

MCMC

IRO Medical Dispute Resolution M2 Prospective Medical Necessity IRO Decision Notification Letter

Date:	01/26/2005
Injured Employee:	
Address:	
MDR #:	M2-06-0426-01
DWC #:	
MCMC Certification #:	IRO 5294

REQUESTED SERVICES:

Please review the item(s) in dispute: Pre-authorization denied for EMG/NCV lower extremities.

DECISION: **Upheld**

IRO MCMC llc (MCMC) has been certified by the Texas Department of Insurance as an Independent Review Organization (IRO) to render a recommendation regarding the medical necessity of the above disputed service.

Please be advised that a MCMC Physician Advisor has determined that your request for an M2 Prospective Medical Dispute Resolution on 01/26/2006, concerning the medical necessity of the above referenced requested service, hereby finds the following:

The EMG/NCV studies of both lower extremities are not medically necessary.

CLINICAL HISTORY:

This 40 year old female was allegedly injured on _____. On 07/02/2001 Dr. Scheffey evaluated her for complaints of pain in her back, going down her legs. The MRI study apparently revealed "a probable protrusion at L4/5 and bulging at L5/S1." On examination the injured individual had restricted ROM secondary to pain, and apparently had some weakness of the plantar flexors and dorsiflexors bilaterally. She allegedly had decreased sensation along the L5 to S1 dermatomes. She was given Vicodin and sent to physical therapy (PT) and a myelogram was ordered.

Dr. Fulford performed an RME on 09/11/2001 and deemed her to be capable of light duty work with restrictions. Dr. Scheffey evaluated her on 09/26/2001 and 12/12/2001. The notes are remarkably similar to those of 07/02/2001.

In 2002 Dr. Scheffey continued to recommend the myelogram/CT scan. Despite the fact that this study had not been done on 01/28/2002 he recommended a laminectomy and fusion with instrumentation. On 04/29/2002 the injured individual complained of "pain across her back and down both legs." Despite the absence of a true radiculopathy Dr. Scheffey recommended EMG/NCV studies and his earlier recommendations were also repeated.

The EMG/NCV studies of 07/16/2002 of both lower extremities were completely normal. On 08/26/2002 her complaints remained the same and the only clinical findings, per Dr. Scheffey, were “some tightness across her lumbosacral spine and into her buttocks.” Dr. Scheffey now recommended a discogram/CT scan. On 12/02/2002 she had the same complaints and was referred to pain management.

REFERENCE:

The Spine. Orthopedic Knowledge Update. Published by AAOS. 2002.

RATIONALE:

The injured individual was determined at maximum medical improvement (MMI) on 01/22/2002 by Dr. McShane. The EMG/NCV study of 03/25/2003 revealed findings that were “suggestive of S1 radiculopathy.” Dr. Fulford did a report of medical evaluation (RME) on 04/14/2003 and based on her complaints of back and left leg pain, he recommended a new MRI study. The MRI of 05/15/2003 revealed only “subtle, shallow posterior annular bulged disc at L2/3, L3/4 and L5/S1.” There was also a posterior subligamentous disc protrusion at L4/5. There was evidence of arthropathy at L4/5 and L5/S1.

On 06/30/2003 the patient had the same complaints and Dr. Scheffey continued to make the same recommendation. Another EMG/NCV study was performed on 07/8/2003 and this was said to show “increased insertional activity and fibrillation potential at L4/5 and L5/S1.”

It is not clear how and why surgery was approved. On 08/07/2003 she underwent a laminectomy and fusion with instrumentation. Post-operatively, she was followed by Dr. Hardimon as well as Pain Management. On 10/13/2003 she was said to be showing “steady improvement.” On 11/03/2003, Dr. Hardimon stated that she was continuing to have “significant back and leg pain” and any type of activity aggravated her condition. Dr. Hardimon (who works with Dr. Scheffey) stated that “she is a candidate for spine surgery.” The note states that she had a listhesis of L5 on S1 with a protruded disc at L4/5. Dr. Hardimon notes that the injured individual was “waiting for approval for her L4 to S1 fusion. However the note further states that she was “status post laminectomy and fusion L4 to S1.”

