

July 19, 2005

VIA FACSIMILE  
Ms. Amada S.  
Robert S. Henderson, MD

VIA FACSIMILE  
Ms. Wisteria Hutchenson  
Netherlands Insurance Company c/o Harris & Harris

### NOTICE OF INDEPENDENT REVIEW DECISION

**RE: MDR Tracking #: M2-05-1864-01**  
**TWCC #:**  
**Injured Employee:**  
**Requestor: Robert J. Henderson, MD**  
**Respondent: Netherlands Insurance Company c/o Harris & Harris**  
**MAXIMUS Case #: TW05-0123**

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 37 year-old male who sustained a work related injury to his back on \_\_\_\_\_. A MRI of his lumbar spine performed on 10/4/04 revealed flattening of the lumbar lordosis, which may have been secondary to muscle spasm or possibly due to patient positioning, mild dessication at L1, L2 and L5 and broad based bulging of the annular fibers at L5 measuring approximately 2mm, which displaced the thecal sac and nerve roots to a mild degree. An EMG performed on 10/7/04 revealed moderate L5 and S1 motor nerve root irritation on the right.

Treatment for this patient's condition has included physical therapy, medications, chiropractic treatment, an epidural steroid injection, work hardening and participation in a functional restoration program. Diagnoses for this patient include chronic compensable bilateral lumbar posterior ramus pain with physical examination findings of asymmetric L4-S1 segment rigidity without current evidence of active radiculopathy and with imaging findings of L5 bulge and multilevel degenerative disc disease, deconditioning syndrome and chronic pain syndrome with medical/psychological features. A lumbar discogram with CT scan has been recommended for further diagnosis of this patient's condition.

### Requested Services

Lumbar Discogram with CT at L3-4.

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

#### *Documents Submitted by Requestor:*

1. Pre-authorization determinations dated 4/20/05 and 4/26/05
2. Chart notes dated 3/4/05, 4/11/05
3. Report of Medical Evidence dated 2/28/05
4. Report from a MRI scan of the lumbar spine performed on 8/16/04
5. Review of Medical Records and Physical Examination dated 2/28/05

#### *Documents Submitted by Respondent:*

1. Letter about the appeal dated 6/21/05
2. Pre-authorization determinations dated 4/20/05 and 4/26/05
3. Chiropractic Peer Review Report dated 1/10/05
4. Report of Medical Evidence dated 2/28/05
5. Review of Medical Records and Physical Examination dated 2/28/05
6. Impairment Rating Report dated 2/18/05
7. Orthopedic Consult Reports dated 2/1/05, 2/22/05 and 3/23/05
8. Employee Accident Report dated 8/20/04
9. Chart notes dated 3/4/05 and 4/11/05
10. Report from Caudal Epidural Steroid Block performed on 2/16/05
11. MRI report dated 10/4/04
12. Progress notes from 4/20/05 to 4/26/05
13. Records from a functional restoration program from 1/27/05 to 5/2/05, letter regarding his initial evaluation dated 2/3/05, letter regarding his participation in this program dated 5/5/05 and information regarding the program
14. Quantitative Functional Evaluation dated 5/5/05
15. Work Conditioning/Work Hardening records from 11/16/04 to 1/10/05
16. Mental Health Evaluation dated 1/31/05
17. Physical therapy records from 1/27/05 to 5/17/05
18. Electrodiagnostic reports dated 10/7/04 and 2/9/05
19. Interim functional capacity examination report dated 12/7/04
20. Initial functional capacity examination report dated 11/11/04

## 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 37 year-old male who sustained a work related injury to his back on \_\_\_\_\_. The MAXIMUS physician reviewer indicated that there is radiographic evidence that this patient has multiple level degeneration of the lumbar spine as demonstrated by the MRI performed on 10/4/04. The MAXIMUS physician reviewer explained that a discogram is unlikely to be of any benefit for this patient because he is not a good candidate for spinal surgery due to the multiple levels of degeneration. The MAXIMUS physician reviewer also explained that a discogram is primarily a pre-surgical test to identify questionable levels of degeneration. The MAXIMUS physician reviewer indicated that the MRI performed on 10/4/04 clearly identified multiple levels of degeneration in the patient's lumbar spine. The MAXIMUS physician reviewer also indicated that a discogram is not needed to clarify questionable levels of degeneration. Therefore, the MAXIMUS physician consultant concluded that a lumbar discogram with CT at L3-4 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 19<sup>th</sup> day of July 2005.

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