April 28, 2005

TWCC Medical Dispute Resolution
7551 Metro Center Suite 100
Austin, TX 78744

Patient:
TWCC #:
MDR Tracking #: M2-05-1082-01
IRO #: 5284

Specialty IRO has been certified by the Texas Department of Insurance as an Independent Review Organization. The Texas Worker's Compensation Commission has assigned this case to Specialty IRO for independent review in accordance with TWCC Rule 133.308, which allows for medical dispute resolution by an IRO.

Specialty IRO has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, all relevant medical records and documentation utilized to make the adverse determination, along with any documentation and written information submitted, was reviewed.

This case was reviewed by a licensed Medical Doctor with a specialty in Anesthesia and Pain Management. The reviewer is on the TWCC ADL. The Specialty IRO health care professional has signed a certification statement stating that no known conflicts of interest exist between the reviewer and any of the treating doctors or providers or any of the doctors or providers who reviewed the case for a determination prior to the referral to Specialty IRO for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to the dispute.

CLINICAL HISTORY

According to the medical records, the patient was working for Cortheon Health Care on ___, the day of her injury. She was working as a housekeeper and was moving some books / trash while at work. She was bent at the waist and pulling on a heavy bag trying to lift it. She experienced immediate mid and low back pain, which "took her breath away". She was seen in the Emergency Room on 11-22-03, underwent x-rays and was prescribed Zanaflex and Naprosyn. She then treated at Concentra where she underwent physical therapy and continuation of medications. She was placed on Vioxx and Flexeril and on modified work duty as of 12-03-03. The patient denied any previous back injury. The patient has been off work since 12-25-03. Over the next few weeks, she experienced numbness and tingling in her legs as well.

Later, she underwent an MRI and then injections under Dr. Bolte. Dr. Bolte evaluated her on 12-17-03. In his report, he referred inappropriate pain behavior and the patient referred lumbar pain with right radicular symptoms. Her physical examination revealed a range of motion limited to 30 degrees of flexion, 0 degrees of extension and 10 degrees of lateral bending maneuvers. In his conclusion, he gave the patient "the benefit of doubt" and realized a lumbar epidural injection. The patient later referred no relief whatsoever from this intervention. The patient later referred an increase of pain when placed back to regular duty.

On 01-29-04, she was seen by Dr. Cody Doyle, DC. He reported the patient's subjective symptoms of lower lumbar pain bilaterally with sacroiliac joint pain and a VAS score of 10/10. Her physical examination revealed significant physical limitation with range of motion difficulties. Her reported height was 5'6 and weight 155 lbs on this initial evaluation. She was to continue with home therapy and was referred to a neurosurgical consult. During subsequent office notes, he referred the similar areas of pain with burning and pins and needles in the low back. She also initiated with complaints of cervical and upper extremity pain. Apparently, the patient attempted to return to work in February but did not tolerate the work duties. Throughout his notes, the patient's VAS score oscillates between 8/10 to 10/10 with one mention of 5/10 intensity.

Dr. Leslie Bishop evaluated the patient on 02-26-04 as a designated doctor. She determined that she reached MMI with 0%. She referred to an MRI report of 12-17-03 with degenerative changes at L4/L5 and facet hypertrophy. She also makes note of reports by Dr. Bolte and Dr. Hatley of symptom magnification. She states that she also noted inappropriate pain behavior and that she observed the patient leaving her office with a normal motor gait, which was markedly different from the gait she presented during examination.

On 03-10-04 a discogram reports with post CT scan. L3/L4 is normal. L5-S1 presents an annular fissure towards the right posterior or at L4-L5, ambiguous report.

Dr. Cindrich, neurosurgeon, evaluated the patient in February of 2004 and performed a lumbar discogram on 03-10-04. The post CT scan report is slightly ambiguous since it reports an annular fissure at L5-S1 on one page and then refers to the L4-L5 level as presenting the fissure, but this could simply be a clerical error. Dr. Cindrich then requested surgery in April of 2004, which has been denied. He proposed a three level fusion with interbody fusion and instrumentation. In his physical examinations, he reports a normal cervical range of motion with no significant upper extremity findings. He reports lumbar range of motion limited to flexion with positive SLR at 40 degrees and a slow motor gait.

