was necessary except for a home exercise program. An RUR by _____ on 10/22/03 indicated that she felt the NCV performed on 8/27/03 was not medically necessary. She did not feel that the thoracic disc finding correlated with the pain complaints and did not need further evaluation. The assessment from the _____ on 4/22/04 indicated that the claimant was reporting depression and anxiety symptoms with problems of feeling overwhelmed, frustrated, irritable, poor concentration, poor memory, sleep disturbance, anxiety, reduced participation in pleasure activities, reduced libido and reduced appetite. They diagnosed him with a pain disorder, major depressive disorder and on AXIS III they had T7/8 disc herniation, degeneration of the lumbar intervertebral disc, thoracic radiculitis, myofascial pain and discopathy. Their Global Assessment Functioning Scale was 55. A Beck Depression Inventory was done which was 19 a Beck Anxiety Inventory was 30. Their treatment recommendation was for 30 sessions of a chronic pain management program. This was not authorized by the carrier with the rationale that in a discussion with the primary treating physician, she believed that the persistent pain was due to the disc bulge in the thoracic spine and that all primary and secondary means of intervention must be exhausted before proceeding to a chronic pain management program. On the appeal, the treatment program indicated that they thought the claimant was not a surgical candidate. They indicated that they thought a claimant could be advanced to the tertiary level of care if it is more appropriate than the primary or secondary level of care and they also indicated that the carrier was denying requests by the treating physician and that this indicated that primary and secondary levels had been exhausted. This was non-authorized on 5/7/04 with the rationale that the claimant had been determined at MMI with a 0% impairment in the past, that the request for 6 weeks is beyond the standard of care for duration of a pain program, that the level of depression was consistent with that which can be treated concurrently with employment, and that there was no history and physical by which to judge the appropriateness of the referral including whether or not all appropriate treatment had been tried. The subsequent evaluation by _____ on 5/11/04 indicated a diagnosis of low back pain, upper back pain and disc herniation at T7/8. His recommendation was that the claimant was a candidate for further rehabilitation and manipulation and a candidate for discectomy and fusion of T7 and T8.

Requested Service(s)

Thirty sessions of a chronic pain management program

Decision

Based on the documentation available, I agree with the insurance carrier that the services in dispute are not medically necessary at this juncture.

Rationale/Basis for Decision

Based on the telephone conversation between the first reviewer and ____, it appears that ____ felt the claimant's symptoms were arising from his thoracic disc herniation. This is further supported by the orthopedic evaluation by ____ where he indicates that he feels the claimant is a candidate for discectomy and fusion of T7 and T8. There are no notes from either ____ indicating they have abandoned this position. While the CPMP asserts that the carrier is denying requests by ____ and thus the claimant is at a tertiary level of care, I am sure they would acknowledge that denial by an insurance carrier does not necessarily mean an intervention is not medically necessary. That is the entire reason for the appeal and IRO process. Moreover, there is no included documentation that the discectomy and fusion were requested and denied. Thus, at the time of denial, it appears that the primary treating physician and the consulting orthopedic surgeon did not believe that all primary and secondary interventions have been exhausted and entrance into a tertiary level of care would have been premature. Consideration for less intensive mental health interventions would have been reasonable to treat comorbid psychological symptoms.

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 (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.

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 patient, the requestor, the insurance carrier, and TWCC via facsimile or U.S. Postal Service from the office of the IRO on this 4th day of August 2004.