

MCMC

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

Date:	02/22/2006
Injured Employee:	_____
Address:	
MDR #:	M2-06-0666-01
DWC #:	
MCMC Certification #:	IRO 5294

REQUESTED SERVICES:

Please review the item(s) in dispute: Pre-authorization denied for lumbar discogram/CT L3-L4, L4-L5, L5-S1 with L2-L3 only if necessary for control level.

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 02/22/2006, concerning the medical necessity of the above referenced requested service, hereby finds the following:

The lumbar discogram/CT at L3-L4, L4-L5, L5-S1 with L2-L3 only if necessary for control level is not medically necessary.

CLINICAL HISTORY:

This 44-year-old male was allegedly injured on _____. The MRI of 08/21/2003 revealed a 1 to 2 mm disc bulge at L3/4 and L4/5 and 2mm focal herniation at L5/S1. There was some facet arthrosis at the L5/S1 level. The injured individual allegedly developed back pain after lifting a heavy dishwasher.

The electromyogram (EMG)/nerve conduction velocity (NCV) studies of 01/15/2004 of both lower extremities were normal. The second MRI of 4/6/2004 revealed changes of lumbar spondylosis from L3 to S1. There was a focal three millimeter left foraminal disc herniation with a concentric annular tear slightly narrowing the left neural foramen at L3/4 and L4/5. There was

a focal disc protrusion at L5/S1. This report was given by a chiropractor. The injured individual had extensive and excessive physical therapy (PT) and chiropractic care over the next two years. This chiropractic care also included massage therapy that was being given to decreased headache, calm the nervous system, relax the muscles, increase the range of motion and flexibility of joints, reduce chronic pain, strengthen the immune system and for more restful sleep. These benefits of massage therapy are hypothetical and never been proven to be present.

The injured individual also had several Functional Capacity Exams (FCEs) performed, the first on 03/22/2004 that concluded the injured individual will lift 15 pounds occasionally. There was no documentation of objective clinical findings to substantiate the recommendation.

REFERENCES:

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

RATIONALE:

Dr. Gill [orthopedist] evaluated the injured individual on 04/14/2004. He was complaining of some back pain and believed that the weakness on his left leg had increased. He also complained of frequent urination but had no objective neurological findings. He was to continue physical therapy (PT) and was believed to be “not capable” of working. Dr. Ibarra performed a Designated Doctor Evaluation (DDE) on 04/16/2004. He believed that the injured individual had reached maximum medical improvement (MMI) status and was given a 5% PPI rating. He could return to work (RTW) with restrictions.

The subsequent notes are mainly from the chiropractor and physical therapist documenting continued treatment. Dr. Pedrone [unknown specialty] evaluated him on 07/06/2004 for complaints of constant low back pain. The injured individual claimed that the chiropractic adjustments reduced his pain. The evaluation did not identify the presence of objective clinical findings of an organic lesion that would warrant the recommendation for a discogram and work hardening. The Functional Capacity Exam (FCE) of 07/23/2004 revealed that the injured individual could work at a light to medium capacity and was able to lift up to 35 pounds occasionally, 15 pounds frequently. The recommendation was for more work hardening.

Dr. Schade [pain] evaluated the injured individual on 08/27/2004 for chronic low back pain radiating to both groins and occasional burning in his left calf. The physical examination did not find any objective clinical finding of a true radiculopathy. Even though he was said to have positive straight leg raise (SLR) test bilaterally there is no description of the actual response to the test. There is a notation that “sensory is decreased in the left lower extremity” has no relevance since it is a non-anatomical and non-physiological finding. Despite the absence of objective clinical finding of nerve root compression by a herniated disc the clinician recommended epidural steroid injection (ESI).

Dr. Woodruff [neurology] noted that the injured individual had a stocking type distribution of decreased sensation in both lower extremities. This is again a finding suggestive of symptom

magnification. On examination the SLR test was said to be positive at 60 degrees on the right and equivocal at 50 degrees on the left. Based on this evaluation the neurologist stated that the injured individual could not RTW at the medium to heavy level of work.

The electromyogram (EMG)/nerve conduction velocity (NCV) study of 04/04/2005 allegedly showed a chronic left L5 radiculopathy. It should be noted that the injured individual had in fact complained of more right sided pain that ended proximal to the knee and on the left only extended to the buttock. These complaints are not commensurate with the EMG report.