Dr. Ghadially evaluated her on 01/22/2004 for back and right leg pain with numbness. Apparently “doing anything makes the pain worse.” On examination she had limitation of range of motion (ROM) of the spine secondary to pain. She apparently had a positive straight leg raise (SLR) test in the seated position. The x-rays revealed the laminectomy and the cages. The right cage was laterally located. Based on this examination, he recommended an epidural steroid injection (ESI). He also recommended removal of the bone stimulator because it would apparently be “non-functioning at six months.” A myelogram/CT scan was recommended.

The post myelogram/CT scan on 02/05/2004 revealed the anterior fusion with the cages and pedicle screw instrumentation. There was evidence of laminectomy and facetectomy at the two fused levels. The nerve root sleeves were not compromised. The sacral screws protruded 10 mm anterior to the anterior sacrum. Dr. Ghadially recommended a CT scan to evaluate the status of the fusion. The office notes do not comment on the presence of any gastrointestinal (GI) or

gastro-urinary (GU) symptoms given that the sacral screws, per Dr. Ghadially, were protruding anterior to the sacral cortex.

On 03/10/2004 Dr. Ghadially made the same recommendations. The complaints and clinical examination were similar to those of 01/22/2004. On 04/01/2004 Dr. Ghadially noted that the fusion mass extended to the right transverse process of L5 and the left posterolateral region of L5/S1. The CT scan report does not provide enough detail to determine the need for any additional treatment. There was apparently no compromise of the canal or foramen. Flexion/extension CT scan images did not show any change, suggesting there was no motion in the operated site. This would be expected since the instrumentation is intact and will obviously prevent motion.

On 05/19/2004 Dr. Ghadially stated that “she does have a pseudoarthrosis” and she has pain from this area. His statement is not substantiated by the CT scan reports. Furthermore it is well known that in the presence of instrumentation, both anteriorly and posteriorly, it is very difficult to evaluate the status of a fusion. In addition it often takes even a year or two for a bone graft to consolidate. This patient has complained of pain within less than three months after surgery and all the office notes subsequently have not identified any change in the intensity or severity of her symptoms. Despite all these considerations Dr. Ghadially operated on her on 06/21/2004. He removed the cages and reinserted additional instrumentation, both anteriorly and posteriorly using bone graft from the iliac crest.

On 07/22/2004 she continued to complain of back pain and was to continue with numerous medications that included narcotic pain medications. On 10/05/2005 the patient stated that she had “some good days and some bad days” and mainly has residual numbness in her feet. On 12/21/2004 she still continued to complain of pain at a 6/10 level. Bending, changes in the weather and stooping apparently increased her pain. She continued to take the same medications.

On 01/05/2005 she had the same complaints. She had no objective clinical findings of nerve root compression or any other organic lesion commensurate with her complaints. All the monthly notes from Dr. Ghadially’s office are practically identical.

Dr. Berliner evaluated her on 08/26/2005 because Dr. Ghadially was “no longer on the approved doctor’s list for workers comp.” The x-rays revealed the cages and pedicle screws to be in good position and there was a visible fusion mass from L4 to S1. There was no motion on flexion/extension views. The patient had complained of back pain radiating to both lower extremities and numbness and tingling in both feet. She had diminished sensation on the soles of both feet and allegedly had 3/5 motor strength of the muscle groups of both lower extremities.

Despite the absence of a well-defined radiculopathy Dr. Berliner recommended EMG studies of both lower extremities. He also recommended a myelogram/CT scan. It should be noted that the patient had non-anatomical and non-physiological complaints and physical findings. Diminished sensation on the soles of both feet is a non-physiological finding. Diffuse motor weakness of all the muscles of both lower extremities, in the absence of additional clinical findings, is also non-

physiological and not indicative of any organic disease that would warrant any further testing or treatment.

