

# MCMC

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

<b>Date:</b>	<b>08/01/2006</b>
<b>Injured Employee:</b>	
<b>Address:</b>	
<b>MDR #:</b>	<b>M2-06-1568-01</b>
<b>DWC #:</b>	
<b>MCMC Certification #:</b>	<b>IRO 5294</b>

### REQUESTED SERVICES:

Please review the item(s) in dispute: Pre-authorization denied for lateral mass fusion L2-S1 with hardware removal L5-S1 with three day length of stay (22612, 22650, 22852, 20930, 20975, and 22842).

### DECISION: **Upheld**

---

IRO MCMCllc (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 08/01/2006, concerning the medical necessity of the above referenced requested service, hereby finds the following:

The requested lateral mass fusion L2-S1 with hardware removal L5-S1 with three day length of stay (22612, 22650, 22852, 20930, 20975, and 22842) are not medically necessary.

### CLINICAL HISTORY:

This 42-year-old female allegedly felt a sharp, stabbing, pulling sensation in her low back on \_\_\_\_\_ when lifting a injured individual weighing 300 pounds. She apparently also developed pain going down the right leg.

Dr. Roberts evaluated her on 06/10/2003 complaining of more back than leg pain. The leg pain when present extended to her foot. The medications and activity modifications failed to give her any relief. On examination she had no objective clinical findings of nerve root compression. X-rays were said to reveal a Grade II spondylolisthesis at L5/S1.

The injured individual was treated with medications, work restrictions and physical therapy (PT) for a lumbar strain. She apparently improved when seen on 07/14/2003 but allegedly had muscle spasm in the mid portion of her back. Same treatment was continued.

On 08/11/2003 she stated she had improved but still had daily pain. She was continued on the same treatment. On 08/23/2003 she continued to complain of pain and discomfort in her back. She claimed to have felt a pop in her back that morning. On examination she was said to present "pitched forward and has difficulty straightening secondary to severe discomfort in her lower back". She was said to have an intact neurovascular system. It is not clear how a complete neurological examination was performed given that she was "pitched forward" and could not "straighten her back".

**REFERENCES:**

Current Concepts Review - Lumbar Arthrodesis for the Treatment of Back Pain: The Journal of Bone and Joint Surgery 81:716-30 (1999): Hanley, E.N. JR., and David, S.M.

Lumbar fusion versus non-surgical treatment for chronic low back pain: a multicenter randomized controlled trial from the Swedish Lumbar Spine Study Group:  
Fritzell, P., et al: Spine (2002): 27: 1680-1686. (Volvo Award Winner in clinical studies).

**RATIONALE:**

Dr. Van Hal (Orthopedics) evaluated the injured individual's clinical records since the alleged incident. In his letter dated 08/30/2003 he concluded that she had a pre-existing congenital anomaly in her lower back. He did not believe the passive modalities were warranted and answered other questions raised by CorVel.

Dr. Roberts evaluated her on 09/08/2003 and noted that the MRI study revealed spondylolisthesis but no nerve root compression. The flexion/extension x-rays showed increased spondylolisthesis in flexion, and the bilateral pars defect. Surgical treatment was recommended.

On 10/09/2003 Dr. Roberts performed a Gill decompression and bilateral foraminotomies followed by posterior fusion with instrumentation and allograft bone. On 10/24/2003 she was doing well but still complained of pain. She was placed on severe work restrictions. On 01/26/2004 the injured individual claimed that she had been reprimanded for not doing assigned work, which she claimed violated the work restrictions placed on her by Dr. Roberts. The injured individual continued to complain of pain over the next several months. The x-rays on 04/05/2004 showed the hardware to be in place. She was to continue her activity level and was apparently using a stimulator.

Dr. Whitsell, Orthopedics, performed an Independent Medical Exam (IME) on 03/29/2004. She complained that increased workload of pushing a dental cart allegedly aggravated her pain. Walking and cold air increased her pain. She was noted to be 5'3" tall weighing 170 pounds. She was able to get up without any discomfort and walk normally. She was only 5 months post-operative and not yet at maximum medical improvement (MMI).

Dr. Roberts had requested work conditioning and the notes in May and June comment on the denial. On 06/22/2004 in a brief office note of six lines Dr. Roberts placed a 20 pound weight restriction, and gave her a 9% PPI and 0% disability rating. On 06/28/2004 she was to return as needed.

