

IRO America Inc.

An Independent Review Organization

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December 13, 2005

TDI-DWC Medical Dispute Resolution

Fax: (512) 804-4868

Patient:

TDI-DWC #:

MDR Tracking #:

IRO #:

M2-06-0295-01

5251

IRO America Inc. (IRO America) has been certified by the Texas Department of Insurance as an Independent Review Organization. The TDI, Division of Workers' Compensation (DWC) has assigned this case to IRO America for independent review in accordance with DWC Rule 133.308 which allows for medical dispute resolution by an IRO.

IRO America 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; the Reviewer is a credentialed Panel Member of IRO America's Medical Knowledge Panel who is a licensed M.D., board certified and specialized in Orthopedic Surgeon. The reviewer is on the DWC Approved Doctor List (ADL).

The IRO America Panel Member/Reviewer is a health care professional who has signed a certification statement stating that no known conflicts of interest exist between the Reviewer and the injured employee, the injured employee's employer, the injured employee's insurance carrier, the utilization review agent, or any of the treating doctors or insurance carriers health care providers who reviewed the case for decision before referral to IRO America 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

Notification of IRO Assignment, records from the Requestor, Respondent, and Treating Doctor(s), including: 1-8-98 Amarillo Diagnostic Clinic JCL9-30-98 Price, MD10-7-98 MRI4-29-99 Disability Management note, Randy Jacobs8-11-99 TRC12-4-00 Review Med, Crane MD1-9-1 Stringfellow, MD. 5-3-1 ER note5-17-01 Review Med, Crane

MD6-19-03 MRI Dillee, MD6-27-3 Ward, MD8-27-04 ER note 11-2-4 MRI 11-2-04
Burgesser MD8-19-05 bone scan 9-12-05 Walter Piskun, MD. Neurosurgeon. 9-29-05
Letter of Denial 10-10-05 Letter of Denial. Physician Advisor, Kenneth Rosenzweig, MD

CLINICAL HISTORY

OTJ 9-19-97 .ikfting 55 lbs of meat at Albertson's. Injury to lb and sh. MRI showed ml hnp. Pt didn't want esi's. Had 2nd op.

12-2-97 LLand D bilat S1.

1-8-98 Amarillo Diagnostic Clinic JCL (? MD, possible ge I think Jake Leonard, MD), postop ulcer.

9-30-98 Price, MD. PE h/t, dec rom/ +slr R 45/ dec sens I C/ dtrs/ strength/ cried. Plan PT, MRI with C, Xanax, ami dc'd, Prozac, dn100, poss esi p MRI.

10-7-98 MRI C. Psotop change 5-1. Minmal L hnp 1-2.

12-16-98 P. 12-2-97 LLand D bilat S1. Continues LBP. PMP for esi at 34. 1-5-99 P. esi.

4-29-99 Disability Management note, Randy Jacobs voc case manager.

7-9-99 Ward, MD. Lbp bilat legs. PE slr + bilat seated and supine 50 deg. Sens/dtrs/. Some type of D questionnaire: depression is not likely to interfere with treatment. Good coping skills. Rec rehab and meds.

8-11-99 TRC note.

9-26-00 P. Imaging showed hnp 12-1 and 1-2. Nl postop change. Rec esis. Currently PT. Subsequent notes esi x 2 x 4?

12-4-00 Review Med, Crane MD. Pt made attempts to rtw post LLand D. MMI 12-99. MMI 4-7-98 of 15%. Periodic tx ancluding esi, and meds. Pt made attempts at applying for work, retrained, but unable to obtain a job. Video surveillance tape Oct 99 and 2000. No observable limitation of function, could bend and stoop, turn while in a bent position., no gait change, no limp. Carried out wide variety of activities w/o limitation. Pt appeared to be working in a retail stroe. Cx good result of LLandD of 12-02-97. Treatment ok thru 4-7-98. when at MMI. Does not think that tx after then was medically reasonable or necessary. Video shows no lack of ability to perform her work. Crane did not examine the pt.

1-9-1 Stringfellow, MD. OTJ 9-19-97 .ikfting 55 lbs of meat at Albertson's. Injury to lb and sh. MRI showed ml hnp. Pt didn't want esi's. Had 2nd op. Persistent lbp>exis, PT, . FCE lifting ok 50 lbs occ and 20 lb frequently. PE appropriate, mmt/sens/dtrs. Summary: completed extensive post op rehab and pmp with Price. Is working. **Future ongoing meds are ok.** Cont HEP.

5-3-1 ER note. Exacerbviation of lbp p 1-2 days. Lbp and down leg to F. Some a T, mostly p leg. To great toe. Slr + bilat 20/10 deg, inc with dorsi rest of neuro neg. Dx acute flare of chronic sciatica.

5-17-01 Review Med, Crane MD. Ongoing meds ok. Doesn't rec esis (temp relief).

6-12-03 Ward, MD. Inc pain R leg, inc with hip rom, + slr R 30. lbp. Failed back surgery syndrome. Toradol. Rec MRIC. Neurontin, Methadone, sij inj.

6-19-03 MRI Dillee, MD. Postop changes 51. No obvious recurrent, but has central protrusion. DD 12.

6-27-3 Ward, MD. Exacerbation of old injury.

8-27-04 ER note.

10-27-04 Burgesser. Lbp ever since surgery. And R. PE lbp with slr/dtrs/mmt R 4+/5 ? all muscles/dec sens pp R 4-5. Plan MRI. No DX.

11-2-4 MRI w/ C. Postop change 51, bulge 1-2.

11-2-04 Burgesser MD. Lbp since 1997. back has hurt ever since. Esis no help. Severe exacerbation of her back pain and has R leg. Smokes. PE tender, R sciatic notch, lbp with slr, dtrs/ MMT 4+/5 but limited by pain/ dec pp L45 R. Plan MRI. No dx listed.