Dr. Berliner, in a letter dated 09/29/2005, requested the EMG study of both lower extremities. His rationale for this is that the patient allegedly had “motor weakness and sensation changes as well as back pain with radicular complaint.” There is no doubt that his office notes do identify these signs and symptoms. However, they do not follow any kind of anatomic or physiological pattern to warrant the requested study. Dr. Berliner evaluated her on 11/14/2005 and noted that she had a positive SLR test on the left with diminished sensation along the left S1 dermatome. Motor strength was 4/5 in the plantar flexors and toe flexors. These findings are completely different from those noted earlier by Dr. Berliner. In addition, this patient has had these complaints prior to and after both surgical procedures. This makes it very difficult to ascertain the reliability and validity of her complaints. Also the physical examination by the treating clinicians has failed to substantiate well defined objective clinical findings commensurate with nerve root compression that would warrant the requested study.

RECORDS REVIEWED:

Notification of IRO Assignment dated 12/29/05

MR-117 dated 12/29/05, 11/28/05

DWC-60

DWC:69: Report of Medical Evaluation signed 03/18/04, 09/11/01

MCMC: IRO Medical Dispute Resolution Prospective dated 01/06/06

Texas Association of School Boards: Prospective Review (M2) Response dated 12/30/05

MCMC: IRO Acknowledgment and Invoice Notification Letter dated 12/29/05

Texas Association of School Boards: Pre-authorization Decision and Rationales dated 10/31/05, 09/09/05, 09/02/05

Texas Association of School Boards: Preauthorization fax notes dated 10/25/05, 09/02/05, 08/29/05

Texas Association of School Boards: Pre-authorization for DOS by 09/30/05 (handwritten)

LoneStar Orthopedics: Letter of Medical Necessity for EMG of the Lower Extremities and Letter of Medical Necessity for CT Myelogram, both dated 09/29/05, from Kenneth Berliner, M.D.

Texas Association of School Boards: Office notes (handwritten) dated 09/02/05, 08/29/05

LoneStar Orthopedics: Orthopedic Reports dated 08/26/05, 09/29/05, 11/14/05 from Kenneth Berliner

LoneStar Orthopedics: Routine History & Physical (handwritten) dated 08/26/05

DWC: Work Status Report signed 08/26/05

LoneStar Orthopedics: X-ray lumbar spine dated 08/15/05

Kelly Holland, P.T.: Daily Notes dated 11/26/04, 11/10/04

Gulf Cost Orthopaedic and Spine Associates: Prescription notes dated 11/03/04, 08/27/04, 07/22/04

Star Therapy Services: Physical Therapy Re-Evaluation dated 11/02/04 from Stacy Kimpel, P.T.

Genex Services: Letters dated 10/28/04, 03/26/04 from Margaret Perkins, R.N.

Margaret Perkins: Memos dated 10/21/04, 06/23/04, 03/26/04

GCOSA: Lumbosacral spine radiographs dated 10/05/04, lumbar spine radiographs dated 07/06/04, chest radiographs dated 06/16/04, lumbar spine radiographs dated 04/13/04, lumbar spine radiographs dated 01/22/04

Star Therapy Services: Initial Evaluation Report dated 08/19/04 from Stacy Kimpel, P.T.
Laboratory Report dated 07/21/04

Intra Operative Monitoring Services: Certification of Medical Necessity (handwritten) dated 06/21/04

Houston Community Hospital: Lumbar spine radiographs dated 06/21/04, chest radiographs dated 06/18/04

Houston Community Hospital: Operative Report dated 06/21/04 from James Ghadially, M.D.

Houston Community Hospital: Operative Report dated 06/21/04 from Younan Nowzaradan, M.D.

Houston Community Hospital: Surgical Consultation Report dated 06/21/04 from Younan Nowzaradan, M.D.

Charles Popeney, III, D.C.: Neurophysiological Monitoring Report dated 06/21/04

Houston Community Hospital: Surgical Pathology report dated 06/21/04

Texas Ambulatory Surgical Center: Operative Note dated 04/13/04 from James Ghadially, M.D.