The Work Injury Recovery Center realized an initial psychological evaluation on 03-03-04 by George Esterly, MS. He recommended 6-week chronic pain program, but apparently the patient was initiated with individual counseling. The individual counseling notes do not provide any individual patient evaluation or evolution of symptoms with improvement. There are some notes referring to satisfactory progress and reduced rage. After completing these sessions, the patient

was to undergo an initial 2 weeks of chronic behavioral pain management program due to severe depression and anxiety.

In terms of medications, the patient's regimen was managed by Dr. Crockett. In March of 2004 she was prescribed Hydrocodone and Neurontin, but there are no further records from Dr. Crockett's pain management. There is also no mention of any prescription of anti-depressant or anti-anxiety medications. There are some references to disputes, benefit review conferences and most importantly, pain medication denials, which are relevant to the patient's current situation.

The most recent medical records are office notes from 2005 from Dr. Doyle. He states that she presents upper back and thoracic pain. There is also a reference of cervical pain with symptoms of right-sided neuritis. He pain level continues to be reported at a VAS of 10/10. She is unable to realize basic daily activities and cannot sleep. She has vision disturbances with severe depression and anxiety. Apparently, her lumbar surgery was approved through a contested case hearing but has not yet been scheduled.

Records Reviewed:

A. General Records: Notification of IRO assignment dated 03-14-05; Note of receipt of MDR request by TWCC dated 03-14-05; MDR Request form dated 02-16-05; Initial Pre-authorization denial dated 12-27-04; Pre-authorization appeal dated 01-12-05

B. Records from the carrier: Additional IRO information letter 03-21-05; Summary of carrier's position dated 03-07-05; MDR Request form dated 02-16-05; Pre-authorization denial dated 01-28-05; Pre-authorization review dated 01-27-05; Pre-authorization reconsideration review dated 01-12-05; Pre-authorization appeal dated 01-12-05; Initial Pre-authorization denial dated 12-27-04; Contact note from insurance rep to doctor's office dated 11-01-04; Pre-certification note dated 12-27-04; Pre-authorization review dated 12-27-04; Peer Review dated 03-17-04 by Ephraim Brenman, DO; Addition report by Dr. Leslie Bishop dated 03-18-04, with clarification of report request dated 03-16-04; TWCC 73 form dated 12-24-03; Evaluation by Dr. Brett Bolte dated 12-17-03; Impairment Abstract dated 02-26-04 by Leslie Bishop, MD

C. Records from the doctor: Note of receipt of MDR request by TWCC dated 03-14-05 x 2; TWCC IRO Assignment letter dated 03-14-05 x 2; Office note from Cody Doyle, DC dated: 01-29-04, 01-05-05, 02-08-05, 02-28-05, 04-13-04, 04-27-04; Daily progress notes from Cody Doyle, DC dated: 01-29-94 through 02-10-04, 02-11-04 through 04-02-04, 05-03-04 through 06-28-04, 07-12-04 through 10-05-04, 10-22-04 through 12-0-04, 04-13-04 through 04-27-04; Summary letter for IRO records dated 03-12-05; PT progress notes by Maciej Nowicki dated: 12-03-03; Office note of Dr. Warren Hatley MD dated 12-05-03, 12-10-03, 01-14-04, and 01-21-04; Office note of Dr. Brett Bolte, MD dated 12-17-03 w/ handwritten note; Impairment Abstract dated 02-26-04 by Leslie Bishop, MD; L3-S1

Discogram operative note dated 03-10-04 by Patrick Cindrich, MD with post CT scan; Referral letter from Dr. Cindrich dated 04-05-04; Patient referral form date unknown for psych evaluation; Work Injury Recovery Center notes dated 03-03-04, 06-08-04, 10-22-04; Individual Counseling session dated 03-31-04, 04-07-04, 04-13-04, 04-27-04, 05-03-04, 05-12-04, 05-19-04, 06-28-04

REQUESTED SERVICE

The item in dispute is the prospective medical necessity of a chronic behavioral pain management program X 10 sessions.

DECISION

The reviewer agrees with the previous adverse determination.

BASIS FOR THE DECISION

The reviewer states that the medical records have not established the medical necessity of the proposed treatment. This type of treatment would be considered a tertiary phase of treatment. The patient is a surgical candidate and pending scheduling for this. A patient with a significant and persistent physical component of pain would not be a candidate for this type of psychological program since she continues with the possibility of material recovery after the surgery. All possibilities of medical treatment have not been exhausted. It is clearly documented that the patient continues to present physical sources of pain that superimpose and exacerbate any secondary psychological symptoms. During the session notes, it states that the patient continues to have some minor improvements from a psychological standpoint, but has significant setbacks with physical functioning. There are also no notes as to patient's improvement from a functional standpoint or even if she has undergone a functional capacity evaluation to evaluate any improvement.

