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NOTICE OF INDEPENDENT REVIEW DECISION

Date: February 17, 2005

Requester/ Respondent Address:

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

Positive Pain Management
Attn: Luis Solorio
Fax: 972-487-1916
Phone: 972-272-1633

Zurich American Insurance Co c/o FOL
Attn: Annette Moffett
Fax: 512-867-1733
Phone: 512-435-2266

RE: Injured Worker:

MDR Tracking #: M2-05-0699-01
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 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:

- Psychological evaluation and report
- Appeal of the Non-authorization for the chronic pain management program
- Notes from individual psychotherapy and biofeedback treatments

- Notes from Dr. Stephenson
- Notes from Dr. Garcia
- Notes from the Texas Worker's Comp Clinic of San Antonio
- MRI dated 10/18/04 of the left ankle

Submitted by Respondent:

- Matrix Investigative Agency report, CD/Video from this investigation from 9/19/02
- Treatment notes from the International Institute of Pain Management
- Treatment notes from Dr. Garcia
- Communications with the Positive Pain Management Program
- Treatment notes from Healthsouth Combined Group
- X-ray of the lumbar spine, x-ray of the right knee
- Physical therapy notes
- Impairment rating by Dr. Perkins
- Notes from Texas Worker's Comp Clinic of San Antonio
- Notes from the Corrective Care Clinic

Clinical History

___ reportedly fell and slipped on ___ leading to injury to her left ankle and back. She has had extensive conservative treatment as well as surgical treatment of the left ankle. She continues to report persistent pain. The claimant underwent a psychological evaluation which indicated a prior history of depression and suicide attempts. The Behavioral Assessment of Pain was noted to need to be interpreted with caution and the Beck Depression Inventory was noted to show extreme levels of depression. During individual psychotherapy her pain level actually increased though her depression and anxiety levels slightly decreased. A request was made for a chronic pain management program and non-authorized. Additional relative information includes that the most recent note dated 4/13/04 from Dr. Garcia, the orthopedic surgeon who operated on her ankle, indicates that he feels the claimant needs a second opinion and consideration for ankle reconstruction. There is no note as to whether this was accomplished. Also included in the notes from Dr. Stephenson from 11/11/04 was an indication that he was referring the claimant for evaluation for pain medications and on 12/15/04 the claimant was to schedule with Dr. Garcia for follow up. Additionally, I would note that the Matrix Investigative Agency filming on 9/19/02 showed footage of the claimant getting in and out of her car without evidence of limp or pain behaviors. It showed her ascending and descending stairs, again without evidence of limp or pain behaviors. It showed her bending fully at the waist to pick up a baby stroller, again without evidence of pain behaviors. It showed her lifting a baby and adjusting the infant from side to side on her hip without evidence of pain behaviors. There was no brace on her ankle observed and her motions appeared fluid. She appeared to be doing a number of errands.

Requested Service(s)

Thirty (30) sessions of chronic pain management program.

Decision

I concur with the carrier that the chronic pain management program is not medically necessary at this juncture.

Rationale/Basis for Decision

First, the claimant appears to still be considered a possible surgical candidate by the orthopedic surgeon. She is also being referred for lower levels of care by Dr. Stephenson. A chronic pain management program is a tertiary level of care and should be considered after primary and secondary interventions have been exhausted. Secondly, the video footage does bring up the possibility of symptom magnification. The psychological evaluation does not indicate why the BAP should be interpreted with caution; however, this is often the case when there is significant over endorsement of symptoms. Additionally, the extreme level of depression indicated on the BDI without substantial notation from other treating providers of depression symptoms is unusual and also raises this possibility. Further exploration, especially given the video footage, as to the likelihood of symptom magnification and other secondary gain issues should be explored by the evaluating psychologist prior to enrollment into a chronic pain management program because if these issues are present her likelihood of a positive outcome is poor.

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 17th day of February 2005.

Signature of IRO Employee:

Printed Name of IRO Employee: Denise Schroeder