

August 11, 2005

TEXAS WORKERS COMP. COMISSION
AUSTIN, TX 78744-1609

CLAIMANT: ___
EMPLOYEE: ___
POLICY: M2-05-2115-01-SS01
CLIENT TRACKING NUMBER: M2-05-2115-01-SS 5278

Medical Review Institute of America (MRIOA) has been certified by the Texas Department of Insurance as an Independent Review Organization (IRO). The Texas Workers Compensation Commission has assigned the above mentioned case to MRIOA for independent review in accordance with TWCC Rule 133 which provides for medical dispute resolution by an IRO.

MRIOA has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review all relevant medical records and documentation utilized to make the adverse determination, along with any documentation and written information submitted, was reviewed. Itemization of this information will follow.

The independent review was performed by a peer of the treating provider for this patient. The reviewer in this case is on the TWCC approved doctor list (ADL). The reviewer has signed a statement indicating they have no known conflicts of interest existing between themselves and the treating doctors/providers for the patient in question or any of the doctors/providers who reviewed the case prior to the referral to MRIOA for independent review.

Records Received:

FROM THE STATE:

Notification of IRO assignment dated 7/27/05 1 page
Texas Workers Compensation Commission form dated 7/27/05 1 page
Medical dispute resolution request response form 2 pages
Table of disputed services 1 page
Letter from Tina Hawes Lvn, Medical case manager dated 5/6/05 2 pages
Letter from Tina Hawes Lvn, Medical case manager dated 6/17/05 3 pages

FROM DR. CLARK GUNDERSON, MD:

Fax cover sheet dated 4/29/05 1 page
(continued)

Revisit questionnaire dated 7/22/05 1 page
Revisit questionnaire dated 6/10/05 1 page
Scan of lumbar spine report dated 5/17/05 1 page
Fax cover sheet dated 4/29/05 1 page
Letter of medical necessity dated 4/29/05 1 page
Letter of medical necessity (not dated) 1 page
Revisit questionnaire dated 4/29/05 1 page
MRI lumbar spine report dated 4/19/05 2 pages
Revisit questionnaire dated 4/7/05 1 page
Radiology report dated 3/29/05 1 page
Revisit questionnaire dated 1/17/05 1 page
Revisit questionnaire dated 9/28/04 1 page
Revisit questionnaire dated 7/16/04 1 page
Revisit questionnaire dated 4/6/04 1 page
Discharge summary dated 6/14/04 1 page
Electromyography report dated 3/22/04 2 pages
Radiology report dated 3/22/04 1 page
Radiology report dated 3/22/04 1 page
History and physical dated 3/22/04 1 page
Operative report dated 7/7/03 3 pages

FROM DR. KEVIN GOUN, MD:

Letter from Dr. Gorin, MD dated 7/27/05 3 pages
Chart notes dated 6/30/05 1 page
Chart notes dated 6/1/05 1 page
Chart notes dated 5/4/05 1 page
Chart notes dated 4/7/05 1 page
Chart notes dated 3/1/05 1 page
Chart notes dated 2/10/05 1 page
Chart notes dated 1/11/05 1 page
Chart notes dated 12/13/04 1 page
Chart notes dated 11/9/04 1 page
Chart notes dated 10/14/04 1 page
Chart notes dated 9/30/04 1 page
Chart notes dated 8/30/04 2 pages
Chart notes dated 8/16/04 1 page
Letter from Dr. Gorin, MD dated 7/20/04 2 pages
Chart notes dated 7/20/04 3 pages

FROM ST. PAUL TRAVELERS:

Letter from St. Paul Travelers (not dated) 1 page
Letter from St. Paul Travelers dated 7/2/05 1 page
Fax cover sheet dated 6/10/05 1 page
Letter of medical necessity dated 4/29/05 1 page
Letter of medical necessity (not dated) 1 page
Revisit questionnaire dated 6/10/05 1 page
(continued)

Revisit questionnaire dated 4/29/05 1 page
Revisit questionnaire dated 7/16/04 1 page
Revisit questionnaire dated 6/4/04 1 page
Revisit questionnaire dated 4/6/04 1 page
Texas Workers Compensation Commission form 1 page
Chart notes dated 8/16/04 1 page
Revisit questionnaire dated 6/4/04 1 page
Copy of check from Travelers Indemnity dated 7/27/05 1 page

Summary of Treatment/Case History:

This 43-year-old female had a work injury on _____. Records are not provided until 07/07/03 at which time it was noted that a discogram was positive at L3-4 and L4-5. On 07/07/03, the claimant underwent posterior lumbar fusion at L3-4 and L4-5 by Dr. Gunderson. The records lapse until 03/22/04 when it was noted that the claimant had constant severe back pain and was falling secondary to her left leg giving way. X-rays at that time showed a diminished fusion. Medications were Lortab, Soma and Valium.

