

July 18, 2006

TX DEPT OF INS DIV OF WC  
AUSTIN, TX 78744-1609

CLAIMANT: \_\_\_

EMPLOYEE: \_\_\_

POLICY: M2-06-1630-01

CLIENT TRACKING NUMBER: M2-06-1630-01 5278

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Medical Review Institute of America (MRIOA) has been certified by the Texas Department of Insurance as an Independent Review Organization (IRO). The Texas Department of Insurance Division of Workers Compensation has assigned the above mentioned case to MRIOA for independent review in accordance with DWC Rule 133 which provides for medical dispute resolution by an IRO.

MRIOA has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review all relevant medical records and documentation utilized to make the adverse determination, along with any documentation and written information submitted, was reviewed. Itemization of this information will follow.

The independent review was performed by a peer of the treating provider for this patient. The reviewer in this case is on the DWC approved doctor list (ADL). The reviewing provider has no known conflicts of interest existing 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.

**Records Received:**

Records received from the State:

- Notification of IRO assignment dated 6/27/06 2 pages
- Medical dispute resolution request undated 2 pages
- Table of disputed services undated 2 pages
- Review determination dated 6/2/06 3 pages
- Review determination dated 5/25/06 5 pages
- Exercise plan for the patient dated 3/14/06 10 pages
- MRI results dated 12/06/05 1 page

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Records received from the Respondent:

- Letter from Parker & Associates dated 7/5/06 1 page
- Designated Doctor Summary dated 7/12/05 4 pages
- Case review dated 6/14/05 4 pages
- Designated Doctor Evaluation dated 3/2/05 2 pages
- Designated Doctor Evaluation dated 7/21/05 4 pages
- Visit notes undated 1 page
- TWCC-69 Report of medical evaluation undated 1 page
- Employers first report of injury or illness dated 11/18/04 1 page
- Visit note dated 3/24/05 1 page
- Progress notes dated 11/23/04 1 page
- Visit notes dated 11/30/04 – 2/16/05 7 pages
- TWCC-69 Report of medical evaluation dated 3/2/05 1 page
- Soap notes dated 4/14/05 – 12/9/05 44 pages
- Visit notes dated 1/20/06 2 pages
- Progress notes dated 1/20/06 – 4/4/06 7 pages
- PT note dated 11/18/04 1 page
- Initial evaluation note dated 11/18/04 1 page
- PT note dated 11/19/04 1 page
- Progress notes dated 11/19/04 1 page
- PT note dated 12/15/04 1 page
- Initial evaluation note dated 12/15/04 1 page
- PT note dated 12/06/04 1 page
- PT note dated 12/17/04 1 page
- PT note dated 1/4/05 1 page
- Progress report dated 1/5/05 1 page
- PT note dated 1/5/05 1 page
- Imaging report dated 5/6/05 1 page
- Radiology report dated 11/19/04 2 pages
- Radiology report dated 12/5/05 1 page

Records received from the Requestor:

- Consult notes dated 10/25/05 – 2/6/06 6 pages
- Letter of dispute dated 4/25/06 4 pages
- Procedure note dated 5/4/06 2 pages
- Letter from Dr. Cyr undated 1 page
- Follow up visit note dated 5/15/06 2 pages
- Follow up visit note dated 6/1/06 2 pages
- Consult note dated 3/16/06 3 pages
- Psychological Evaluation dated 11/23/05 4 pages
- NCV/SEP dated 5/27/05 5 pages
- Electrodiagnostic results dated 5/27/05 6 pages

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- Lumbar MRI findings dated 12/06/05 1 page
- Radiology report dated 12/2/04 1 page

### **Summary of Treatment/Case History:**

The patient is a 42-year-old male who sustained an injury to his lower back in \_\_\_ when he lifted approximately 80 pounds of brake shoes. Following this injury, the patient developed pain in the lower back with radiation down his right leg.

### **Questions for Review:**

Item(s) in dispute: preauth denied for L5-S1 fusion ALIF under decompression.

### **Explanation of Findings:**

The records from Dr. James W. Simmonds indicate that 60 percent of discomfort was axial and 40 percent was pain in the extremity. Discomfort was between 8/10 to 10/10.

The patient underwent physical therapy for one year and he also underwent epidural steroid injections, which produced only transient relief of his pain.

On 10/25/05 Dr James W. Simmonds expressed an opinion that the patient suffers from L5/S1 right paracentral disc protrusion, right lower extremity radiculopathy, and low back pain. Dr. Simmonds recommended discogram with CT scan at the levels of L3/L4, L4/L5 and L5/S1. Dr. Simmonds re-evaluated the patient on 12/09/05 and he reiterated a diagnosis of L5/S1 right paracentral disc protrusion from the MRI performed on 11/19/04 and right lower extremity radiculopathy confirmed by EMG and NDC performed on 5/27/05.

On 4/25/04 Dr. Stephen Cyr, orthopedic surgeon, dictated a letter on the patient when he disputed second opinion provided by Dr. Daniel Gutteriz, a neurosurgeon. (The opinion of Dr. Gutteriz was not provided for review.)

In the letter Dr. Cyr cited multiple references from orthopedic and neurosurgical literature supporting his conclusion that the patient would benefit from L5/S1 segmental fusion. Dr. Cyr, in his letter stated that one of the indications for fusion in this patient's case is the fact that at least 50 percent of the patient's pain is localized in the low back area.

