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May 17, 2005

TWCC Medical Dispute Resolution
Fax: (512) 804-4868

Patient:
TWCC #:
MDR Tracking #: M2-05-1440-01
IRO #: 5251

Ziroc has been certified by the Texas Department of Insurance as an Independent Review Organization. The Texas Worker's Compensation Commission has assigned this case to Ziroc for independent review in accordance with TWCC Rule 133.308 which allows for medical dispute resolution by an IRO.

Ziroc 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.

The independent review was performed by a matched peer with the treating doctor. This case was reviewed by a licensed MD board certified and specialized in orthopedic surgery. The reviewer is on the TWCC Approved Doctor List (ADL). The Ziroc health care professional has signed a certification statement stating that no known conflicts of interest exist between the reviewer and any of the treating doctors or providers or any of the doctors or providers who reviewed the case for a determination prior to the referral to Ziroc for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to the dispute.

RECORDS REVIEWED

Documents provided by the Requestor, Respondent, and Provider, including 5-4-04. MRI.S 24-4 Dr Wheeler 4-23-04. Neuro_Med. Diagnostics Dr Walia. 6-4-4 Neuro Med. Diagnostics Dr Walia 6 24-04 Myelo CT7-2-4 Dr. Joe Wheeler NS9-3-04 Neuro Med. Diagnostics Dr Walia 1-02-04 Dr. Alan Hurschman, PM and R, DD/RME11-30-04 ESI Robertson MD: 1-31-04 Dr. Sazy2-14-05 Intracorp denial letter 2-18-05 appeal letter, Dr. Sazy 3-1-05 Intracorp, Dr. Milnor, preauth reviewer,

CLINICAL HISTORY

Doi . 4-23-04 Neuro_Med. Diagnostics Dr Walia PE as below, pt in sig pain.S 1 pattern on PE, Recs MRIand EMG. 5-4-04 MRI: facets, no disc bulging or stenosis. Diffuse 5-1 bulging

and form narrowing., moderate. 5-24-4 Dr Wheeler: LB and left leg pain and weakness and N left foot. Extreme left leg pain, can't walk due to pain. OTJ thrown back and flipped out of the cage on the Sky Track.

Immed electrical shock going down his leg. Iron worker. Tx meds, no NSAIDs thorough PE: spasms, der pp bil med-lat foot, ag, weakness platar left, , EMG Dr. Walla; left S 1 radic Recs MyeloCT with FIE. (seems to find pt is a pain outlier). 6-4-4 Neuro_Med. Diagnostics Dr Walla Dx Si radio see PE's below. + MRI and EMG. 6-24-04 Myelo CT: istbmic I slip 5-1. Mild underfilling of (L5) NRsL45 due to bulging disc and lig.. 7-2-4 Dr. Joe Wheeler NS: MyeloCt: slip 51 + foram, subartic recs t 45. P having trouble waking any distance. His life is miserabvle. Recs fusion 51 and reduction of 51 with screws at L3, L4, and L5. for almost grade II at 51. Pt gives consent. 9-3-04 Neuro_Med. Diagnostics Dr Walla: 4/5 hams, GS and per along with EDB. Dec seas L5 and S 1. left Dec left AJ. Dx luz nbo sacral radic. Recs Vic, lidocaine patch, MR "Will nedd PT after surgery" 9-30-04 Neuro_Med. Diagnostics Dr Walla: 4/5 hams, GS and per along with EDB. Dec sans L5 and S L left Dec left AJ. Lx Jumbo sacral radic. Rx Vic, lidocaine patches. Stretching and strengthening. 10-204 Dr. Man Hurschman, PM and R, DD/RME: }Ix as above, oce urinary incontinence. Constant LB and left leg 8/10, Soma and Vic. PE: + SLR antalci hit, no sensory deficits, DTRs OK bilat. Recs ESI x 3 before surgery. 11-30-04 ESI Robertson MD: no better. 12-10-04 Neuro_Med. Diagnostics Dr Wa ia: standing on platform tied to a vehicle which moved and hit fire hydrant Pt fell and twisted LB. LB and bilat leg left ? right. Left toe numb. Activities. ESIs. No better rim to weds. PE left *gastroc*, per and EDB all 4/5. Decrased pp left L5 /S I and left AI decreased. Dx lumbar *Indic. EMG indicative of left S 1.* 1-31-05 Dr. Sazy: Pt threatened lawsuit for Hippa this AM. He addressed me by my first name at first meeng. OTJ thrown back felt a pop in LB the tingling in his left legh. ER told had sciatica. Pt has realistic eaxpectations from surgery. Dr. Wheeler wanted to opertate. Negative smoking hx. Vicoding 8/day. Detailed neuro: decreased sensation left calf, absent left AI. MRI: Facets and DD 45 and spondylo L5S I grade I/II. Does not record nonsurgical treatments. Somewhat emotional. Plans TLLF and cardiac clearance. 2-14-05 Intracorp denial letter: Claimant does not have documented ddynamic instabilities and no neurological reason for proceeding *with* this intervention. Co-morbidtdity of smoking which would adversely affect the outcome, Porcedure does not *appear* medically indicated. 2-18-05 appeal letter, Dr. Sazy: states that Dr. Shirley was incorrect in their being no instability and in smoking adversely affttdting outcome when hardware used. 3-1-05 Intracorp, Dr. Milnor preauth reiviewer: no serial exams to confirm Dr. S findings of decreased sensation and AJ. Not clear why Dr. Graham did not perform sur^eery. 5-1 slip stable on FIE xrays. Conflict among reported data. Treatment no clearly medically reasonable. NASS guideline cited but not quoted.