A 03/22/04 EMG/NCS suggested the presence of very mild L5 root irritation on the left side. A lumbar CT/myelogram documented postsurgical changes with bilateral pedicle screw fixation L3 through L5. There was annulus bulging at L4-5. During this time period, the claimant had multiple episodes of falling and multiple trips to the emergency room, one of which was due to being beaten by her son. Dr. Gunderson noted that the CT/myelogram did not show a surgical lesion. The claimant was placed on Neurontin and pain management was recommended.

On 07/20/04 Dr. Gorin (PM&R) began treating the claimant. He documented persistent pain in the lower lumbar region radiating down the left leg and more recently down the right leg. On exam she had trigger points and spasms in the lower lumbar paravertebral musculature. Straight leg raise was negative. Waddell criteria was 2/5. His diagnosis was failed lumbar surgery syndrome, chronic lumbosacral myofascial pain syndrome, left L5 radiculopathy, adjustment disorder due to disability with components of major depression and generalized anxiety and probable opioid tolerance and dependence. He placed the claimant on Duragesic patches with Oxycodone for breakthrough pain, Keppra for leg pain and Soma for spasms. Records for monthly follow up visits with Dr. Gorin for medication management were provided.

On 09/28/04 Dr. Gunderson noted that x-rays showed no fusion and he recommended tomograms and MRI. On 01/17/05 Dr. Gunderson documented tenderness at L4-5 on exam; motor/reflex exam was intact. Straight leg raise was positive for low back pain at 60 degrees. X-rays showed no lateral fusion and he again recommended tomograms. On 03/29/05 a tomogram of the lumbar spine showed post op changes at L3 through L5 with bilateral pedicle screw fixation and apparent posterolateral bony fusion.

At the 04/07/05 visit, Dr. Gunderson indicated that plain x-rays showed no definite fusion. He recommended a repeat MRI and felt that the claimant may be a candidate for anterior lumbar interbody fusion. The MRI was done on 04/19/05 and showed extensive post op changes at the L3-4 and L4-5 levels. There was no disc pathology at those levels is seen. There was mild disc bulging and triangulation of the central canal at L2-3, unchanged since the previous exam.

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On 04/29/05 Dr. Gunderson documented severe low back pain to both legs. He indicated that the discs above and below the prior surgery looked good. The diagnosis was lumbar disc disease. The claimant had mainly low back pain and he recommended anterior lumbar interbody fusion at L3-4 and L4-5 with cages. He also requested a back brace and external bone growth stimulator.

Surgery was denied per physician advisor review. A lumbar CT scan was done on 05/17/05 that demonstrated disc spaces narrowing at L3-4 and L4-5 but no focal protrusion of disc material was visible. There was no evidence of hardware loosening. Dr. Gunderson indicated in his note of 06/10/05 that there was no fusion seen on CT scan and he again recommended surgery. The procedure was again denied on physician advisor review.

Dr. Gunderson filed a dispute regarding the denial for surgery. On the 07/22/05 exam Dr. Gunderson documented low back pain and pain in both legs. There was tenderness at L3-5. He again indicated no evidence of fusion. A letter from Dr. Gorin dated 07/27/05 documented low back pain radiating down both lower extremities. Complaints were unchanged from previous visits. He noted concerns regarding the patient's drug screen being negative, as she was prescribed and indicated that she takes the medications at least on an intermittent basis. On exam she had limited lumbar range of motion, weak paravertebral muscles and there was no evidence of progressive motor, sensory or reflex deficits noted. Behaviorally, the claimant appeared appropriate with no evidence of symptom magnification or malingering. His diagnosis was failed lumbar surgery syndrome, bilateral lumbosacral radiculopathy, painful lumbar hardware, and lumbosacral myofascial pain syndrome and adjustment disorder due to disability. She was to continue Kadian as needed. He changed her breakthrough medication from Oxycodone to Hydrocodone 10/650. She was also taking Soma and Xanax, Lunesta and Kepra.

Questions for Review:

1. SERVICE IN DISPUTE: Anterior lumbar interbody fusion L3-4, L4-5 with cages, lumbar back brace and external bone growth stimulator.

Explanation of Findings:

On review of this medical record, it appears the patient underwent a lumbar laminectomy and discectomy L3-4 and L4-5 with a posterolateral fusion L3-5 with internal fixation and pedicle screws on 07/07/03. Post-operatively the patient has had ongoing complaints of pain and has had diagnostic testing to include CT myelograms and CT scans, which do not appear to show loss of fixation, change in position, or neurocompressive lesion. She has had an EMG that suggests the presence of a very mild L5 root irritation on the left side, but no clear evidence of failure of the patient's fixation. The patient continues to complain of pain and is prescribed chronic narcotic pain medication although it does appear from the medical record that there is some question as to whether the patient is diverting her medication and not using it herself since her urine drug screen is reported to have come back normal. She has been under the care of Dr. Gunderson who apparently feels the patient has ongoing back complaints due to a failure of fixation and non-union and has requested a two-level ALIF with cages, back brace, and external bone growth stimulator.

While it may be difficult at times to determine whether or not a patient has a solid lumbar fusion, clearly signs of fixation failure and non-union can be bone screw interface lucency, loss of overall lumbar vertebral body position, or the development of a neurocompressive lesion at the level of the fusion.

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In this case, none of these abnormalities seem to be present on any of the diagnostic tests. What appears is that the patient has chronic ongoing back complaints and has been prescribed narcotic pain medication, but there does not appear to be a clear indication of failure of her previous operative procedure. Sometimes patients just have chronic back pain following surgery and another operative procedure done for pain relief without a clear anatomic indication of previous failure or new neurocompressive lesion is appropriate in terms of patient care. Therefore, based on this medical record, there is not a medical indication for revision surgery and there is no indication that the patient in fact does have a painful construct, and no indication that there is a failure of fixation or lack of fusion at the previous operative level.

Conclusion/Decision to Not Certify:

1. SERVICE IN DISPUTE: Anterior lumbar interbody fusion L3-4, L4-5 with cages, lumbar back brace and external bone growth stimulator.

The request for anterior lumbar interbody fusion L3-4 and L4-5 with cages, lumbar back brace and external bone growth stimulator is not recommended and is upheld.

Applicable Clinical of Scientific Criteria or Guidelines Applied in Arriving at Decision:

ACOEM guidelines chapter 12, page 305-307

Campbell's Operative Orthopedics, pages 1708-1709

This physician providing this review is board certified in Orthopaedic Surgery. The reviewer is a member of the American Academy of Orthopaedic Surgeons, the American Medical Association, their state Orthopaedic Society, the Eastern Orthopaedic Society, their state Medical Society, and is certified in impairment rating evaluations through the Bureau of Workers Compensation. The reviewer was part of the National Association of Disability Evaluating Professionals and was the Orthopaedic Advisor of a National Football League team. The reviewer has been in active practice since 1994.

MRIOA is forwarding this decision by mail, and in the case of time sensitive matters by facsimile, a copy of this finding to the treating provider, payor and/or URA, patient and the TWCC.

YOUR RIGHT TO REQUEST A HEARING

Either party to the medical dispute may disagree with all or part of this 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 receiving the TWCC chief Clerk of Proceedings within ten (10) days of your receipt of this decision as per 28 Texas Admin. Code 142.5.

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 twenty (20) days of your receipt of this decision as per Texas Admin. Code 102.4 (h) or 102.5 (d).

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A request for hearing
should be sent to:

Chief Clerk of Proceedings / Appeals Clerk
P. O. Box 17787
Austin, TX 78744

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

It is the policy of Medical Review Institute of America to keep the names of its reviewing physicians confidential. Accordingly, the identity of the reviewing physician will only be released as required by state or federal regulations. If release of the review to a third party, including an insured and/or provider, is necessary, all applicable state and federal regulations must be followed.

Medical Review Institute of America retains qualified independent physician reviewers and clinical advisors who perform peer case reviews as requested by MRIOA clients. These physician reviewers and clinical advisors are independent contractors who are credentialed in accordance with their particular specialties, the standards of the American Accreditation Health Care Commission (URAC), and/or other state and federal regulatory requirements.

The written opinions provided by MRIOA represent the opinions of the physician reviewers and clinical advisors who reviewed the case. These case review opinions are provided in good faith, based on the medical records and information submitted to MRIOA for review, the published scientific medical literature, and other relevant information such as that available through federal agencies, institutes and professional associations. Medical Review Institute of America assumes no liability for the opinions of its contracted physicians and/or clinician advisors. The health plan, organization or other party authorizing this case review agrees to hold MRIOA harmless for any and all claims, which may arise as a result of this case review. The health plan, organization or other third party requesting or authorizing this review is responsible for policy interpretation and for the final determination made regarding coverage and/or eligibility for this case.

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cc: Requestor
Respondent