

MCMC

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

Date:	06/26/2006
Injured Employee:	
Address:	
MDR #:	M2-06-1255-01
DWC #:	
MCMC Certification #:	IRO 5294

REQUESTED SERVICES:

Please review the item(s) in dispute: Pre-authorization denied for posterior spinal fusion L4-S1 right nerve root decompression, pedicle screws, rods, ICBG anterior fusion L4-S1, LSO brace, bone growth stimulator, cyro unit for 10 day rental.

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 06/26/2006, concerning the medical necessity of the above referenced requested service, hereby finds the following:

The posterior spinal fusion L4-S1 right nerve root decompression, pedicle screws, rods, ICBG anterior fusion L4-S1, LSO brace, bone growth stimulator, cyro unit for 10 day rental is not medically necessary.

CLINICAL HISTORY:

This 42-year-old female had a discogram on 09/15/1999 after an alleged injury on _____. This revealed no pain and a normal discogram at L3/4, at L4/5 mild partly concordant left low back and buttock pain at a 3/10 level. At L5/S1 there was a posterior disc protrusion and an annular tear with 5/10 partly concordant pain. She had a past history of a prior alleged work injury in 1982 for which she underwent a lumbar laminectomy.

RATIONALE:

The injured individual allegedly felt a pop in her back when lifting a box containing 24 jeans. The myelogram did not identify any significant pathology. On 02/02/2000 she underwent a

revision laminectomy at L5/S1 and foraminotomy despite the negative myelogram and equivocal discogram.

Dr. McDonnell evaluated her on 08/04/2001 for complaints of low back and neck pain. He interpreted the discogram from 1999, two years earlier, as positive at L5/S1 and recommended surgery. Dr. McDonnell performed the procedure two years later on 05/22/2003. The operation consisted of a PLIF with cages and bone graft from the iliac crest. This surgery appears to have been done on the basis of an essentially inconclusive discogram done four years earlier.

The MRI of 09/16/2003 revealed the cages at L5/S1, bilateral facet arthropathy at L4/5 and L5/S1 with bilateral foraminal encroachment at both levels, mild at L5/S1 and moderate at L4/5 worse on the right. On 11/25/2003, about six months after the L5/S1 fusion, Dr. Nguyen performed the so-called percutaneous "instrumented" decompression at L4/5 level. This was done despite the absence of only a disc protrusion causing her symptoms. There was evidence of bony stenosis.

On 04/02/2004 because of complaints of severe low back pain radiating to both feet a myelogram/CT scan was ordered. There was evidence of bilateral facet arthrosis causing bilateral foraminal narrowing with effacement of both L4 nerve root sleeves at their origin but the sleeves filled normally. At L5/S1 the fusion appeared solid on the right but fragmented on the left. The foramina were patent and the nerve root sleeves filled normally. The right facet joint appeared fused.

Another discogram done on 07/07/2004 revealed no pain at L2/3 and L3/4. There was apparently concordant pain at L4/5 and a posterior tear. The CT scan revealed a broad-based disc protrusion moderately narrowing the right foramen and mildly displacing the right L4 nerve root. She was then treated with epidural steroid injections (ESIs) by Dr. Nguyen who referred her to Dr. Francis on 05/03/2005. Dr. Francis evaluated her on 08/30/2005 and recommended an anterior interbody fusion at L4/5 with bone morphogenetic protein (BMP), and a repair of the pseudoarthrosis at L5/S1.

She returned to the office on 01/10/2006 and was to get electromyogram/nerve conduction velocity (EMG/NCV) studies. These were obtained on 02/02/2006 and apparently revealed a chronic right L5/S1 radiculopathy. On 02/28/2006 Dr. Francis again reviewed the studies and recommended surgical intervention. The injured individual has age related changes at L4/5 particularly facet arthrosis that is moderately severe. This injured individual has complaints of chronic back and bilateral leg pain to her feet. Her complaints vary in terms of the radiculopathy.

In fact the initial surgery was not warranted because of the essentially negative diagnostic studies. Furthermore, the submitted notes do not document how she has spent her time in terms of work, recreational and social activities. The studies that are being used to determine the need for surgery are more than two years old. Therefore, the request for surgical treatment is inappropriate and not warranted. Plain x-rays would reveal the presence of degenerative spondylosis, and flexion/extension views would determine the presence or absence of true

instability. In addition her BMI has not been reported, nor has her level of conditioning and motivation to work, as well as compliance with a well designed home exercise program (HEP).

RECORDS REVIEWED:

- Notification of IRO Assignment dated 05/09/06
- MR-117 dated 05/09/06
- DWC-60
- DWC-69: Report of Medical Evaluation dated 02/09/01
- MCMC: IRO Acknowledgment and Invoice Notification Letter dated 05/10/06
- Texas Mutual: Letter dated 06/06/06 from LaTreace Giles, RN
- Texas Pain Institute: Office visit note dated 05/11/06 from Viet Nguyen, M.D.
- Texas Mutual: Letter dated 03/27/06 from Roger McLain, RN
- Terry Shultis, LPN: Letters dated 03/10/06 (three letters)
- Spine Associates of Houston: Office visit note dated 02/28/06 from Richard Francis, M.D.
- Spine Associates of Houston: Exam note dated 02/02/06 from Meyer Proler, M.D.
- Twelve Oaks Hospital: Lumbar spine post-discography and lumbar spine post-discogram CT, both dated 07/07/04
- Summit Ambulatory Center: Operative Report dated 11/25/03 from Son Nguyen, M.D.
- Memorial MRI & Diagnostic: MRI lumbar spine dated 09/16/03
- Spring Branch Medical Center: Operative Report dated 05/22/03 from Mark McDonnell, M.D.
- Churchill Evaluation Centers: Report of Medical Evaluation dated 02/09/01 from Gregory Baker, D.C. with attached Review of Medical History, Physical Examination, Impairment Rating Calculation and Detail and Testing and Measurements
- Bayou Medical Center: Operative Report dated 02/02/00 from Robert Hoekman, M.D.
- John B. Berry, M.D.: Letter dated 11/24/99
- Initial Medical Report-Workers' Compensation Insurance dated 03/11/99

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 June 2006.

Signature of IRO Employee: _____

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