THIS DECISION HAS BEEN APPEALED. THE FOLLOWING IS THE RELATED SOAH DECISION NUMBER:

SOAH DOCKET NO. 453-05-7316.M2

May 20, 2005

VIA FACSIMILE
Kenneth G. Berliner, M.D.
Attn: Brenda Gonzalez

VIA FACSIMILE
Bankers Standard Ins. Co/ESIS
Attn: Javier Gonzalez

NOTICE OF INDEPENDENT REVIEW DECISION

RE: MDR Tracking #: M2-05-1387-01
TWCC #:
Injured Employee:
Requestor: Kenneth G. Berliner, M.D.
Respondent: Bankers Standard Ins Co./ESIS
MAXIMUS Case #: TW05-0082

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 neurosurgery 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 male who sustained a work related injury on ___. The patient reported that while he was working he began to experience back and bilateral leg pain when he

attempted to lift a 60 lb roll of fiberglass. AN MRI of the lumbar spine performed on 2/19/03 revealed desiccation at the L4-L5 and L5-S1 discs and an EMG report dated 3/6/03 indicated a right subacute S1 radiculopathy. On 11/7/03 the patient underwent a bilateral lumbar laminectomy at the L5-S1 level with decompression of right lateral recess stenosis, and left lateral recess stenosis lumbar neurolysis with right and left and removal of a herniated disc at L5-S1. Following surgery, the patient complained of continued pain. The patient underwent a series of epidural steroid injections and was subsequently prescribed medications. A repeat MRI of the lumbar spine showed degerenative changes at theL4-5 and L5-S1 levels showing a broad based posterior disc protrusion, and a right laminectomy defect herniation of the thecal sac. The patient has been recommended for a lumbar discogram with CT scan at the L3-S1 levels.

Requested Services

Lumbar discogram with CT scan L3-S1.

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

Documents Submitted by Requestor:

1. Operative report 11/7/03, 3/8/04, 3/24/04, 4/21/04
2. MRI report 8/27/04
3. Nerve conduction study 10/13/03
4. MRI report 2/19/03
5. EMG/NCV report 12/14/04
6. Orthopedic Report 2/2/05
7. Review of Medical History and Physical Exam 1/11/05
8. Follow Up Notes 11/3/03 – 1/26/04

Documents Submitted by Respondent:

1. Required Medical Examination 11/10/04
2. Orthopedic Report 2/2/05
3. Follow Up Notes 5/22/03 – 1/10/05
4. Operative Report 12/8/04
5. Functional Abilities Evaluation 2/4/03
6. Rehab Notes 5/1/03 – 5/30/03

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 male who sustained a work related injury to his back on ___. The MAXIMUS physician reviewer also noted that the patient has been treated with surgery, epidural steroid injections, and medications. The MAXIMUS physician reviewer further noted that a lumbar discogram with CT scan following for the L3-S1 levels has been recommended for this patient. The MAXIMUS physician reviewer indicated that

there is no clear indication for the requested discogram. The MAXIMUS physician reviewer noted that discography is a controversial study. The MAXIMUS physician reviewer explained that there is no clear evidence supporting the efficacy of a discogram in patients with a history of laminectomy. Therefore, the MAXIMUS physician consultant concluded that the requested lumbar discogram with CT scan to follow at the L3-S1 level 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

Elizabeth McDonald
State Appeals Department

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 20th day of May 2005.

Signature of IRO Employee: _____
External Appeals Department