

June 29, 2005

VIA FACSIMILE  
Ms. Annette Moffett  
Commerce & Industry Ins. Co.

### NOTICE OF INDEPENDENT REVIEW DECISION

**RE: MDR Tracking #: M2-05-1287-01**  
**TWCC #:**  
**Injured Employee:**  
**Requestor:**  
**Respondent: Commerce & Industry Ins. Co.**  
**MAXIMUS Case #: TW05-0116**

MAXIMUS has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The MAXIMUS IRO Certificate Number is 5348. Texas Worker's Compensation Commission (TWCC) Rule §133.308 allows for a claimant or provider to request an independent review of a Carrier's adverse medical necessity determination. TWCC assigned the above-reference case to MAXIMUS for independent review in accordance with this Rule.

MAXIMUS has performed an independent review of the proposed care to determine whether or not the adverse determination was appropriate. Relevant medical records, documentation provided by the parties referenced above and other documentation and written information submitted regarding this appeal was reviewed during the performance of this independent review.

This case was reviewed by a practicing physician on the MAXIMUS external review panel. The reviewer has met the requirements for the ADL of TWCC or has been approved as an exception to the ADL requirement. This physician is board certified in orthopedic surgery and is familiar with the condition and treatment options at issue in this appeal. The MAXIMUS physician reviewer signed a statement certifying that no known conflicts of interest exist between this physician and any of the treating physicians or providers or any of the physicians or providers who reviewed this case for a determination prior to the referral to MAXIMUS for independent review. In addition, the MAXIMUS physician reviewer certified that the review was performed without bias for or against any party in this case.

#### Clinical History

This case concerns a 59 year-old female who sustained a work related injury to her back on \_\_\_\_\_. This patient's medical history includes high blood pressure, bladder/bowel problems, diabetes, asthma, Sjogren's syndrome and autoimmune polyglandular disease. Information submitted by the patient explained that she underwent placement of a dorsal column nerve stimulator in 1972 and replacement of this stimulator in 1973 for treatment of pain in her right upper thigh and right inguinal area, which was attributed to scarring and adhesions in the abdominal cavity following surgery for an abscessed peritoneal cavity in 1961 or 1962. This information also indicated that she underwent a total abdominal hysterectomy in 1984, for removal of a large benign right ovarian cyst and that following this surgery, her thigh pain resolved. It noted that the stimulator has not been removed and was not placed for treatment of

back pain. A CT of the lumbar spine performed on 6/21/03 revealed slight spondylolisthes of L4 upon L5 with slight posterior annular bulging, a moderate decrease in the AP diameter of the thecal sac, degenerative changes of the facet joints at the L5-S1 level, slight diffuse annular bulging at L3-4 with a slight decrease in the AP diameter of the thecal sac. An EMG performed on 8/11/04 revealed denervation primarily in the L5-S1 nerve root distribution. A discogram and post-discogram CT performed on 1/7/05 showed severe facet arthropathy of L5-S1, particularly on the right side, a bone fragment at L4-5 and abnormal discographic appearance of 2 levels. She has been treated with ultrasound, physical therapy and a left L4 transformaminal selective epidural steroid injection. She has also attempted exercise, weight reduction and pain management. The patient has been diagnosed with spondylolisthesis at L4-5, degenerative facet joints at L3-4, L4-5 and L5-S1 with secondary lateral recess and foraminal stenosis from L3 to the sacrum, mechanical back pain and right lumbar radiculopathy.

### Requested Services

L3-S1 laminectomy, decompression, fusion, instrumentation, cages and autograft.

