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NOTICE OF INDEPENDENT REVIEW DECISION

Date: June 3, 2005

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

Mayfield Weedon, LLP
Attn: Frank Weedon
Fax: 903-757-9607
Phone: 903-757-9600

Todd Raabe, MD
Attn: Donna, Medical Records
Fax: 903-533-1472
Phone: 903-595-2492

TPCIGA for Reliance National
Attn: Daniel Flores
Fax: 512-502-4811
Phone: 512-345-9335

RE: Injured Worker:
MDR Tracking #: M2-05-1301-01
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 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 Provider:

- Sports/orthopedic initial evaluation with Dr. Raabe 12/6/01
- Operative report of Dr. Raabe 3/15/02
- Postoperative x-rays 3/15/02
- Discharge summary 3/18/02
- Progress notes of Dr. Raabe 3/26/02, 4/18/02, 6/27/02, 12/14/04, 1/11/05, 1/27/05
- CT lumbar spine 11/23/04
- Lumbar x-rays 2/10/05
- Lumbar MRI 2/10/05
- Surgical request 12/20/04
- Request for reconsideration from Att. Weedon 4/7/05

Submitted by Respondent:

- None provided

Submitted by Claimant:

- Progress note of Dr. Ressor 6/24/98
- Office notes of an unknown provider 7/14/98, 9/21/98, 4/20/99, 5/13/99, 11/16/99, 2/27/01
- Evaluation by CORE 9/10/98
- Second opinion request 11/5/98
- Phone call to physician office 3/17/99, 7/6/99
- MRI lumbar spine 5/6/99
- History and physical with Dr. Chow 4/20/00
- Lumbar myelogram 2/23/01
- Impairment rating 4/2/01
- Epidural steroid injections lumbar spine 5/30/01, 6/1/01, 7/13/01,
- Epidural steroid injections cervical spine 8/3/01, 7/20/01
- Office note of Dr. Foox 7/20/01, 10/30/01, 12/7/01, 12/26/01, 1/21/02, 2/21/02, 6/3/02, 6/12/02, 8/21/02, 9/12/02, 10/3/02, 10/9/02, 11/21/03, 5/8/03, 8/11/03, 7/7/04, 7/14/04, 8/11/04, 9/9/04, 11/11/04, 12/1/04
- Nerve blocks cervical spine 10/12/01
- MRI cervical spine 9/22/01
- Hardware block/lumbar nerve block 10/3/01, 10/12/01
- MRI cervical spine 10/12/01
- CORE evaluation 10/23/01
- Office note of Dr. Raabe 12/6/01, 6/27/02
- IME with Dr. Reesor 2/1/02
- Operative report 2/21/02
- CORE physical therapy evaluation 5/2/02
- Lumbar x-rays 6/3/02

- MRI lumbar spine 9/24/02
- Second opinion with Dr. Milani 5/21/03
- Phys. Caps. 5/21/03
- Record review by Dr. Medley 8/2/03
- MRI lumbar spine 7/7/04
- Office note of Dr. Milani 10/21/04, 11/16/04
- CT scan lumbar spine 11/23/04
- Orthopedic evaluation with Dr. Ratliff 4/11/05
- Att. Weedon letter 5/5/05

Clinical History

The claimant is a 63-year-old male injured on ___ with a reported low back injury resulting from a motor vehicle accident. He underwent a subsequent posterior lumbar interbody fusion a levels L4-5 and L5-S1 on 4/21/00. The claimant improved initially, however, his symptoms returned approximately two years later. On 3/15/02 the claimant underwent a removal of the segmented hardware spinal instrumentation and exploration of a fusion mass with a post lateral fusion of L4-5 and L5-S1; reinsertion of the spinal fixation device from L4 through S1 with a right posterior autogenous iliac crest bone graft. There was an implantation of a bone growth stimulator and sublaminar decompression, beneath the lamina of level L3.

