

MCMC

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

Date:	04/06/2006
Injured Employee:	
Address:	
MDR #:	M2-06-0881-01
DWC #:	
MCMC Certification #:	IRO 5294

REQUESTED SERVICES:

Please review the item(s) in dispute: Pre-authorization denied for lumbar discogram at L3-4, L4-5 and L5-S1 and post CT Scan.

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 04/06/2006, concerning the medical necessity of the above referenced requested service, hereby finds the following:

The lumbar discogram at L3-4, L4-5 and L5-S1 and post CT Scan is not medically necessary.

CLINICAL HISTORY:

This 52-year-old female was _____ injured on _____. She apparently was carrying a box up a flight of stairs and claims to have developed pain in her entire spine. She claims the pain became worse and reported the ____ incident. She was seen by her primary care physician (PCP) and kept out of work for three days.

The MRI of the thoracic spine apparently revealed a right disc herniation at T9/10 that indented the thecal sac on the right. There was a cyst in the left kidney. She was treated for a lumbar sprain and thoracic herniated disc. She then consulted a chiropractor on 11/09/2001. The MRI of 12/04/2001 only showed a disc bulge at L5/S1 that abuts the S1 nerve root.

REFERENCES:

Carragee, E.J., et al. False positive findings on lumbar discography: reliability of subjective concordance assessment during provocative disc injections. Spine (1999) 24: 2542-2547.

Fitzell P. 2001 Volvo Award Winner in Clinical Studies: Lumbar fusion versus nonsurgical treatment for chronic low back pain: a multicenter randomized controlled trail from the Swedish Lumbar Spine Study Group. Spine. 2001 Dec 1:26[23]:2521-32: discussion 2532-4.

Boden, S.D. et al. Disc Replacements: This Time Will We Really Cure Low Back and Neck Pain? The Journal of Bone and Joint Surgery (American) 86:411-422 (2004).

RATIONALE:

Dr. Berliner, orthopedics, evaluated the injured individual on 01/08/2002 for complaints of pain in the thoracic spine radiating to the left leg which was said to be numb. He believed that the herniated disc in the thoracic spine was the result of the ____ injury. The description of the injury given to Dr. Berliner was that “almost lost her balance and jerked in order for her to keep from falling and had immediate pain in the upper back and low back.” It should be noted that this mechanism of _____ injury is completely different from the one she described on _____. Dr. Berliner advised her to continue non-operative treatment using medications and physical therapy (PT).

Dr. Andrew, orthopedics, did an Independent Medical Exam (IME) on 04/04/2002. He concluded that there were no objective clinical findings of an organic lesion that would qualify her for any Permanent Partial Impairment (PPI) rating. He said she should return to work (RTW) without restrictions. The MRI of the cervical spine dated 07/03/2002 revealed 2mm disc protrusion at C4/5 and C5/6. On 07/07/2002 Dr. Berliner stated that because the epidural steroid injection (ESI) had not been approved, the injured individual was to be scheduled for surgery on the thoracic spine.

Dr. Hite evaluated her for an IME on 09/12/2002 for complaints of pain in the low back thoracic spine and cervical spine. The description of the low back pain is extensive whereas that in the thoracic region only consists of two lines that state the pain to be constant in the thoracic spine that was increased with twisting and turning. On examination the only findings were tenderness in the entire spine with some limitations of motion secondary to complaints of pain. There were no focal neurological findings of nerve root compression or irritation. He believed she may be a candidate for surgical treatment and would be limited from heavy physical activity. The reason for this was that if the disc ruptured further she could develop paraplegia.

She complained of thoracic back pain. She now weighed 154 pounds and was noted to be 4’ 10” tall. She had no objective clinical findings of nerve root compression or tension yet an ESI was recommended. Subsequent notes in the remaining months in 2002 are from Dr. Berliner’s office although they are signed by different surgeons.

On 02/17/2003 Dr. Berliner noted that the thoracic MRI study apparently revealed “very mild cord compression” and “marked foraminal narrowing”. At the time the only thoracic spine MRI study was done on 10/25/2001 and the report documents a “prominent right paracentral herniation with slight superior extrusion and prominent indentation on the thecal sac and slight indentation on the anterolateral surface of the spinal cord on the right side.” The MRI study was over 18-months old when Dr. Berliner saw the injured individual on 02/17/2003.