A lumbar myelogram dated 08/31/2004 revealed a mild mass effect on the thecal sac from L1 to S1. The L5 nerve root was swollen at the L4/5 level. The post myelogram CT scan revealed postoperative changes at L5/S1 with moderate to severe right foraminal narrowing and moderate mass effect on the right L5 nerve root.

On 09/09/2004 Dr. Roberts recommended epidural steroid injection (ESI) for the changes noted on the myelogram and persistence of the Grade I spondylolisthesis. The ESI were given by the pain center.

On 11/15/2004 the injured individual was very upset as she was in the midst of a divorce and was going to lose her house. She also had some health issues and Dr. Roberts stated that this was "making it very difficult to deal with her back and leg discomfort." Her claim had also been denied and she was advised to talk with the adjuster.

Dr. Mayorga evaluated her on 12/17/2004 at the recommendation of the chiropractor. He noted that the MRI of 09/04/2003 only revealed mild degenerative changes in the lumbar spine and mild anterior listhesis of L5 on S1. She had no objective clinical findings except for pain with range of motion (ROM) of her low back that were commensurate with her complaints. She was given Darvocet and Flexeril. He recommended further studies and continued chiropractic care.

Dr. Reynolds evaluated her on 12/20/2004 at the recommendation of the chiropractor. He noted her history, previous treatment including surgery, the myelogram report as well as the MRI report of 09/04/2003 (preoperative) that apparently revealed only disc desiccation and a bulging annulus at L2/3 and L3/4. Based on this information Dr. Reynolds stated that she had "instability at L2/3" and recommended a discogram.

On 02/25/2005 Dr. Mayorga continued to evaluate the injured individual and give her narcotic pain medications. He prescribed the same treatment for her complaints of intermittent pain on 04/15/2005 and on 05/27/2005. The MRI of 07/05/2005 revealed postoperative changes with probable fusion at L5/S1. There was a pseudo disc bulge without any thecal sac or nerve root compression. There was mild degenerative spondylosis with disc bulges from L2 to L5. On 07/28/2005 Dr. Mayorga continued to prescribe Lortab and Flexeril at the injured individual's request. She continued to receive chiropractic care.

Dr. Reynolds in a brief note dated 07/27/2005 stated that she had instability at L2/3 and a discogram was necessary if surgery was "contemplated." The injured individual had been evaluated several times since her alleged injury at the request of TWCC.

The latest note from Dr. Tuinstra is dated 07/28/2005 where he examined her at the request of TWCC. She now claimed to be "hurting all the time." She apparently could not sit for a long

time and therefore could not go out. On examination she could walk on her heels and toes, she could get in and out of a chair and on and off the examination table without any difficulty. Despite this she apparently had a ROM that was “severely restricted”. He also noted that the deep tendon reflexes were absent but does not specify if this was in all four extremities or only in the lower extremities. The injured individual’s complaints and Dr. Tuinstra’s findings are completely opposite to those recorded by the other examining and treating clinicians. Dr. Tuinstra then made the comment that it was “truly pathetic that this examining was getting worse because the red tape is getting more painful.” Dr. Tuinstra made her MMI status as of 06/03/2005 with a 10% PPI rating.

Dr. Mayorga continued to prescribe the same narcotic pain medications of Darvocet and Flexeril despite the injured individual complaining only of “intermittent pain and discomfort in her low back.” Her physical examination was essentially normal. The injured individual continued to receive chiropractic care. The note of 12/16/2005 from Dr. Mayorga documents that the injured individual requested refills of her medication and that the medications provided adequate relief. The physical examination is a verbatim quote of the physical exam on 10/28/2005 and 07/08/2005. Despite the absence of any objective clinical findings commensurate with her complaints and physical examination, she continued to receive narcotic pain medications and chiropractic care.

On 01/18/2006 she was evaluated by someone named Kendil C. Bienfang, LSA, OPA-C. The entire note only discusses the issue of her insurance, denial of the discogram and advice about the need to get an ombudsman. There is a notation that “when the money stopped coming in the attorney apparently dropped the case.” The chiropractor was apparently continuing to help the injured individual get health care. There was apparently no change in her status but she was said to have straight leg raise (SLR) test bilaterally at 90 degrees.

