

December 9, 2005

TX DEPT OF INS DIV OF WC
AUSTIN, TX 78744-1609

CLAIMANT: ___

EMPLOYEE: ___

POLICY: M2-06-0367-01

CLIENT TRACKING NUMBER: M2-06-0367-01-5278

Medical Review Institute of America (MRIOA) has been certified by the Texas Department of Insurance as an Independent Review Organization (IRO). The Texas Department of Insurance Division of Workers Compensation has assigned the above-mentioned case to MRIOA for independent review in accordance with DWC 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 DWC approved doctor list (ADL). The reviewing provider has no known conflicts of interest existing between that provider 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 carrier health care providers who reviewed the case for decision before referral to the IRO.

Records Received:

FROM THE STATE:

Notification of IRO assignment 11/29/05 1 page
Division of Workers' compensation form 11/29/05 1 page
Medical dispute resolution request response form 1 page
Table of disputed services 1 page
Provider form 1 page
Letter from Texas Mutual 10/27/05 2 pages
Letter from Texas Mutual 9/23/05 2 pages

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FROM THE REQUESTOR:

MRI lumbar spine 1/11/05 1 page
History and physical 1/12/05 2 pages
SOAP notes 1/13/05 1 page
SOAP notes 1/14/05 1 page
SOAP notes 1/20/05 1 page
SOAP notes 1/21/05 1 page
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SOAP notes 2/11/05 1 page
SOAP notes 2/14/05 1 page
Chart notes 2/14/05 1 page
SOAP notes 2/16/05 1 page
SOAP notes 2/22/05 1 page
SOAP notes 2/25/05 1 page
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SOAP notes 3/2/05 1 page
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SOAP notes 5/3/05 1 page
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SOAP notes 6/6/05 1 page
SOAP notes 6/15/05 1 page
SOAP notes 6/21/05 1 page
SOAP notes 6/24/05 1 page
Subjective notes 7/26/05 - 9/28/05 1 page
Lumbar diskogram report 7/22/05 5 pages
Lumbar diskogram report 7/22/05 5 pages (corrected copy)
Initial evaluation and consultation notes 7/26/05 3 pages
Initial medical narrative report 7/26/05 5 pages
Letter from Dr. Cindrich, MD 8/2/05 2 pages
Discogram report 9/19/05 2 pages
Clinic visit notes 10/11/05 2 pages
Letter from Dr. Cindrich, MD 10/17/05 2 pages
Clinic visit notes 10/18/05 2 pages

FROM THE RESPONDENT:

Letter from Texas Mutual 12/2/05 2 pages
Emergency physician record 12/31/04 2 pages
Emergency physician orders 12/31/04 1 page
Emergency nursing record 12/31/04 2 pages
Lumbar spine discogram report 12/31/04 1 page
Physician record 1/11/05 2 pages
Physician record 1/18/05 2 pages
Report of medical evaluation 7/29/05 1 page
Letter from Dr. Perkins, MD 7/29/05 3 pages
Letter from Texas Department of Insurance 9/12/05 1 page
Letter from Dr. Perkins, MD 9/22/05 1 page
Letter from Texas Mutual 9/23/05 2 pages
Letter from Texas Mutual 10/27/05 2 pages

Summary of Treatment/Case History:

The claimant is a 36 year old right hand dominant, white, male ranch hand and truck driver who was injured at work on _____. He was lifting a heavy brake drum when he felt a painful pop in his low back that caused him to fall forward. He first presented for medical attention two days later at the hospital emergency room.