It appears that the primary rationale for this chronic pain program is depression and anxiety. It is well documented that chronic pain, especially with poor control, can frequently manifest symptoms of anxiety and / or depression. There is no reference to anti-depressant, anti-anxiety or any nerve modulator medication that could control these secondary symptoms. Due to the persistence and severity of symptoms, this would need to be managed medically before considering psychological treatment with a chronic pain program. Therefore, psychological treatment cannot be considered effective until the medical component is addressed.

The individual sessions also provide an indication of his expected outcome from a further chronic pain psychological intervention at this time. The patient has had a minimal response at best and she is unlikely to present any significant improvement with further sessions of this program.

In summary, the patient does present with a justifiable depression secondary to her chronic low back pain, all other forms of treatment have not been exhausted. The individual sessions have presented minimal improvement at best, predominantly because this type of intervention is not medically beneficial at this point in her treatment. She presents a poor prognosis to improve with this program until the medical factors have been properly addressed. It is well known that annular disc tears can generate pain resistant to conservative treatment and this pathology is an important limiting factor in this case. Once the patient's anatomical pain generator and depression have been addressed medically, then this type of treatment can be considered if necessary. According to established medical guidelines, the proposed treatment will not provide any future medical benefit at this time.

References:

(1) Albright, et al (including Philadelphia and Ottawa Panel Members). *Philadelphia Panel Evidence-Based Clinical Practice Guideline on Selected Rehabilitation Interventions for Low Back Pain.* Physical Therapy. 81(10). Oct. 2001.

(2) A Placebo-Controlled Randomized Clinical Trial of Nortriptyline for Chronic Low Back Pain. Atkinson JH, Slater MA, Williams RA, et al. *Pain*. 1998; 76 (3): 287-96.

(3) Effects of Noradrenergic and Serotonergic Antidepressants on Chronic Low Back Pain Intensity. Atkinson JH, Slater MA, Wahlgren DR, t al. Pain. 1999; 83(2): 137-45.

(4) Co morbid Psychiatric Disorders and Predictors of Pain Management Program Success in Patients with Chronic Pain. Workman EA, Hubbard JR, Felker BL. (Records supplied by publisher). Aug 2002. 4(4) p. 137-140.

(5) Minder, et al. *Interferential therapy: lack of effect upon experimentally induced delayed onset muscle soreness*. Clin Physiol Funct Imaging. 22(5): 339-47. Sept. 01, 2002.

(6) ACOEM (American Academy of Occupation and Environmental Guidelines).

Specialty IRO has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. Specialty IRO has made no determinations regarding benefits available under the injured employee's policy. Specialty IRO believes it has made a reasonable attempt to obtain all medical records for this review and afforded the requestor, respondent and treating doctor an opportunity to provide additional information in a convenient and timely manner.

As an officer of Specialty IRO, Inc, dba Specialty IRO, I certify that there is no known conflict between the reviewer, Specialty IRO and/or any officer/employee of the IRO with any person or entity that is a party to the dispute.

Sincerely,

Wendy Perelli, CEO

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.

In the case of prospective ***spinal surgery*** decision, a request for a hearing must be made in writing and it must be received by the TWCC Chief Clerk of Proceedings within **10** days of your receipt of this decision. (20 Tex. Admin. Code 142.5(c)).

In the case of other ***prospective (preauthorization) medical necessity*** disputes a request for a hearing must be in writing, and it must be received by the TWCC Chief Clerk of Proceedings within **20** (twenty) 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 (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 Worker's Compensation Commission, P.O. Box 17787, Austin, TX 78744. The fax number is 512-804-4011. A copy of this decision should be attached to the request.

The party appealing this decision shall deliver a copy of its written request for a hearing to all other parties involved in the dispute, per TWCC rule 133.308(u)(2).

Sincerely,

Wendy Perelli, CEO

I hereby certify, in accordance with TWCC Rule 102.4 (h), that a copy of this Independent Review Organization decision was sent to the carrier, requestor, claimant (and/or the claimant's representative) and the TWCC via facsimile, U.S. Postal Service or both on this 28th day of April 2005

Signature of Specialty IRO Representative:
Name of Specialty IRO Representative: Wendy Perelli