Dr. Reynolds discusses the discogram findings on 04/24/2006. She apparently had concordant pain from L2 to S1. The actual discogram report and post discogram reports are not provided for review. Despite the presence of concordant pain from L2 to S1, Dr. Reynolds recommended a fusion from L4 to the sacrum and “removal of the bad discs as they are encountered.” In addition he recommended that a lateral mass fusion with hardware should be done because of the many levels involved. It is interesting to note that he no longer states that the injured individual has instability at L2/3.

The injured individual’s clinical records since the time of the alleged incident have failed to identify organic disease commensurate with her complaints and of sufficient magnitude to have warranted the initial surgery. The reports of the preoperative MRI study and flexion-extension x-rays were not provided for review, but several clinicians who evaluated her after the surgery only identified a pre-existing spondylolisthesis without nerve root compression.

Her clinical examination has never been very impressive or commensurate with her imaging findings. She also appeared to describe different complaints to the various clinicians involved in her care. The myelogram CT scan findings were also not suggestive of pathology commensurate with her changing symptomatology. Finally, the discogram, which is reported to reveal

concordant pain from L2 to S1, fails to substantiate Dr. Reynolds initial assertion of instability at L2/3. The absence of a completely pain free level, per the note of 04/24/2006 from Dr. Reynolds, makes it difficult to accept the relevance of the results. In this injured individual, with complaints of pain from L2 to S1 on the discogram and the clinical history as summarized above, further surgical treatment is not substantiated by the data.

**RECORDS REVIEWED:**

Notification of IRO Assignment dated 06/26/06

MR-117 dated 06/26/06

DWC-60

DWC-69: Reports of Medical Evaluation with exam dates of 07/28/05, 02/02/05, 08/04/04, 06/22/04, 03/29/04

DWC-73: Work Status Reports dated 05/29/03 through 04/24/06 and two with return to work dates of 06/10/04, 06/10/05

MCMC: IRO Acknowledgment and Invoice Notification Letter dated 06/26/06

Ian J. Reynolds, M.D.: Consult cover note (handwritten) dated 05/24/06

Ian J. Reynolds, M.D.: Form notes (handwritten) dated 05/13/06, 05/11/06

Explanation of Benefits dated 05/01/06 (four)

Ian Reynolds, M.D.: Office notes dated 04/24/06, 07/27/05, 12/20/04

Kendil Bienfang, LSA, OPA-C: Office note dated 01/18/06

Gilbert Mayorga, M.D.: Consultations dated 12/16/05, 10/28/05, 07/08/05

Churchill Evaluation Centers: Letter of Clarification dated 09/25/05 from Theodore Tuinstra, D.O.

Churchill Evaluation Centers: Reports of Medical Evaluation dated 07/28/05, 02/02/05 from Theodore Tuinstra, D.O. with attached Review of Medical History, Physical Examination

River Oaks Imaging and Diagnostic: MRI lumbar spine dated 07/05/05, lumbar myelogram, CT lumbar spine dated 08/31/04

Gilbert Mayorga, M.D.: Office notes dated 05/27/05, 05/28/03

Psychiatric Services International: Progress Notes (handwritten) dated 05/03/05

Gilbert Mayorga, M.D.: Consultations dated 04/15/05, 02/25/05, 01/14/05

James G. Wellington, B.S., D.C.: Review of Designated Doctor Report dated 03/10/05

Hope Herrera, Billing Department: Letter dated 03/04/05

Qualcare Medical & Rehab: Industrial Rehabilitation Weekly Progress Summary (handwritten) dated 02/09/05

Qualcare Medical & Rehabilitation: Form note dated 01/03/05 with "Code" and "Procedure"

Qualcare Medical & Rehabilitation: Mental Health Assessment dated 12/29/04 from Gloria Cantu, Ed.D.

Gilbert Mayorga, M.D.: Initial Consultation dated 12/17/04

J. G. Wellington, D.C.: Transcription notes dated 12/07/04 through 01/11/06

James G. Wellington, B.S.: Initial Narrative Report dated 11/30/04

Employee's Request to Change Treating Doctors dated 11/22/04, 10/08/04

East Houston Orthopedics & Sports Medicine: Letters dated 11/16/04, 10/07/03 from E. Brooke Roberts, M.D.