REQUESTED SERVICE

Approval for L5-S 1 transformaninal lateral interbody fusion, possibly L4-5 and cardiac clearance is requested for this patient

DECISION

The reviewer disagrees with the determination of the insurance carrier.

BASIS FOR THE DECISION

The denial was based on:

1. Lack of instability,
2. No neurological reason to proceed with surgery,
3. Smoking would adversely affect outcome, and
4. Lack of serial documentation of PE findings of decreased sensation and reflex.

The Reviewer disagrees with all of *these for the following reasons:*

1. This patient had istbmic spondylolisthesis which by clinical definition is instability. This condition means that *one* vertebral body has slipped forward on another, out of normal alignment. Even though the flexion and extension lateral X-rays demonstrated no additional motion (under the AMA criteria for instability), there was several millimeters of slip established on imaging.
2. Multiple providers documented similar findings of left S 1 radiculopathy, including Drs. Walls, Wheeler, Sazy, and Hurschman. Their findings constitute significant neurological findings.
3. The patient's smoking history, although it might cause a pseudarthrosis, is not a contraindication for a fusion. A smoking cessation program and use of an internal bone stimulator can be used to *increase* the likelihood of a successful fusion,
4. Multiple providers documented similar findings of left S 1 radiculopathy, including Drs. Walia, Wheeler, Sazy, and Hurschman. Their findings constitute significant neurological findings. An ESI wasn't given until the RME Dr. Hurschman *recommended it*

The Reviewer does have misgivings about the proposed procedure:

1. It sounds as if a 3 level fusion is being planned from L3 to S1 *so that the L5S1 slip can be reduced*. Reduction should be possible without adding the L34 level.
2. This patient is a laborer. It is highly unlikely that he will ever return to work with such a fusion. Is he aware of this? What are his functional expectations from a fusion?
3. This patient has no documented physical therapy. That would be a standard nonsurgical treatment which should be tried and could also give insight into this patient's compliance with nonsurgical care. Likewise, I see no trial of NSAIDs, or oral Corticosteroids.
4. Neither Dr. Wheeler nor Dr. Walia seemed particularly aggressive about nonsurgical care, e.g. ESIs in the first few weeks after injury. In view of the preexisting nature of the patient's condition more nonsurgical care should have been delivered. Perhaps the severity of the patient's pain influenced their decisions.

Ziroc has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. Ziroc has made no determinations regarding benefits available under the injured employee's policy.

As an officer of ZRC Services, Inc, dba Ziroc, I certify that there is no known conflict between the reviewer, Ziroc and/or any officer/employee of the IRO with any person or entity that is a party to the dispute.

Ziroc is forwarding by mail and, in the case of time sensitive matters by facsimile, a copy of this finding to the Injured Employee, Requestor, Respondent, Treating Doctor, and TWCC.

Sincerely,
ZRC Services Inc



Dr. Roger Glenn Brown
Chairman & CEO

Cc: John Sazy
Fax 817-468-7676

Ace American Ins. Co.
Shelley Smith
Fax 972-465-7964

Usha Walia
Fax 817-281-8141

YOUR RIGHT TO REQUEST A HEARING

Either party to 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:

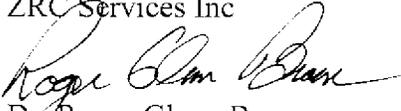
Chief Clerk of Proceedings / Appeals Clerk
P.O. Box 17787
Austin, Texas 78744
Fax: 512-804-4011

The party appealing this decision shall deliver a copy of its written request for a hearing to other party involved in this dispute.

Name/signature

I hereby certify, in accordance with TWCC Rule 102.4 (h), that a copy of this Independent Review Organization decision was sent to the carrier, requestor, claimant (and/or the claimant's representative) and the TWCC via facsimile, U.S. Postal Service or both on this _____ day of _____, 2005.

Name and Signature of Ziroc Representative:

Sincerely,
ZRC Services Inc

Dr. Roger Glenn Brown
Chairman & CEO