

September 26, 2005

VIA FACSIMILE:  
Zurich American Insurance Company  
Attention: Annett Moffett

### NOTICE OF INDEPENDENT REVIEW DECISION

**RE: MDR Tracking #: M2-05-2281-01**  
**TWCC #:**  
**Injured Employee:**  
**Requestor:**  
**Respondent: Zurich American Insurance Company**  
**MAXIMUS Case #: TW05-0184**

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 45-year old male who sustained a work related injury on \_\_\_\_\_. The patient reported that he sustained an injury to his back while shoveling cement into a dumpster. He also reported that he developed back pain with left leg radiation. Diagnoses included lumbago, L4-L5 and L5-S1 herniated disc with discogenic pain and acute lumbar arthrosis. Evaluation and treatment has included electrodiagnostic studies including nerve conduction studies, MRIs, physical therapy, medication and epidural steroid injections.

#### **Requested Services**

Preauthorization for lumbar laminectomy, discectomy and fusion.

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

### *Documents Submitted by Requestor:*

1. None submitted

### *Documents Submitted by Respondent:*

1. Summary of Carriers Position – 8/24/05
2. Non Authorization Notices – 7/5/05, 7/29/05, 8/17/05
3. Disability Evaluation Center Letter – 1/31/05
4. Electrodiagnostic Study – 9/27/04
5. MRI of Lumbar Spine – 6/2/04, 6/27/05
6. Maximum Medical Improvement and Impairment Rating Evaluation – 6/2/05
7. Physical Examination – 6/1/05

## **Decision**

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

## **Rationale/Basis for Decision**

MAXIMUS physician consultant indicated that this member has MRI confirmed facet joint degeneration at 3 lumbar levels (L3-4, L4-5, L5-S1). MAXIMUS physician consultant noted there is very mild disc pathology/herniation at L4-5 and L5-S1. MAXIMUS physician consultant also noted that any multiple fusion surgery to address this pathology is not likely to be effective in reducing back pain. MAXIMUS physician consultant explained there is too much degeneration facet pathology present at 3 levels. MAXIMUS physician consultant also explained that the standard of care in this situation is non-operative interventions. MAXIMUS physician consultant indicated that surgery is not the standard of care for a patient who has chronic back pain and age related degenerative lumbar disc and facets at many levels.

Therefore, the MAXIMUS physician consultant concluded that the requested lumbar laminectomy, discectomy and fusion procedure is not medically necessary for treatment of this patient's condition.

## **Your Right To Appeal**

If you are unhappy with all or part of this decision, you have the right to appeal the decision. The decision of the Independent Review Organization is binding during the appeal process.

If you are disputing the decision (other than a spinal surgery prospective decision), the appeal must be made directly to a district court in Travis County (see Texas Labor Code §413.031). An appeal to District Court must be filed not later than 30 days after the date on which the decision that is the subject of the appeal is final and appealable. If you are disputing a spinal surgery prospective decision, a request for a hearing must be in writing and it must be received by the Division of Workers' Compensation, Chief Clerk of Proceedings, within ten (10) days of your receipt of this decision.

Sincerely,  
**MAXIMUS**

Lisa Gebbie, MS, RN  
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 26th day of September 2005.

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