11-8-4 B. MRI no recurrent, bulge 1-2, Cont Lortab, soma, ambient

2-17-5 Burgesser. Same problems, . Tx Lortab, soma, several similar visits

8-10-5 MRI. DD 12-1, small L prot 1-2, 23, 34, and 45 discs ok. 5-1: DD and diffuse prot, fact mild to mod foram stenosis.

8-19-05 bone scan. Neg.

9-12-05 Walter Piskun, MD. Neurosurgeon. Works as a housecleaner c/o lbp and R *that began about ten months ago*. Back = leg. Getting worse. N e leg. Inc walking sitting, walking bending, twisting, BM,. Imaging: MRI showed left sided defect. L spine shows scoliosis. MRI 8/05 shows hypertrophic changes at 5-1. No forma. CT/M was reported as normal. PE moans groans, and cries. SLR L causes R groin. Can't do slr R because of pain. Absent R AJ. Giveaway weakness secondary to pain in every muscle group. Able to h/t. Walks like Chester on TV. DX herniated disc. Worried about fever and possible discitis. His interpret of MRI and myelo is that there is a R mass effect at 5-1. Wants reread by radiologist and sed rate.

9-19-5 Piskun. Rad reread films and agrees that there's an osteophyte disc hern R 5-1. Plan options: sec opinion, nonsurg, redo decomp (but back = leg), or fusion L4 to S1. Pt wants surgery.

9-20-5 Burgesser MD. Surgery palanned with Piskin. Lortab and SOMA.

9-29-05 Letter of Denial. OTJ 9-19-97. Surgery 1997. No clinical info to support the request. No objective and subjective to support this request. (lists the ODG indications for surgery. Apparently insufficient clinical info (dist, weakness, imaging, nonsurg-nsaids-esi-rehab-psych-etc).

10-10-05 Letter of Denial. Physician Advisor, Kenneth Rosenzweig, MD. Records state surgery is only for L5-S1. Pt had spontaneous onset of pain 10 weeks ago, unprovoked, and is unclear that this relates to OTJ 8 years ago. Tx: meds, no PT. Objective findings do not fit with subjective c/o. Advosor res PT. Unclear that surgery would have an advantage over the NH of chronic lbp. [Advisor seems unaware of fairly well documented ongoing complaints for several years. Neither advisor nor other providers have ruled out instability with flexion/extension X-rays]

DISPUTED SERVICE(S)

Under dispute is the prospective, and/or concurrent medical necessity of L4-S1 PLIF with instrumentation, allograft, and 4 days los

DETERMINATION/DECISION

The Reviewer agrees with the determination of the insurance company.

RATIONALE/BASIS FOR THE DECISION

Proposed surgery at L4-5: Dr. Piskun documented no abnormality at the L4-5 level other than dextroscoliosis. Dr. Piskun gave no explanation of why the L4-5 level is a pain generator. Neither he nor any other provider found evidence of nerve compression at the L45 level. The radiologist found no abnormality at L4-5 on the MRI of 8-10-05. Therefore there is *no evidence* that the L4-5 level needs to be included in an operation.

Proposed surgery at L5-S1: evidence supporting surgery at this level includes persistent complaints of back and right leg pain, absent right ankle jerk, abnormal findings on the MRI scan (right S1 nerve root impingement per Piskun and the radiologist, foraminal stenosis right L5-S1 per the radiologist), The Patient compliance with work preparation, and a good result on a previous psychological inventory. However, Dr. Piskun's description of the physical exam seems to include multiple element of possible symptom magnification behavior (exaggerated gait, crying, unable to perform a straight leg raise on the right, and giveaway weakness in multiple muscle groups).

The Reviewer would advise that The Patient be sent to a conservative surgeon for a required medical exam/second surgical opinion. This surgeon should look for symptom magnification behavior on exam and carefully review the imaging. Standing X-rays with flexion/extension views should be performed to rule out unrecognized instability.

Screening Criteria

1. General:

In making his determination, the Reviewer had reviewed medically acceptable screening criteria relevant to the case, which may include but is not limited to any of the following: Evidence Based Medicine Guidelines (Helsinki, Finland); Texas Medical Foundation: Screening Criteria Manual (Austin, Texas); Texas Chiropractic Association: Texas Guidelines to Quality Assurance (Austin Texas); Texas Medical Foundation: Screening Criteria Manual (Austin, Texas); Mercy Center Guidelines of Quality Assurance; any and all guidelines issued by DWC or other State of Texas Agencies; standards contained in Medicare Coverage Database; ACOEM Guidelines; peer-reviewed literate and scientific studies that meet nationally recognized standards; standard references compendia; and findings; studies conducted under the auspices of federal government agencies and research institutes; the findings of any national board recognized by the National Institutes of Health; peer reviewed abstracts submitted for presentation at major medical associates meetings; any other recognized authorities and systems of evaluation that are relevant.

CERTIFICATION BY OFFICER

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

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

IRO America is forwarding by mail or facsimile, a copy of this finding to the DWC, the Injured Employee, the Respondent, the Requestor, and the Treating Doctor.

Sincerely,

IRO America Inc.



Dr. Roger Glenn Brown

President & Chief Resolutions Officer

Cc:

Albertson Inc.
Attn: Katie Foster
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Mary Burgesser
Fax: 806-355-5822

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.

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

I hereby certify, in accordance with DWC 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 DWC via facsimile, U.S. Postal Service or both on this 13th day of December, 2005.

Name and Signature of IRO America Representative:

Sincerely,

IRO America Inc.



Dr. Roger Glenn Brown

President & Chief Resolutions Officer