

February 21, 2006  
February 16, 2006

VIA FACSIMILE  
Dean R. McMillan, MD  
Attention: Angie Velasquez

VIA FACSIMILE  
Liberty Insurance Corp  
Attention: Carolyn Guard

### **Amended NOTICE OF INDEPENDENT REVIEW DECISION**

**RE: MDR Tracking #: M2-06-0699-01**  
**DWC #:**  
**Injured Employee:**  
**Requestor: Dean R. McMillan, MD**  
**Respondent: Liberty Insurance Corp**  
**MAXIMUS Case #: TW06-0017**

MAXIMUS has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The MAXIMUS IRO Certificate Number is 5348. The TDI, Division of Workers Compensation (DWC) has assigned this case to MAXIMUS in accordance with Rule §133.308, which allows for a dispute resolution by an IRO.

MAXIMUS has performed an independent review of the proposed care to determine whether or not the adverse determination was appropriate. Relevant medical records, documentation provided by the parties referenced above and other documentation and written information submitted regarding this appeal was reviewed during the performance of this independent review.

This case was reviewed by a practicing physician who is board certified in physical medicine and rehabilitation on the MAXIMUS external review panel who is familiar with the condition and treatment options at issue in this appeal. The reviewer has met the requirements for the approved doctor list (ADL) of DWC or has been approved as an exception to the ADL requirement. A certification was signed that the reviewing provider has no known conflicts of interest 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, was signed. In addition, the MAXIMUS physician reviewer certified that the review was performed without bias for or against any party in this case.

#### Clinical History

This case concerns an adult male who had a work related injury on \_\_\_\_\_. The patient reported that while pulling himself up onto a forklift he suddenly felt severe low back pain that radiated to his legs. Diagnoses included a herniated disc and radiculopathy. Evaluation and treatment have included an EMG, an MRI, epidural injections, physical rehabilitation and medication.

## Requested Services

Preauthorization for physical rehabilitation 18 sessions (97140, 97110, 97112)

## Documents and/or information used by the reviewer to reach a decision:

### *Documents Submitted by Requestor:*

1. Request for Reconsideration – 12/13/05, 2/3/06
2. Diagnostic Studies (i.e., MRI, x-rays) – 7/22/05, 8/9/05, 8/23/05
3. Electrodiagnostic Evaluation – 8/23/05
4. Pain & Recovery Clinic Records – 11/23/05-1/13/06
5. Shanti Pain and Wellness, PA Records – 12/30/05-1/12/06

### *Documents Submitted by Respondent:*

1. Professional Reviews, Inc. Reports – 12/5/05, 12/27/05
2. Pain & Recovery Clinic Records – 11/23/05-12/13/05
3. Shanti Pain and Wellness, PA Records – 11/18/05-12/2/05
4. Orthopedic Records – 9/19/05

## Decision

The Carrier's denial of authorization for the requested services is upheld.

## Standard of Review

This MAXIMUS determination is based upon generally accepted standard and medical literature regarding the condition and services/supplies in the appeal.

## Rationale/Basis for Decision

The MAXIMUS physician consultant indicated the patient had conservative management of his condition including 30 sessions of skilled physical therapy and an epidural steroid injection on 1/12/06. The MAXIMUS physician consultant noted that the patient reported no pain during rest and increasing pain to a level of 5/10 with activity during a physical therapy session on 1/13/06. The MAXIMUS physician consultant also noted that during this session, he was reported to have a normal gait pattern, normal lumbar spine range of motion except for mild limitation in extension, and near normal strength in abdominal and lumbar muscles. The MAXIMUS physician consultant explained that at this point, the main goals were to increase endurance, strength and activity tolerance. The MAXIMUS physician consultant indicated the member had several sessions of physical therapy prior to the epidural injection and he should be competent to independently perform therapeutic exercises required to strengthen muscles of the back and abdomen. The MAXIMUS physician consultant noted that endurance and activity tolerance could be improved with exercises such as walking and other independent activities. The MAXIMUS physician consultant indicated that further skilled physical therapy is not medically necessary and that this is in accordance with community standards of practice for treatment of back pain. (Manorian AF. Rheumatology. July, 40(7):772.)

Therefore, the MAXIMUS physician consultant concluded that the requested physical rehabilitation 18 sessions (97140, 97110, 97112) are not medically necessary for treatment of the member's condition.

**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.

Sincerely,  
**MAXIMUS**

Lisa Gebbie, MS, RN  
State Appeals Department

cc: Division of Workers Compensation

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 16th day of February 2006.

Signature of IRO Employee: \_\_\_\_\_  
External Appeals Department