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NOTICE OF INDEPENDENT REVIEW DECISION

Date: January 25, 2005

Requester/ Respondent Address:

TWCC
Attention: Gail Anderson
7551 Metro Center Drive, Suite 100, MS-48
Austin TX 78744-1609

Dr. B, DC
Attn: _____
Fax: 972-647-4160
Phone: 972-647-4175

Travelers Indemnity Co
Attn: _____
Fax: 512-347-7870
Phone: 512-328-7055

RE: Injured Worker:

MDR Tracking #: M2-05-0483-01-SS
IRO Certificate #: 5242

Forté 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 Forté for independent review in accordance with TWCC Rule §133.308 which allows for medical dispute resolution by an IRO.

Forté 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 an Orthopedic reviewer (who is board certified in orthopedic surgery) 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:

- Notes from Dr. D, M.D.

- Independent review decision dated 9/10/04
- MRI report dated 3/22/04
- Three views, lumbar spine x-ray report
- Discogram report dated 9/27/04
- CT post discogram report dated 9/27/04
- EMG/NCV study report dated 6/17/04
- Notes from Dr. M, M.D. dated 5/21/04 and 10/26/04
- Recording of worker's compensation hearing
- Notes from Dr. B, D.C.

Submitted by Respondent:

- Review determinations regarding proposed surgery

Clinical History

___ is a 42 year old male who was complaining of pain in the lower back radiating to the right hip region with some intermittent numbness in the inner aspect of both thighs. These were his initial complaints after an injury on ___. He described slipping on ice and falling on the right hip, low back region and right shoulder and elbow. The right low back and hip region complaints persisted. He initially sought care from Dr. B, chiropractor, and was described as having the symptoms noted above. When he was seen by Dr. D on 4/7/04 and 4/28/04, he denied any lower extremity radicular symptoms. His pain was confined to the right low back area and the right sacroiliac joint with lesser symptoms on the left sacroiliac region. He underwent lumbar epidural steroid injection on 4/14/04. On 4/21/04 and 5/5/04 he had sacroiliac joint injections. On 6/28/04 in a note by Dr. D it is noted that he is complaining of bilateral radicular pain; however, there was no radicular pain with straight leg raising. I did not see evidence of consistent reports of radicular pain prior to the 6/28/04 visit, which is over 5 months post injury. MRI report of 3/22/04 by Dr. F, M.D. indicates a 2-3 mm protrusion to the left of the midline with minimal left foraminal stenosis and it touched and effaced the thecal sac. On 9/27/04, a lumbar spine x-ray showed minimal loss of disc height at L4 and L5 and that was the level of the disc protrusion. Discogram was done on 9/27/04 and pain was elicited at the L4-5 level. The CT post-discography revealed a 3-4 mm annular bulge with posterior annular contrast accumulation. There was an EMG/NCV report on 6/17/04 by Dr. M, M.D. that noted a chronic L5 radiculopathy on the right. Subsequently, he was seen by Dr. A and he suggested that this gentleman, having failed conservative treatment, should be treated with posterior lumbar decompression and interbody and lateral fusion at L4-5.

Requested Service(s)

Posterior lumbar decompression and interbody and lateral fusion at L4-5.

Decision

I agree with the insurance carrier that the above services are not medically necessary.

Rationale/Basis for Decision

There are no criteria here for lumbar fusion. There has been no documentation of any spinal instability in this gentleman. In the absence of spinal instability, there is no indication for lumbar fusion. Clinical Practice Guideline #14 published by The Agency for Healthcare Policy and Research indicates that, in the absence of lumbar instability caused by spondylolisthesis, trauma, or other etiologies, fusion is not indicated. There is no evidence of instability in this gentleman. There have never been any flexion/extension films made to determine if there is any translatory motion present. The findings on the MRI indicate findings on the left side with minimal neuroforaminal compromise. The EMG findings indicate chronic radiculopathy on the right side. These findings are in conflict. The patient's complaints were right sided, so the MRI findings are inconsistent with his complaints. Discography has shown to be unreliable in a number of studies and also is not recommended in the Clinical Practice Guideline #14 on page 79. Eugene Carragee published four studies from December 1999 to December 2000. These are well controlled studies on reliability of discography and they indicate that in the case of workers' compensation patients and emotionally unstable patients there is no reliability to using discography and CT/discogram as studies on which to base surgical decision making. The unreliability of how intensive pain is from patient to patient, especially with ongoing symptoms, indicates that this test is not a reliable test on which to base surgical decision making. It is using a subjective rather than an objective response to validate a test. One group that had discography had significant pain on testing, and these were patients that had no back symptoms for at least a year after the discogram. There is no indication in the literature for lumbar fusion for lumbar disc degeneration. The North American Spine Society expresses significant doubts about the accuracy of discography. The findings noted above in the Agency for Healthcare Policy and Research Clinical Guideline #14 published in 1994 have presently been reviewed and the reliability of those issues were validated in the study by Shekelle in 2001 in the Journal of the American Medical Association. In summary, the findings are inconsistent. A left sided protrusion with minimal left foraminal compromise, right L5 radiculopathy are inconsistent, and this gentleman had no complaints of radicular symptoms until some months after his accident; therefore, I would not relate them to the accident of 1/6/04.

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 25th day of January 2005.

Signature of IRO Employee:

Printed Name of IRO Employee: