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NOTICE OF INDEPENDENT REVIEW DECISION

Date: May 16, 2005

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

Richard A. Francis, MD
Attn: Victor Anaya
Fax: 832-252-1015
Phone: 713-383-7100

Fidelity & Guaranty c/o Downs Stanford
Attn: Jon Grove
Fax: 214-747-2333
Phone: 214-748-7900

RE: Injured Worker:
MDR Tracking #: M2-05-1282-01
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 from Richard Francis, MD
- Independent review from Ziroc
- Evaluation Stephen I. Esses, MD
- MRI with Gadolinium report 8-12-04
- MRI report lumbar spine 3-28-03
- EMG report 1-2-03
- NCV report 3-18-02
- MRI report Kirby diagnostic
- Lumbar discogram report 8-20-03
- Operative notes epidural steroid injection (ESI) 10-18-02, 11-22-02.

Submitted by Respondent:

- Letters from Downs-Stanford
- Letter for Sedgwick CMS
- Lumbar MRI report 8-22-01
- EMG, NCS reports
- Chiropractic review 2-20-03
- Discogram report 6-20-03
- Lumbar MRI report 3-27-03
- Records George Medley, MD
- Bradley & Assoc. Physical Therapy
- Record from Robert Y. Pick, MD
- Records from Peter Yeh, MD
- Records from Stephen Esses, MD
- MRI report 8-12-04

Clinical History

The claimant is a 44 year old male who injured his low back on ___ while stocking shelves. He has failed numerous treatments and seen numerous health practitioners. His multiple MRI studies have not demonstrated any major pathology to account for his complaints. His electrodiagnostic studies indicate subtle radiculopathy at L5 there is no mention of myelopathy. He has no consistent neurologic deficits, no evidence of lumbar instability has been found. He had one negative and one positive discogram.

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Requested Service(s)

Posterior fusion L4-S1 (codes 22612, 22614, 22842, 20937, 62351, 63707, 20930) and anterior fusion L4-S1 (codes 63090, 63091, 22558, 22585, 22851, 22845, 20930) these would include pedicle screws, and cages.

Decision

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

Rationale/Basis for Decision

There are no clinical indicators for lumbar fusion. There has been no lumbar instability demonstrated. There is no evidence of neoplasm. There is no evidence of instability secondary to fracture. There is no evidence of infection. There are no lumbar flexion/extension views demonstrating transitory segmental instability. The results of discography have been demonstrated by Carragee et al. in studies at Stanford to be unreliable and of little diagnostic use and cannot stand alone as criteria for surgery. This gentleman has chronic pain and lumbar fusion is not an answer for chronic pain without the conditions cited above and imaging studies that correlate clinically with the physical findings. These are not present in this case.

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:

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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 16th day of May 2005.

Signature of IRO Employee:

Printed Name of IRO Employee: Denise Schroeder