GCD: CT scan lumbar spine in flexion, CT scan lumbar spine in extension, CT lumbar spine without contrast dated 04/01/04

Thomas Walston, Administrative Law Judge: Order Dismissing Case From SOAH Docket signed 03/31/04

Genex: Progress Reports dated 03/10/04 through 10/28/04 from Margaret Perkins, R.N.

Cypresswood Physical Therapy: Daily Notes dated 02/20/04 through 11/24/04 from Stacy Kimpel, P.T.

GCOSA: Reports dated 02/12/04, 02/26/04, 03/24/04, 04/27/04, 04/29/04, 06/09/04, 06/16/04, 07/06/04, 07/22/04, 10/05/04, 11/03/04, 11/30/04, 02/01/05, 03/02/05 from William Lowery, Jr., PA-C

Churchill Evaluation Centers: Report of Medical Evaluations dated 03/18/04, 01/22/03 from Jerry McShane, D.O. with attached Review of Medical History, Physical Examination, Impairment Rating Calculation and Detail, Testing and Measurements

Cypresswood Physical Therapy: Initial Evaluation Report dated 02/16/04 from Stacy Kimpel, P.T.

GCD: Lumbar myelogram, addendum to post-myelographic CT scan lumbar spine, post-myelographic CT scan lumbar spine dated 02/05/04

GCOSA: Reports dated 01/22/04, 02/12/04, 03/10/04, 03/24/04, 05/19/04, 06/29/04, 12/14/04, 12/21/04, 04/29/04, 09/07/04, 08/17/04, 01/05/05, 03/31/05, 05/31/05 from James Ghadially, M.D.

Floyd Hardimon, D.O.: Office notes dated 12/01/03, 11/03/03, 10/27/03, 10/13/03, 09/15/03

Pain Management Consultants: Undated Follow Up Office Visit note (dictated 09/18/03) from Boris Payan, M.D.

Advanced Radiological Associates: Lumbar spine radiographs dated 09/15/03

Pars Neurological: Nerve Conduction/EMG study dated 07/08/03, 03/25/03, 07/16/02

North Houston Imaging Center: Lumbar Spine MRI dated 05/15/03

Churchill Evaluation Centers: Letter of Clarification dated 04/30/03 from Jerry McShane, D.O.

Houston Community Hospital: Anesthesia Record dated 04/30/01

Robert Fulford, M.D.: Reports dated 04/14/03, 09/11/01
Eric H. Scheffey, M.D.: Letter dated 02/19/03
Eric Scheffey, M.D.: Office notes dated 06/04/01 through 08/20/03
LoneStar Orthopedics: Undated EMG/NCV Request Form (handwritten)
Memorial MRI & Diagnostic: Handwritten Rapid Response form (handwritten)
Allied Therapy & Diagnostics: Form signed by Kenneth Berliner, M.D. dated 08/15/??
Texas Association of School Boards: Pre-Authorization (revised – handwritten) for EMG/NCV

The reviewing provider is a **Licensed/Boarded Orthopedic Surgeon** and certifies that no known conflict of interest exists between the reviewing **Orthopedic Surgeon** 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 prior to referral to the IRO. The reviewing physician is on DWC's Approved Doctor List.

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.

This decision is deemed received by you 5 (five) days after it was mailed (28Tex.Admin. Code 102.4(h)(2) or 102.5(d)). A request for a hearing **and a copy of this decision** should be sent to:

Chief Clerk of Proceedings / Appeals Clerk
Texas Department of Insurance Division of Workers' Compensation
P.O. Box 17787
Austin, Texas, 78744
Fax: 512-804-4011

The party appealing the decision shall deliver a copy of its written request for a hearing to all other parties involved in the 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 carrier, the requestor and claimant via facsimile or U. S. Postal Service from the office of the IRO on this

26th day of January 2006.

Signature of IRO Employee: _____

Printed Name of IRO Employee: _____