The CT scan of 02/19/2003 revealed anterior osteophytes at T8/9, a chronic disc herniation with bony osteophytes at T9/10 effacing the thecal sac and right neural foramen. On 03/19/2003 she complained of low thoracic pain that apparently shoots around the right side. She also complained of low back and buttock pain and claimed to have mild diminished sensation along the right side of her abdomen. She was tender over the lower thoracic region. Based on these findings Dr. Tomaszek did a right laminotomy, foraminotomy and partial discectomy at T9/T10.

Dr. Esses evaluated her on 10/23/2003. The note does not document any specific complaints at the time of the office visit. She was said to be tender over the thoracic region. In addition she apparently had a “Tinel sign both on the right and the left side.” It is not clear where exactly the Tinel sign was elicited. It is also not clear what the implication of this sign is in treating the injured individual. The MRI of 04/02/2004 clearly stated that there were only postoperative changes from T9 to T10 and there were no intra or extradural defects. The injured individual then had an anterior discectomy and fusion with instrumentation at T9/10 done by Dr. Esses. There is no documentation as to why this was performed since the most recent imaging studies did not reveal any pathological process that required such an intervention.

The injured individual was then seen by Drs. Esses and Berliner. On 04/28/2005 she was complaining of increasing low back pain. Straight leg raising apparently produced back pain and the range of motion (ROM) was limited secondary to pain. Despite the fact the previous MRI of her lumbar spine on 12/04/2001 only showed a disc bulge, Dr. Esses noted that the injured individual claimed that the low back pain was part of the Worker’s Compensation incident. She now claimed that her pain was so severe that she could not walk.

The MRI of 05/27/2005 revealed degenerative facet arthropathy at L3/4 and L4/5. There was a left lateral disc herniation at L3/4 and a disc bulge at L4/5. There was some clumping of the nerve roots from L1 to L4 level. On 11/17/2005 Dr. Berliner noted that the injured individual complained of 8/10 low back pain with numbness in both lower extremities. She also complained of 8/10 thoracic pain with weakness in the left side. Once again it is not clear where this weakness was located. Thus the injured individual is now again complaining of persistent neck, low back and thoracic pain. The electromyogram (EMG) of 12/21/2005 was normal. Dr. Berliner however on the basis of persistent pain recommended that the injured individual should have a lumbar discogram.

The medical records shows that this injured individual had non-specific ongoing complaints that are not commensurate with objective clinical imaging findings to warrant invasive testing and treatment. In fact, even though the initial thoracic imaging studies in 2001 revealed a disc herniation at T9/10 her clinical symptoms were not commensurate with this pathology. She

underwent a decompression two years later even though the findings on the MRI of 2003 were not commensurate with objective clinical findings. The injured individual is now started to complain of severe low back pain. She has complained in the past but the initial imaging studies were essentially normal. There is no evidence of any objective clinical or imaging findings to substantiate a need for any invasive treatment, therefore, the discogram study is inappropriate and not warranted.

RECORDS REVIEWED:

Notification of IRO Assignment dated 03/08/06

MR-117 dated 03/08/06

DWC-60

DWC-69: Report of Medical Evaluation signed 09/12/02

DWC-73: Work Status Report dated 11/17/05

DWC-24: Benefit Dispute Agreement dated 02/06/02

MCMC: IRO Medical Dispute Resolution Prospective dated 03/22/06

MCMC: IRO Acknowledgment and Invoice Notification Letter dated 03/08/06

Texas Association of School Boards: Prospective Review (M2) Response dated 03/16/06

MCMC: Statement dated 03/13/06

Texas Association of School Boards: Letters dated 02/01/06, 01/19/06, 12/05/05, 05/24/05 with attached Pre-Authorization Decision and Rationale notes

Diary note dated 01/19/06

Texas Association of School Boards: Fax notes dated 02/27/06, 01/18/06, 05/19/05 from TASB Risk Management Services

Lonestar Orthopedics: Review Form fax note date 02/07/06 (handwritten)

Lonestar Orthopedics: Dr. Ribeiro-Procedure Orders (handwritten) dated 01/17/06 (two)

Texas Association of School Boards: 28 TAC & 134.600 for Pre-Authorizations dated 01/31/06, 01/17/06, 12/01/05, 05/24/05, 01/19/06

Lone Star Orthopedics: History and Physical dated 01/10/06 from Sady Ribeiro, M.D.

