

May 4, 2006

VIA FACSIMILE
Kenneth G. Berliner, MD
Attention: Brenda Gonzales

VIA FACSIMILE
Vanliner Insurance Company
Attention: John Fowler

NOTICE OF INDEPENDENT REVIEW DECISION

RE: MDR Tracking #: M2-06-1016-01
DWC #: _____
Injured Employee: _____
Requestor: Kenneth G. Berliner
Respondent: Vanliner Insurance Company
MAXIMUS Case #: TW06-0047

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 orthopedic surgery 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 _____. Records indicate that while unloading furniture, the load shifted and fell on him. He reported he fell to the floor injuring his back and right arm. Diagnoses included degenerative disc disease at L2-3 associated with a bulging disc, lumbar spine strain and right wrist sprain. Evaluation and treatment has included physical therapy, steroid injections, and medications.

Requested Services

Low pressure lumbar discogram w/ CT L1-S1 (62290, 72128)

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

Documents Submitted by Requestor:

1. Texas Orthopaedic And Aquatic Therapy Institute Records – 5/12/05-5/13/05
2. Diagnostic Studies (e.g., x-rays, MRI, CT scan, etc.) – 9/24/04, 0/18/04, 12/8/04, 2/1/05
3. Determination Notices – 4/21/05, 5/2/05, 7/29/05, 2/14/06, 2/23/06
4. The Palladium For Surgery Houston, LLP Records – 11/16/05
5. Lonestar Orthopedics Records – 1/19/05, 2/1/05, 3/1/05, 3/17/05, 5/9/05, 8/25/05, 10/6/05, 12/1/05, 1/2/06, 1/17/06, 1/23/06, 2/28/06, 3/3/06
6. Churchill Evaluation Centers Records – 7/7/05, 1/5/06
7. Review of Medical History – 7/7/05, 1/5/06
8. Impairment Summary – 1/5/06
9. Table of Medical Information & Records – 7/12/05
10. Notice of Assignment for Independent Review – 6/21/05
11. Vanliner Insurance Company Response – 5/30/05
12. Casey L, et al. Lumbar Discogenic Pain and Instability. American Academy of Orthopaedic Surgeons, OKU: Spine 2 – no date
13. US Healthworks of Texas Clinic Notes – 9/24/04-2/16/04

Documents Submitted by Respondent:

1. Vanliner Insurance Company Response – 3/21/06
2. Lonestar Orthopedics Records – 1/2/06, 1/17/06, 3/3/06

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 has had back pain symptoms since ___ and has discogenic changes in his back. The MAXIMUS physician consultant explained the patient has had multiple treatment modalities and still has pain. The MAXIMUS physician consultant noted that surgical intervention at this point is not likely to be successful. The MAXIMUS physician consultant also noted that literature demonstrates that surgery is not likely to be successful in similar type cases. The MAXIMUS physician consultant indicated the requested discogram is not medically necessary because the information it will provide will not make a difference with regard to treatment. (van Tulder M, et al. Outcome of non-invasive

treatment modalities on back pain: an evidence-based review. Eur Spine J. 2006 Jan; 15 Suppl 1:S64-81. Epub 2005 Dec 1.)

Therefore, the MAXIMUS physician consultant concluded that the requested low pressure lumbar discogram w/ CT L1-S1 (62290, 72128) is 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 4th day of May 2006.

Signature of IRO Employee: _____
External Appeals Department