Dr. Henderson [orthopedics] evaluated the injured individual on 04/06/2005 for complaints of increasing back pain that compromises his ability to sit, stand and walk. He complained of numbness and tingling in the posterior aspect of the thigh above his knee. The right leg symptoms apparently “come and go”. SLR test was said to be mildly positive on the right at 90 degrees. He was said to have weakness of the “femoral biceps” which are 3 to 4 on the right compared with the left side. Despite the absence of a well-defined radiculopathy Dr, Henderson gave him an ESI on 05/09/2005.

On 07/06/2005 the injured individual stated that the ESI “apparently helped a lot” for one week. He said he had no right leg pain and only had back pain. Dr. Henderson notes that the EMG report said that the injured individual had a right L5 radiculopathy; however, the EMG report clearly states that the injured individual had a left-sided L5 radiculopathy. Despite this contradiction and the absence of any objective clinical findings of a specific focal organic lesion, Dr. Henderson recommended an MRI and discogram study.

Dr. Ibarra did a second DDE on 07/11/2005 and essentially came to the same conclusion. On 12/05/2005 Dr. Henderson evaluated the injured individual who was complaining of constant low back pain. There is no documentation of any objective clinical findings of a specific organic lesion in his spine to warrant the requested MRI and discogram study. The injured individual has complained chronic low back pain and has not described a true radiculopathy or signs suggestive of mechanical spinal instability. His MRI studies have essentially been equivocal in so far that the changes noted are not of sufficient magnitude to warrant any type of invasive treatment. Therefore the requested discogram study is inappropriate and not warranted.

RECORDS REVIEWED:

Notification of IRO Assignment dated 01/27/06

MR-117 dated 01/27/06

DWC-60

DWC-69: Report of Medical Evaluations for exam dates of 04/16/04, 07/06/04, 07/11/05

DWC-73: Work Status Reports dated 12/30/03 through 07/14/05 and three undated with treating doctor evaluation dates of 07/29/04, 09/13/04, 11/08/04

EES-14 dated 03/17/04

EES-14C dated 07/08/05, 06/23/05

MCMC: IRO Medical Dispute Resolution Prospective dated 02/03/06

MCMC: IRO Acknowledgment and Invoice Notification Letter dated 01/27/06
Law Offices of Jeffrey M. Lust: Letter dated 02/01/06 from Deborah Womack
Mike Treister, M.D.: Letter dated 01/05/06
Mike Triester, M.D.: Appeal Response-Adverse Determination dated 01/03/06
Peter Garcia, M.D.: UR Peer Review Summary Denial dated 12/22/05
Suzana Fisher, LPN: Letter dated 12/21/05
Kenneth Rosenzweig, M.D.: UR Peer Review Summary Denial dated 08/11/05
Dan Gerstenblitt, M.D.: UR Peer Review Summary Denial dated 07/15/05
Dallas Spine Care: Chart Notes dated 12/05/05 and 07/06/05 from Robert Henderson, M.D.
Robert Henderson, M.D.: Caudal Epidural Steroid Block dated 05/09/05
Medical Arts Surgery Center: Patient Charge Sheet dated 05/09/05
Peter Garcia, M.D.: Peer Review Summary Approval dated 04/27/05
Robert Hassett, D.O.: UR Peer Review Summary Denial dated 04/19/05
Dallas Spine Care: Initial Chart Note dated 04/06/05 from Robert Henderson, M.D.
Metroplex Pain Management: Statement dated 03/18/05
Buckner Back and Neck Clinic: Musculoskeletal Examination/Re-Exams dated 03/08/05,
05/17/04
Dorothy Leong, M.D.: Peer Review dated 03/07/05
Metroplex Pain Management: Follow up Visit note dated 02/04/05 from J. Michael Stanton,
D.O. and Mary Rosson, R.N.
Harmison Pharmacies: Pharmacy receipts dated 01/18/05 for Baclofen and Clonidine
Sharon Woodruff, M.D.: Neurologic Examination dated 11/03/04
Buckner Back and Neck Clinic: Work Hardening Progress Notes Week #4 dated 11/02/04
Behavioral Healthcare Associates: Work Hardening Group Counseling notes (handwritten) dated
10/29/04, 09/30/04, 09/24/04, 08/26/04
Thomas Harvard, D.O.: Prescription notes dated 10/27/04, 08/25/04, 08/11/04
Buckner Back and Neck Clinic: Work Hardening Progress Notes Week #3 dated 09/30/04
Concentra: Letters dated 09/13/04, 08/04/04 from Kimberlee Stukenbrock, Utilization Review
Nurse
Center for Pain Control: High Complexity Evaluation and Health and Behavioral Assessment
dated 08/27/04 from Annie Abraham, RN and C.M. Schade, M.D.
Buckner Back and Neck Clinic: Work Hardening Progress Notes Week #2 dated 08/26/04
Buckner Back and Neck Clinic: Work Hardening Progress Notes Week #1 dated 08/12/04
Buckner Back & Neck Clinic: Report dated 08/26/04 from Sean Kilgore, D.C.
Medical Progress Evaluations (handwritten) dated 08/11/04, 08/25/04, 10/27/04
Progressive Resistance Rehab Exercises for the period 08/09 through 11/02
Buckner Back and Neck Clinic: Physical Therapy Evaluations (handwritten) dated 08/06/04,
05/20/04
Buckner Back and Neck: Work Hardening Daily Progress notes for the period 08/06/04 through
11/02
Weekly Patient Conference notes for 08/06 to 08/13, Week #3 and one with no date