Goran A. Jezic, M.D.: Electrodiagnostic Medicine Consultation report dated 12/21/05

Lonestar: X-ray thoracic and ribs summary dated 11/17/05, x-ray lumbar summary dated 07/15/03 from Kenneth Berliner, M.D.

Houston Pain & Injury Clinic: Letter dated 09/21/05 from Joe Garza, D.C.

Advanced Diagnostics: MRI lumbar spine Final Report dated 05/27/05

Natural MRI at Advanced Diagnostics: Report dated 05/19/05

Houston Pain Consultants: Initial Evaluation dated 04/29/05 from Arun Lall, M.D.

Stephen Esses, M.D.: Follow Up Visit note dated 04/28/05

Baylor College of Medicine: Letters dated 08/05/04, 02/23/04, 10/23/03 from Stephen Esses, M.D.

Twelve Oaks Medical Center: Operative Report dated 07/21/04 from Stephen Esses, M.D.

Vista Medical Center Hospital: MRI thoracic spine dated 04/02/04

David Tomaszek, M.D.: Last page of a report dated 06/16/03

Vista Medical Center Hospital: Discharge Summary dated 05/31/03 from David Tomaszek, M.D.

Vista Medical Center Hospital: Operative Report dated 05/29/03 from David Tomaszek, M.D.

Vista Medical Center Hospital: History and Physical Examination dated 05/23/03 from David Tomaszek, M.D.
DWC: Dispute Resolution Denial letter dated 04/24/03 from Nennan Ortiz, Disability Determination Officer
Houston Medical Imaging: Preliminary Report CT thoracic spine and Final Report CT thoracic spine dated 02/19/03
Lonestar Orthopedics: Orthopedic Report dated 02/17/03 from Wade McAlister, M.D.
Lonestar Orthopedics: Orthopedic Report dated 02/17/03 from David Tomaszek, M.D.
Undated, unsigned typed note dated 01/14/03
Lonestar Orthopedics: Orthopedic Reports dated 12/17/02, 11/12/02 from Eric Santos, M.D.
Lonestar Orthopedics: Report dated 10/10/02 from Kevin Moran, M.D.
Lumbar Spine Evaluation (handwritten) dated 10/10/02
Churchill Evaluation Centers: Report of Medical Evaluation dated 09/12/02 from Stanley Hite, M.D. with attached Review of Medical History and Physical Examination
Imaging Institute of Texas: MRI cervical spine dated 07/03/02, MRI lumbar spine dated 12/04/01
Texas Association of School Boards: Letter dated 06/26/02
John G. Andrew, M.D.: Independent Medical Evaluation dated 04/04/02
Lonestar Orthopedics: Orthopedic Reports dated 02/26/02, 06/11/02, 07/17/02, 10/10/02, 11/12/02, 12/17/02, 03/19/03, 07/15/03, 10/01/03, 01/07/04, 10/06/04, 11/17/05 from Kenneth Berliner, M.D.
Lonestar Orthopedics: Orthopedic Consult dated 01/08/02 from Kenneth Berliner, M.D.
Lonestar Orthopedics: Appointment form dated 12/17/01 (handwritten) from Angie
DWC: Payment of Compensation or Notice of Refused/Disputed Claim dated 11/16/01
Houston Pain and Injury Clinic: Initial Office Visit dated 11/09/01 from Joe Garza, D.C.
Pasadena Independent School District: Employees' Sick Leave Bank dated 11/07/01
River Oaks Imaging and Diagnostic: MRI thoracic spine dated 10/25/01
TASB: Handwritten doctor's notes dated 10/23/01 through 11/09/04 (TASB Rec'd 07/26/05 at top)
Rao K. Nandety, M.D.: Certificate To Return Work/School dated 10/01/01
Houston Pain & Injury Clinic: Facsimile Transmittal dated 09/28/01 (handwritten)
Lonestar Orthopedics: EMG/NCV Request Form, undated
Goran A. Jezic, M.D.: Undated Pre-authorization Request (handwritten)
Texas Association of School Boards: 28 TAC & 134.500 for Pre-Authorization Information, undated, handwritten
American Academy of Orthopaedic Surgeons: Undated title page, "Orthopaedic Knowledge Update – Spine"
American Academy of Orthopaedic Surgeons: Undated article, Chapter 9, "Pain Imaging-Discography", pages 81 - 84

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

__6th__ day of __April__ 2006.

Signature of IRO Employee: _____

Printed Name of IRO Employee: **Beth Cucchi**_____