The notes indicated the claimant did not do well postoperatively after the second surgery, as his low back pain failed to improve. The follow up lumbar MRI of 9/24/02 demonstrated the interbody fusions at L4-5 and L5-S1 appeared solid. There was epidural granulation tissue suggested at level L4-5, more prominent at level L5-S1. There were degenerative disc changes present at L3-4 including gas disc phenomenon along with posterior disc protrusion, centrally and more to the right with some extension into the right neural foramen; only minor annular disc protrusions seen at other levels.

Over the next two years the claimant underwent a series of lumbar epidural injections and paravertebral nerve blocks with minimal relief of his symptoms. He was diagnosed with failed back syndrome and degenerative changes of the lumbar spine. However, the treating physician felt that surgery was not required

In 7/04 the claimant reported that his low back symptoms had worsened. The 7/7/04 MRI of the lumbar spine showed the postoperative changes L4-5, L5-S1. The radiologist noted the status of the interbody fusion was difficult to assess on the current study. There was nearly a 5 mm retrolisthesis seen at the L3-4 level that increased with extension. There was mild to moderate disc space narrowing at level L2-3.

On 10/21/04, the claimant underwent a second opinion with Dr. Milani. Dr. Milani suggested a hardware injection to see if the hardware and bone growth stimulator wires needed to be removed. On 11/23/04 the claimant underwent a CT scan of the lumbar spine that showed postoperative changes and degenerative disc disease with grade 1 retrolisthesis of L3 on L4; mild stenosis at L2-L3 due to disc protrusion and spurring.

On the 12/14/04 office visit with Dr. Raabe, the claimant noted he had done well, but the pain had returned and now radiated into the right thigh. The pain was worse with ambulation. He was treated conservatively by Dr. Foox, and noted one epidural helped, the others did not. On exam there was tenderness in the lumbosacral junction into the right sciatic notch. Dr. Raabe reviewed the imaging studies and recommended an L3-4 transforaminal interbody fusion, which he noted was reasonable with retrolisthesis and the disc space collapse at L3-4.

As per the notes, the surgery was denied and the claimant underwent an MRI of the lumbar spine on 2/10/05 that showed the anterior and posterior fusion at levels L4-L5, L5-S1 with posterior instrumentation. The alignment appeared to be satisfactory and there was no stenosis of the canal or foramen at this level. There was a narrow degenerated L3-L4 disc with retrolisthesis and diffuse bulge. There was moderate canal stenosis and facet arthrosis at that level. There was a narrow degenerated L2-L3 disc with mild diffuse bulge and no significant stenosis and desiccated L1-L2 discs.

On the 4/11/05 IME with Dr. Ratliff, the claimant reported low back pain that radiated into the left foot that was constant and severe. On exam, the claimant could heel toe walk without difficulty. There was decreased range of motion and positive bilateral straight leg raises. Dr. Ratkiff noted his impression as cervical strain with degenerative changes; status post lumbar fusion times 2 with residual symptoms that have not responded to non-operative treatment. He recommended extending the fusion to level L3-4.

Requested Service(s)

Please address prospective medical necessity of the proposed L3-4 translaminar interbody lumbar fusion with removal of previous instrumentation, four to five day length of stay, regarding the above mentioned injured worker.

Decision

I recommend approval of the extension of the fusion to L3-4.

Rationale/Basis for Decision

The claimant has evidence of significant stenosis, retrolisthesis, disc space collapse and significant radiculopathy, all of which is consistent with the MRI findings of retrolisthesis, spinal stenosis and disc space collapse. He has significant quadriceps weakness that has been noted in the reports and is consistent with his MRI findings and the previous fusion has been from L4 to the sacrum. The current problem and concern is at a level above. This would require removal of the previous instrumentation, extension of the fusion, and a four to five day length of stay. I recommend approval of the proposed surgery as being medically necessary.

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 3rd day of June 2005.

Signature of IRO Employee:

Printed Name of IRO Employee: Denise Schroeder