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X-rays showed mild degenerative disc and facet disease throughout the entire lumbar spine. He was given pain injections and prescriptions for pain medication. Additional evaluation has included an MRI of the lumbar spine on 1/11/05 that showed spondylosis and midline annular tears at L3-4, L4-5 and L5-S1 with disc protrusions at L4-5 and L5-S1. He was evaluated on 3/23/05 and found to not be at maximum medical improvement. Prior treatment was limited to medications and therapy. Following the 3/23/05 evaluation, the claimant underwent a discogram but no further studies. On exam he is a pleasant, well-developed, well-nourished, white male who was uncomfortable. He ambulates and moves about spontaneously and freely. He stands upright without difficulty with an average step of approximately 14". He does not perform heel to toe walking and he does not walk on heels or toes. He does not squat. Light touch about the low back elicits reports of pain. There is no lumbar spasm. There is normal tone and bulk of the lower extremities. The right thigh measures 54cm and the left thigh measures 53cm and the calf measures 42 cm. There is decrease strength testing of the lower extremities due to back pain. There is loss of sensation over the entire left leg. The deep tendon reflexes are symmetrical. Supine straight leg raising is limited to 15 degrees on the right and 5 degrees on the left by low back pain.

MRI of the Lumbar Spine (01/11/05) was notable for mild spondylosis at L3-4, L4-5, and L5-S1 with midline annular tears at these levels. Small disc protrusions in the midline were noted at L4-5 and L5-S1. Discogram of the Lumbar Spine (07/22/05) was notable for disc degeneration at with fissuring and midline annular tears at these levels. Concordant pain was most notable at L4-5 and to a lesser extent at L3-4. It was discordant at L5-S1 and negative on 09/19/05 at L2-3.

Questions for Review:

1. ITEM(S) IN DISPUTE: Preauthorization request: Anterior Lumbar Interbody Fusion L3-4, L4-5, L5-S1 with Arthrodesis and Instrumentation. SS LOS inpatient x 2 days.

Explanation of Findings:

In summary, the employee sustained a low back injury on ____, while lifting an 18-wheeler brake drum. Based on the available records, he initially was treated at Falls Community Hospital and Clinic on 12/31/04, where he was diagnosed with acute lumbar myofascial strain, and left sciatica. Treatment recommendations included bed rest, medications, and a follow-up office visit in a week. Lumbar MRI dated 01/11/05 showed Mild spondylosis at L3-4, L4-5, and L5-S1, with midline annular tears at all 3 of these levels. In addition, small-superimposed midline protrusions were seen at L5-S1 and, to a lesser extent, L4-5. On 07/22/05, the employee underwent a 3-level lumbar discogram that showed all three lumbar discs are degenerated, with irregularity, fissuring, annular tears, and extravasation. Contrast injection was symptomatic at all levels, concordant at L4-5, and to a lesser extent L3-4, and discordant at L5-S1.

The employee saw Michael S. Perkins, MD, for a designated doctor exam on 07/29/05, and was found at clinical MMI, with a WBI of 5%. He stated that the patient had Chronic low, back symptoms following a lifting injury in the setting of pre-existing degenerative lumbar disease. The claimant presents with a perception of his symptoms and limitations that is not consistent with objective findings and may represent symptom magnification. The employee saw Patrick Cindrich, MD, for a neurosurgical evaluation on 08/02/05, and reported a worsening of symptoms. Dr. Cindrich recommended anterior lumbar interbody fusion at three levels, with posterior pedicle screw and rod instrumentation, with the possibility of a posterior interbody fusion with arthrodesis at L3-4 with arthrodesis and fusion.
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Dr. Perkins, the designated doctor, sent an amended report of medical evaluation, dated 09/22/05, rescinding his previous declaration of MMI. He stated, "based on the discogram results from 7/22/05, which became available subsequent to this reviewer's evaluation on 7/29/05, this reviewer finds that the claimant would not be considered to be at maximum medical improvement pending further treatment".

