7600 Chevy Chase, Suite 400
Austin, Texas 78752
Phone: (512) 371-8100
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NOTICE OF INDEPENDENT REVIEW DECISION

Date: July 21, 2005

Requester/ Respondent Address: TWCC
Attention:
7551 Metro Center Drive, Suite 100, MS-48
Austin, TX 78744-1609

Nester Martinez, DC
Attn: Gracie Diaz
Fax: 713-697-7111
Phone: 713-697-8000

American Home Assurance Co c/o FOL
Attn: Kelly Pinson
Fax: 512-867-1733
Phone: 512-435-2279

RE: Injured Worker:
MDR Tracking #: M2-05-1937-01
IRO Certificate #: 5242

Forté has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Texas Workers' Compensation Commission (TWCC) has assigned the above referenced case to Forté for independent review in accordance with TWCC Rule §133.308 which allows for medical dispute resolution by an IRO.

Forté has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, relevant medical records, any documents utilized by the parties referenced above in making the adverse determination, and any documentation and written information submitted in support of the appeal was reviewed.

The independent review was performed by a Chiropractic reviewer who has an ADL certification. The physician reviewer has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for a determination prior to the referral to for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to this case.

Submitted by Requester:

- Notice of IRO Assignment
- Medical Dispute Resolution Request/Response
- Table of Disputed Services
- MRI of the lumbar spine dated 5/24/02 from Park Place Hospital
- Radiographs of the lumbar spine dated 5/24/02 from Park Place Hospital
- TWCC 73 from John Jones, M.D. dates 8/6/02,12/6/02, 1/23/03, 6/17/02
- IME Report dated 10/4/02 from Hans O. Wendenburg, M.D.
- MRI of the lumbar spine dated 2/4/03 from North Freeway Imaging
- MRI of the left hip dated 6/25/03 from Medical Center Radiology
- Designated Doctor Evaluation Report dated 2/26/04 from Gaston Machado, M.D.
- Physical Performance Evaluation dated 4/2/04 from Tamara Ulrich, P.T.
- TWCC 73 from Thuy Van Ngugen dated 5/7/04, 6/3/04, and 9/3/04
- TWCC 69 from John Jones, M.D. dated 4/21/04
- Comprehensive Medical Analysis from Austin & Associates
- Retrospective Peer Review dated 7/16/04 from Kim Blanchette, M.D.
- Designated Doctor Evaluation Report dated 5/25/04 from Guston Machado, M.D.
- TWCC 73 from Dean McMillan, M.D. dates 9/9/04-6/23/05
- Initial Medical Report dated 9/9/04 from Dean McMillan, M.D.
- Subsequent Medical Reports dates 9/30/04-5/12/05
- Evaluation Report dated 10/14/04 from Mark McDonnell, M.D.
- EMG/NCV Report dated 10/21/04 from M. Sabbahi, PH.D.
- Impairment Certification Dispute dated 11/3/04 from Dean McMillan, M.D.
- Letter dated 1/12/05 from Dean McMillan, M.D.
- TWCC 69 dated 2/2/05 from Nester Martinez, D.C.
- Peer Review dated 8/5/03 from Hans O. Wendenburg, M.D.

Submitted by Respondent:

- None Submitted

Clinical History

Ms. ___ is a 48-year-old female who allegedly injured her low back while employed with as a nurse assistant. The claimant alleges she was helping a patient transition from the bed onto a wheel chair, when the patient's leg got caught and she had to hold the patient for an extended period of time. The claimant felt immediate sharp pain in her low back at the time of the injury. The claimant sought care and treatment with John Jones, M.D. who recommended the claimant have a MRI of the lumbar spine. The MRI of the lumbar spine, which was performed on 5/24/02 at Park Plaza Hospital revealed a shallow left foraminal disk herniation at L4/L5 and appears to abut the left L4 nerve root as it exits the neural foramen. The claimant subsequently required three surgical procedures for the disc herniation at L4/L5, L5/S1 and pseudomeningocele, which was performed by John Jones, M.D. The claimant was determined at MMI by John Jones, M.D. on 4/21/04 and by designated doctor, Gaston Machado,

M.D. on 5/25/04 with a 5% whole person impairment. The claimant continued to subjectively complain of low back pain and left lower extremity pain and sought treatment at Pain & Recovery Clinic, Dean McMillan, M.D. Dr. McMillan's treatment has consisted of medication management, passive and active physiotherapy modalities with a referral to Mark McDonnell, M.D., spine surgeon. Dr. McDonnell evaluated the claimant on 10/14/04 who recommended arthrodesis at L4/L5 and pre-operative lumbar discography. The claimant had a electrodiagnostic study of the lower extremity performed on 10/21/04 from M. Sabbahi, PH.D., which revealed compromised L5/S1 nerve root bilaterally greater on the left than the right. The claimant continues to complain of low back pain with radicular pain and does not wish to proceed with surgical intervention as recommended by Dr. McDonnell. The claimant participated in a Chronic Pain Management program under the direction of Dr. McMillan.

Requested Service(s)

Twenty sessions of a work hardening program.

Decision

I agree with the insurance carrier and find that a work hardening program for 20 sessions is not reasonable and necessary.

Rationale/Basis for Decision

I find that a work hardening program for this claimant that continues to be symptomatic with low back pain with radicular symptoms is not reasonable and necessary and far exceed the recommendation of The Official Disability Guidelines 10th Edition, which allows up to 16 chiropractic treatments over 12 weeks or 10 physical therapy visits over 8 weeks with evidence of objective functional improvement for postlaminectomy syndrome. The claimant did not show any evidence of objective functional improvements or subjective improvements with conservative care including active rehabilitation in the past and is evidently a possible surgical candidate base on the evaluation by Mark McDonnell, M.D. Therefore, it would seem that a work hardening program for this claimant is not medically reasonable or necessary. I form this decision using the Official Disability Guidelines 10th Edition which is a guideline of specific conditions which uses a major source being the "Mercy Guidelines", the consensus document created by the American Chiropractic Association in conjunction with the Congress of State Chiropractic Associations, entitled Guidelines for Chiropractic Quality Assurance and Practice Parameters, Proceedings of the Mercy Center Consensus Conference.

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) 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.

In accordance with Commission Rule 102.4(h), I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to the patient, the requestor, the insurance carrier, and TWCC via facsimile or U.S. Postal Service from the office of the IRO on this 21st day of July 2005.

Signature of IRO Employee:

Printed Name of IRO Employee: Denise Schroeder