On 5/4/06 the patient underwent proactive discography at the levels from L3/L4 down to the level of L5/S1. The L5/S1 level disclosed 6/10 concordant pain in the lower back with pain radiating down the right leg. The study was consistent with annular disruption at this level. Two other injected discs appear to be within normal limits.

A letter, which is not dated, but is signed, by Eloy Castenada, FNP, and Stephen J Cyr was reviewed.

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The letter states that the opinion of the authors, the patient is not at maximum medical improvement. This letter also states that Dr. Cyr is confident that the patient will have successful surgical outcomes and he also stated that he had no clinical failures after surgery of any nature for that matter.

Unfortunately, lumbar fusions are not always successful.

Dr. Cyr, in his justification of the procedure, cites studies by Tothman and Simenoe where patients with one level disease are likely to have mid-90 percent rate of good to excellent outcome.

On 6/1/06 Dr. Costanza and Dr. Cyr again dictated a note on the patient and in the note, dr. Cyr stated that current clinical success rate and return to work success rate with individuals which have this patients pathology is 100 percent. Dr. Cyr also stated that he has not had one failure of any individual with this pathology to return to regular work with no restrictions.

Psychological evaluation performed on 11/23/05 states that the patient has multiple significant stressors and he is in significant psychological distress primary and secondary to his injury and impairment.

On 3/6/06 the patient was seen by Dr. Daniel Gutierrez who stated that the patient has no significant neurological deficit and he recommended conservative therapy but he also stated that if the patient's symptoms did not improve he would recommend possible myelography in anticipation of possible surgical intervention. Dr. Gutierrez stated that because there was no evidence of instability, he did not believe that fusion with instrumentation is indicated. Dr. Gutierrez noticed that the patient experiences low back pain with bilateral radiation to his lower extremities, Neurological examination was completely unremarkable. Straight leg raising was negative.

On 7/21/05 the patient was seen by Dr. James Bugg who placed the patient in the DRE category III with 10 percent whole person impairment.

Examination performed by Dr. Bugg was basically unremarkable with normal strength, normal reflexes and axial compression was producing only mild pain in the lower back. There were no significant Waddell signs.

There is evidence that the patient suffers from ruptured disc at the level of L5/S1. Provocative discography produced significant pain at the level of L5/S1. The patient has no neurological deficit. In spite of normal neurological examination the patient persists to have severe axial low back pain with radiation down both legs, he would be a candidate for surgical intervention.

There is no need for further diagnostic studies, specifically CT and myelography. In none of the independent evaluations there was no evidence of Waddell signs and psychological evaluation

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essentially shows an individual with major distress, which is secondary to disability and chronic pain.

Because of severe axial low back pain, discectomy alone would not be successful in relieving the patient's low back pain but it could relieve his radicular pain.

**Conclusion/Decision to Certify:**

Item(s) in dispute: preauth denied for L5-S1 fusion ALIF under decompression.

There is agreement with Dr. Cyr that the most appropriate surgical treatment would be anterior posterior fusion at the level of L5/S1 with discectomy.

**References in Support of Decision:**

American Association of Neurological Surgeons by Dr. Edward Benzel, MDD

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The physician who provided this review is board certified by the American Board of Neurological Surgery. This reviewer is a member of the American Association of Neurological Surgeons, the American Medical Association and the International Association of Neurological Surgeons and Neurologists. This reviewer is a fellow of the American College of Surgeons. This reviewer has been in active practice since 1966.

**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.

Chief Clerk of Proceedings /  
Appeals Clerk  
P. O. Box 17787  
Austin, TX 78744

A copy of this decision should be attached to the request. 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 Division 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 21 day of Jul/2006.

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Raquel Goodbeau

MRIOA is forwarding this decision by mail, and in the case of time sensitive matters by facsimile, a copy of this finding to the treating provider, payor and/or URA, and the DWC.

It is the policy of Medical Review Institute of America to keep the names of its reviewing physicians confidential. Accordingly, the identity of the reviewing physician will only be released as required by state or federal regulations. If release of the review to a third party, including an insured and/or provider, is necessary, all applicable state and federal regulations must be followed.

Medical Review Institute of America retains qualified independent physician reviewers and clinical advisors who perform peer case reviews as requested by MRIOA clients. These physician reviewers and clinical advisors are independent contractors who are credentialed in accordance with their particular specialties, the standards of the American Accreditation Health Care Commission (URAC), and/or other state and federal regulatory requirements.

The written opinions provided by MRIOA represent the opinions of the physician reviewers and clinical advisors who reviewed the case. These case review opinions are provided in good faith, based on the medical records and information submitted to MRIOA for review, the published scientific medical literature, and other relevant information such as that available through federal agencies, institutes and professional associations. Medical Review Institute of America assumes no liability for the opinions of its contracted physicians and/or clinician advisors. The health plan, organization or other party authorizing this case review agrees to hold MRIOA harmless for any and all claims which may arise as a result of this case review. The health plan, organization or other third party requesting or authorizing this review is responsible for policy interpretation and for the final determination made regarding coverage and/or eligibility for this case.

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Case Analyst: Raquel G ext 518

cc: requestor and respondent

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