A preauthorization request for a 3-level anterior lumbar interbody fusion with arthrodesis and instrumentation was denied by a physician advisor on 09/23/05; it was stated that the request for anterior lumbar interbody fusion is not clinically indicated. Imaging studies showed multilevel lumbar disc pathology with annular tears. There is no evidence of spondylolisthesis or instability at any level. DOG guidelines note that fusion is not recommended in the absence of fracture, dislocation or instability. A preauthorization request for reconsideration was also denied by a physician advisor on 10/27/05, who stated that the decision to operate was based on the discogram being positive at three levels. The patient is only 36 years old, not even 1 year from date of injury. Discogram report of 07/22/05 documents 3-level disease but no pressure data recorded on any of the level obtained. MRI of 01/11/05 also reveals similar findings. This patient is a poor operative candidate especially for long fusion as requested.

Conclusion/Decision to Not Certify:

1. ITEM(S) IN DISPUTE: Preauthorization request: Anterior Lumbar Interbody Fusion L3-4, L4-5, L5-S1 with Arthrodesis and Instrumentation. SS LOS inpatient x 2 days.

The preauthorization request for a 3-level anterior lumbar interbody fusion at L3-S1 with Arthrodesis, instrumentation and two-day hospitalization should not be approved. The request for anterior lumbar interbody fusion is not clinically indicated. Imaging studies showed multilevel lumbar disc pathology with annular tears. There is no evidence of spondylolisthesis or instability at any level. DOG guidelines note that fusion is not recommended in the absence of fracture, dislocation or instability. The patient is only 36 years old and less than 1 year from date of injury. The patient is a poor operative candidate especially for long fusion as requested.

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

White AP. Weinstein MA. Patel TCh. Horowitz MC. Friedlaender GE. Lumbar arthrodesis gene expression: a comparison of autograft with osteogenic protein-1. [Journal Article] *Clinical Orthopaedics & Related Research*. (429):330-7, 2004 Dec.

Bini W. Yeung AT. Calatayud V. Chaaban A. Seferlis T. The role of provocative discography in minimally invasive selective endoscopic discectomy. *Neurocirugia (Asturias, Spain)*. 13(1):27-31; discussion 32, 2002 Feb.

Haid RW Jr. Branch CL Jr. Alexander JT. Burkus JK. Posterior lumbar interbody fusion using recombinant human bone morphogenetic protein type 2 with cylindrical interbody cages. [Clinical Trial. Journal Article. Randomized Controlled Trial] *Spine Journal: Official Journal of the North American Spine Society*. 4(5):527-38; discussion 538-9, 2004 Sep-Oct.

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Mermer MJ. Gupta MC. Wheeler DL. Helgerson J. Reddi AH. Hazelwood S. Benson DR. Efficacy of osteogenic protein-1 in a challenging multilevel fusion model. [Evaluation Studies. Journal Article] Spine. 29(3):249-56, 2004 Feb 1

Burkus JK. Bone morphogenetic proteins in anterior lumbar interbody fusion: old techniques and new technologies. Invited submission from the Joint Section Meeting on Disorders of the Spine and Peripheral Nerves, March 2004. [Review] [22 refs] [Journal Article. Review. Review, Tutorial] Journal of Neurosurgery Spine. 1(3):254-60, 2004 Oct.

Burkus JK. Heim SE. Gornet MF. Zdeblick TA. The effectiveness of rhBMP-2 in replacing autograft: an integrated analysis of three human spine studies. [Journal Article] Orthopedics. 27(7):723-8, 2004 Jul.

The physician providing this review is board certified in Neurological Surgery (1997). The reviewer has additional certification from the American Board of Pediatric Neurosurgery (1998) The physician is a member of the American Medical Association, the Congress of Neurological Surgeons, the American Association of Neurological Surgeons, the Society of University Neurosurgeons and the American College of Surgeons. The reviewer has served on the editorial boards for Neurosurgery and Journal of Neurosurgery: Focus. The reviewer has served as a clinical instructor and Assistant Professor of Neurosurgery at the university level. The reviewer is currently an associate professor at the university level. The reviewer has extensive publishing and presentation within their field of specialty. The reviewer has been in active practice since 1986.

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 DWC.

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.

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

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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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Case Analyst: Cherstin B ext 597

cc: Requestor
Respondent