Qualcare Medical & Rehab: Letter dated 11/01/04 from Marie Salinas, Collections Manager

East Houston Orthopedics & Sports Medicine: Medical Report dated 10/18/04 from E. Brooke Roberts, M.D.

James G. Wellington, B.S., D.C.: Prescription note dated 10/14/04

Pain & Spinal Rehabilitation Institute: Initial Evaluation dated 09/13/04 from Triet Huynh, M.D.

East Houston Orthopedics & Sports Medicine: Re-Exam dated 08/19/04 from E. Brooke Roberts, M.D.

Churchill Evaluation Centers: Report of Medical Evaluation dated 08/04/04 from Joel Nachimson, M.D. with attached Review of Medical History, Physical Examination

Qualcare: Letters dated 07/07/04, 04/07/04

Edward Roberts, M.D.: Prescription dated 06/27/04

East Houston Orthopedics & Sports Medicine: Final Report dated 06/23/04 from E. Brooke Roberts, M.D.

Houston Premier DME: Letter dated 06/03/04 from Alex Cuevas, Office Manager

East Houston Orthopedics & Sports Medicine: Prescription notes dated 05/21/04, 03/21/04

Houston Premier DME: Reconsideration Request for Payment dated 05/20/04 from Lilly Mendoza, Collection Supervisor

Qualcare Medical & Rehab: Functional Capacity Evaluation Summary Report dated 04/15/04 from Maria Romina Limbo, P.T.

Robert E. Whitsell, M.D.: Independent Medical Evaluation dated 04/08/04

Houston Radiology Associated: Letter dated 12/05/03 from Stacey Langley, Patient Account Representative

Apria Healthcare Inc.: Initial Prescription dated 10/13/03

The Methodist Hospital: Operative Report dated 10/09/03 from Edward Roberts, M.D.

The Methodist Hospital: Lumbar spine radiograph dated 10/09/03

The Methodist Hospital: Patient information sheet dated 10/09/03

The Methodist Hospital: Ambulatory/Short Stay Record (handwritten) dated 10/03/03

UniMed Direct: Review Determination letters dated 09/12/03, 10/08/03, 05/06/04, 06/02/04, 08/27/04, 09/17/04, 05/16/06, 05/24/06

Corvel: Letter dated 09/03/03 from Peer Review Unit

Marvin E. Van Hal, M.D.: Letter dated 08/30/03

Royal & Sun Alliance: Fax cover sheet dated 08/26/03 with handwritten note

Corvel: Utilization Review dated 08/23/03 from Diana Helms, Utilization Review Nurse

Qualcare Medical & Rehab: Lumbar Exercise Flow Sheets dated 06/19/03 through 07/28/03, 07/29/03 through 08/25/03, 12/01/03 through 12/31/03, 01/06/04 through 01/28/04, 02/03/04 through 03/02/04, 03/04/04 through 03/30/04, 04/02/04 through 04/08/04, 08/23/04 through 09/28/04

Physical Therapy Progress Reports (handwritten) dated 06/13/03, 06/12/03, 05/28/03

Lumbar Spine Evaluation/Care Plan (handwritten) dated 06/12/03

Plan of Care Spine dated 06/12/03 (handwritten)

E. Brooke Roberts, M.D.: Office notes dated 06/10/03 through 11/15/04

Letter from claimant dated 11/12/04 (handwritten)

Handwritten doctor's note dated 05/29/03 (handwritten – "History" at top)

Bayport Occupational Medical Center: Employee Status dated 05/29/03

Qualcare Medical & Rehab: Physical Therapy Daily Notes (handwritten) dated 01/05/03 through 02/08/05

James G. Wellington, B.S., D.C.: Undated report requesting pre-certification  
James G. Wellington, B.S., D.C.: Undated Review of Records Consultation  
Ian J. Reynolds, M.D.: Procedure Orders (date not legible)  
Undated article on "Billing and Reimbursement for Case Management"  
Article entitled, "Health Care Procedure Coding System" Color Coded 2004

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 1st day of August 2006.**

Signature of IRO Employee: \_\_\_\_\_

Printed Name of IRO Employee: Beth Cucchi