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NOTICE OF INDEPENDENT REVIEW DECISION

Date: April 25, 2005

Requester/ Respondent Address:

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

RS Medical
Attn: Joe Basham
Fax: 800-929-1930
Phone: 800-462-6875

Zurich American Insurance Co c/o FOL
Attn: Katie Foster
Fax: 512-867-1733
Phone: 512-435-22622

RE: Injured Worker:

MDR Tracking #: M2-05-1231-01
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 an orthopedic surgeon 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:

- Records Ortho Rehab Associates-George Wharton, MD
- RS4i prescriptions and patient usage reports

Submitted by Respondent:

- Documents from law firm Flahive, Ogden and Latson
- CMS documents regarding NMES coverage
- ACOEM Guidelines
- Series of Independent medical reviews regarding RS4i stimulator
- Notes from Ortho Rehab Associated, George Wharton, MD
- Lumbar Myelogram and CT with contrast reports 11-19-03
- Operative note 6-16-04 from Health South

Clinical History

This 62 year old male was injured on ___ while working as a truck driver. He was unloading steel pallets from his truck, and claimed injury to his neck and right shoulder. He had a history of lumbar spine surgery in 1981 followed by a lumbar fusion at L4, L5 in 1983. He re-injured his low back while in physical therapy for the cervical and shoulder injury according to the notes I have to review. He saw Dr. Wharton originally on 5-6-04, and on 6-16-04, Dr. Wharton performed a lumbar decompression at L3, and L4 and an anterior and posterior fusion at L3. He had a stormy post op course with probable alcohol withdrawal and a retroperitoneal abscess. He continues with chronic neck and back pain. The surgery was unsuccessful as far as pain relief and functional improvement. He has not improved on analgesics, anti anxiety medications, or physical therapy.

Requested Service(s)

Purchase of a RS4i sequential 4 channel combination interferential and muscle stimulator.

Decision

I agree with the insurance carrier that the above service is not medically necessary.

Rationale/Basis for Decision

There is no objective documentation in the records I reviewed of improvement in functional levels using the above device. The record contains only anecdotal reports. There should be objective evidence of improved range of motion, reduced use of analgesics, and return of function allowing possible return to work. In the records I reviewed, the above was not present. There are no independent evidence based studies in the medical literature that support use of the RS4i stimulator

for the relief of chronic pain. On the contrary, CMS, ACOEM Guidelines, and AHCRP Clinical Guideline #14, find no evidence that neuromuscular and interferential stimulation has any role in chronic pain. Therefore, the only way to evaluate the use of the RS4i stimulator would be to conduct an individual clinical trial with recording of physical improvement in functional capacity and reduced pain with the individual demonstrating physical activities that he could not perform prior to use of the stimulator. The results of the above study should be evaluated by an independent examiner who is a board certified orthopaedic surgeon who is not aware of the patient's functional capacity and pain levels prior to prescribing the device.

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 April 2005.

Signature of IRO Employee:

Printed Name of IRO Employee: Denise Schroeder