Work Hardening/Work Conditioning notes for dates of service 08/06/04 to 08/12/04 (Week One), 08/20/04 to 08/26/04 (Week Two), 09/23/04 to 09/30/04 (Week Three), 10/27/04 to 11/02/04 (Week Four)
Certificates of Medical Necessity dated 08/06/04 through 11/02/04
Work Hardening Goals-BBNC-Consult Time (handwritten) dated 08/06/04
Work Hardening Orientation Checklist signed 08/06/04
Sean Kilgore, D.C.: Functional Capacity Evaluation dated 07/23/04
Buckner Back & Neck Clinic: Reports from Tom Cybulski, P.T. dated 06/28/04, 06/25/04, 05/24/04, 05/21/04
Nick Padron, M.D.: Report dated 07/06/04
Dr. Marsha Miller, D.C.: S.O.A.P. Notes dated 05/26/04 through 07/21/04
Physical Therapy notes (handwritten) dated 05/20/04 through 11/02/04
Buckner Back and Neck Clinic: Physical Therapy Reevaluation (handwritten) dated 05/20/04
Detailed Medical History & Examination (handwritten) dated 05/19/04
Chiropractic Daily Notes (handwritten) dated 05/12/04 through 10/07/04
Bander Family Medical Clinic: Office note dated 04/20/04 with associated handwritten note
Bartolome N. Ibarra, Jr., M.D.: Designated Doctor Evaluations dated 04/16/04, 07/11/05
Stand-Up MRI of America: Letter dated 04/16/04 from Rachel Monahan, Client Account Representative
Orthopedic Specialists: Report dated 04/14/04 from Kevin Gill, M.D.
Metro Radiology Imaging, Inc.: Lumbar spine MRI dated 04/05/04
Assignment for Direct Payment & Privacy Form signed 04/05/04
R. Frank Morrison, M.D.: EMG/NCS Report dated 04/04/05
Choice Rehabilitation: Functional Capacity Evaluation dated 03/22/04 from Joanne Wisdom, D.C.
Klesmit Chiropractic Offices: Letters dated 01/27/04 through 04/29/04 from Sean Kilgore, D.C.
Kathy Toler, M.D.: Electrodiagnostic Consultation dated 01/16/04
Irving Imaging Center: MRI lumbar spine dated 08/21/03
Klesmit Chiropractic Office: Office notes (handwritten) dated 08/19/03 through 04/08/05 and one undated note
Undated list of Additional Medical Providers
The NMR Protocol: Low back exercises for week #1- 08/06 through 08/12, week #2 - 08/20 to 08/26
Neuromuscular Re-Education protocol for low back for week #2 - 08/20 to 08/26
Exercises for weeks 08/06 to 08/12, 08/20 to 08/26, 09/23 to 09/29, 10/27 to 11/02
The Lower Back exercise sheets for weeks of 08/06 to 08/12, 08/20 to 08/26, 09/23 to 09/29, 10/27 to 11/02
NMR Back (Protocol sheets) for week #1 - 08/06 to 08/12, week #2 - 08/20 to 08/26, week #4 - 10/27 to 11/02
Back Flexibility Program (and strengthening) exercise sheet
Exercise sheets with exercises numbered 1 through 12

Undated exercise sheets on the following: Deep Breathing for Relaxation; Breathing Exercises; Knee Exercises; Self-Care Management for the Knees; Hip Exercise Program; Hip Exercises; Cold Therapy; Tips on Stretching; When You're in the Driver's Seat; Preventing Musculoskeletal Injuries During Exercise; Behavior Modification for Headache Sufferers; Guidelines for Moving and Lifting; Exercise for a Healthy Spine; Instructions for Home Care for a Low Back Injury; Low Back Pain and Sexual Activity; Preventing Low Back Pain; Basic Low Back Exercises; Modified Extension Postures and Exercises

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

22nd day of February 2006.

Signature of IRO Employee: _____

Printed Name of IRO Employee: _____