### Documents and/or information used by the reviewer to reach a decision:

#### *Documents Submitted by Requestor:*

1. Injured Employee's Affidavit of Spinal Health History dated 3/14/05
2. Utilization review determination dated 2/11/05
3. Letter regarding results of appeal of adverse determination dated 2/17/05
4. Orthopedic Spinal Evaluation report dated 2/2/05
5. Orthopedic Spinal Follow-up note dated 2/10/05
6. Letter from the patient's orthopedic surgeon dated 2/18/05
7. Transcript from peer to peer review
8. Initial evaluation report from a second opinion dated 4/19/05
9. Report from discogram of L2-3, L3-4, L4-5 and L5-S1 performed on 1/7/05 along with left L4 transforaminal selective epidural steroid injection
10. Report from post-discogram CT performed on 1/7/05
11. Report from CT examination of the lumbar spine performed on 6/21/04
12. Report from thoracic and lumbar myelogram performed on 9/30/97
13. Letter from the injured employee dated 6/13/05
14. NCS-EMG report dated 8/11/04

#### *Documents Submitted by Respondent:*

1. Designated Doctor Evaluation – letter of clarification dated 5/31/05
2. Amended Designated Doctor Evaluation and original Designated Doctor Evaluation
3. Physical therapy evaluation dated 8/23/04 and Re-evaluation reports
4. Rehabilitation Records from 10/1/04 to 3/16/05
5. Report from a CT examination of the lumbar spine/post discogram dated 1/7/05
6. Affidavit of the injured employee regarding her spinal history dated 3/14/05 and accompanying letter dated 3/18/05
7. Report from a chest x-ray performed on 11/30/04

8. Texas State Board of Medical Examiners complaint form
9. Utilization review determination dated 2/11/05
10. Neurosurgeon's office notes dated 2/10/04
11. Letter regarding results of appeal of adverse determination dated 2/17/05
12. Appeal recommendation dated 2/14/05
13. Letters from the patient's neurosurgeon dated 6/30/04, 7/21/04, 8/18/04, 9/8/04, and copies of prescriptions Report from a CT examination of the lumbar spine performed on 6/21/04
14. Report from discogram of L2-3, L3-4, L4-5 and L5-S1 performed on 1/7/05 along with left L4 transforaminal selective epidural steroid injection
15. Initial office visit report dated 4/19/05 from a second opinion evaluation
16. Letter regarding a Required Medical Examination dated 10/14/04
17. Letters from the patient's neurosurgeon dated 2/18/05
18. Records from the patient's treating provider from 6/1/04 to 12/28/04 and letter dated 11/16/04
19. Work status reports
20. NCS-EMG report dated 8/11/04
21. Pain management evaluation dated 12/29/04
22. Functional abilities evaluation dated 10/14/04

### Decision

The Carrier's denial of authorization for the requested services is upheld.

### Rationale/Basis for Decision

The MAXIMUS physician reviewer noted that this case concerns a 59 year-old female who sustained a work related injury to her back on \_\_\_\_\_. The MAXIMUS physician reviewer also noted that she has been treated with ultrasound, physical therapy, epidural steroid injection and pain management. The MAXIMUS physician reviewer further noted that the diagnoses for this patient included spondylolisthesis at L4-5, degenerative facet joints at L3-4, L4-5 and L5-S1 with secondary lateral recess and foraminal stenosis from L3 to the sacrum, mechanical back pain and radiculopathy. The MAXIMUS physician reviewer indicated that this patient has long standing degenerative changes of the spine at multiple levels and back pain. However, the MAXIMUS physician reviewer explained that the success rate for the requested multi-level fusion procedure for treatment of this condition is very low. The MAXIMUS physician consultant also explained that the requested procedure is unlikely to provide long-term relief from the member's back pain. Therefore, the MAXIMUS physician consultant concluded that the requested L3-S1 laminectomy, decompression, fusion, instrumentation, cages and autograft procedure is not medically necessary to treat this patient's condition at this time.

**This decision is deemed to be a TWCC Decision and Order.**

## **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)** days of your receipt of this decision. (20 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)** 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/Appeals Clerk  
P.O. Box 17787  
Austin, TX 78744

Fax: 512-804-4011

**A copy of this decision should be attached to the request.**

The party appealing the decision shall deliver a copy of its written request for a hearing to all other parties involved in the dispute. (Commission Rule 133.308(t)(2)).

Sincerely,

**MAXIMUS**

Lisa K. Maguire, Esq.  
Project Manager, State Appeals

cc: Texas Workers Compensation Commission

I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to the carrier, the requestor and claimant via facsimile or U.S. Postal Service from the office of the IRO on this 29th day of June 2005.

Signature of IRO Employee: \_\_\_\_\_  
External Appeals Department