Clear Resolutions Inc.

An Independent Review Organization

Amended September 20, 2006
September 20, 2006

DWC Medical Dispute Resolution
Fax: (512) 804-4868 Delivered via Fax or Email

Patient / Injured Employee ____
MDR Tracking #: M2-06-1797-01
IRO #: 5251

Clear Resolutions has been certified by the Texas Department of Insurance as an Independent Review Organization. The Division of Worker's Compensation Commission has assigned this case to Clear Resolutions for independent review in accordance with DWC Rule 133.308 which allows for medical dispute resolution by an IRO.

Clear Resolutions 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.

The independent review was performed by a matched peer with the treating doctor. This case was reviewed by a licensed MD, board certified and specialized in Orthopedic Surgery. The reviewer is on the DWC Approved Doctor List (ADL). The Clear Resolutions health care professional has signed a certification statement stating that no known conflicts of interest exist between the reviewer and any of the treating doctors or providers or any of the doctors or providers who reviewed the case for a determination prior to the referral to Clear Resolutions for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to the dispute.

A certification 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.

RECORDS REVIEWED

Notification of IRO assignment, information provided by requestor, information provided by respondent, and treating doctor (s) including but not limited to:

- MRI, lumbar spine, 07/05/05
- MRI, thoracic spine, 07/22/05
- MRI, cervical spine, 07/22/05
- Office visit, Dr. Henry, 07/28/05, 09/01/05, 09/29/05, 11/04/05, 12/09/05, 02/01/06, 05/18/06, 05/26/06, 06/05/06
- Lumbar epidural steroid injection, 09/22/05
- Proceed with EMG/NCS bilateral upper extremities, 10/03/05
- EMG/NCS, 10/14/05
- Dr. Pratt, 11/01/05

- Peer review, 05/30/06, 06/29/06
- Appeal letter, Dr. Henry, 06/21/06
- Request for resolution of medical dispute, 07/31/06

CLINICAL HISTORY

The Patient is a 47 year old male who sustained an injury on ___ while moving a heavy cabinet. Boxes on top of the cabinet fell and struck the Patient's head. He presented with upper and lower back pain and headaches. A lumbar MRI on 07/05/05 noted a disc herniation at L5-S1 on the left with some slight impingement on the left S1 nerve root. At L2 –L3 there was disc herniation with left L2 nerve root and dorsal root ganglion impingement. There was some edema within the L4-5 interspinous ligament. At this level, there was a broad based disc protrusion with impingement on the L5 nerve roots but no spinal or neuroforaminal stenosis.

Treatment consisted of anti-inflammatory medications, therapy and a series of lumbar epidural steroid injections. The Patient continued with low back and bilateral lower extremity pain. Flexion and extension films of the lumbar spine showed some disc space narrowing at L4-5 and L5-S1 with no evidence of instability.

Electrodiagnostic studies reported evidence of bilateral S1 radiculopathy and L2, L3 and S1 left radiculopathy. The Patient underwent a selective nerve root block on the left at S1 with only temporary relief. The treating physician, Dr. Henry, initially recommended decompression of L4-5 and L5-S1.

An office note on 05/18/06 noted increased back pain. The Patient reported sixty percent back pain and percent leg pain. Clinical findings noted no motor strength and sensation intact to both lower extremities. Sensation was slightly diminished over the left L5 distribution and there was increased pain with forward flexion. The Patient had failed conservative treatment and the physician recommended three hundred sixty-degree fusion at L4-5 and L5-S1 based on the predominance of back pain to leg pain. The surgery was not approved. In an appeal letter on

06/21/06, Dr. Henry indicated a direct foraminotomy would not resolve the Patient's back pain and an indirect foraminotomy would provide distraction across the intervertebral disc and open up the neural foramina to provide an indirect foraminal decompression. Therefore, he felt the best option was for surgical fusion to provide relief of back and leg pain. The surgery was not approved.

DISPUTED SERVICE (S)

Under dispute is the concurrent and/or prospective medical necessity of 360 degree fusion @L4-L5 and L5-S1.

DETERMINATION / DECISION

The Reviewer agrees with the determination of the insurance carrier.

RATIONALE / BASIS FOR THE DECISION

It appears from this medical records the Patient has a little more back than leg pain and has significant degenerative disc disease of his lumbar spine with nerve root impingement. This record also documents an abnormal EMG with a L2 and L3 left-sided radiculopathy and the possibility of a bilateral S1 radiculopathy. It appears the Patient has failed conservative care and has ongoing complaints with decreased sensation in the L5 nerve root distribution on the left. Indications for lumbar fusion surgery can be structural instability. Indications for decompression can be foraminal stenosis, disc bulging/disc degeneration with spinal stenosis. It would seem this Patient is a candidate for multi-level foraminotomies, which might cause a structural instability if done aggressively at multiple levels necessitating a multi-level fusion. Based on these tests it is

unknown how much decompression would need to be done at these levels to give freedom to the nerve roots. Clearly fusion for back pain alone has not been proven in the literature to be a totally successful operation.

Screening Criteria

- ACOEM Guidelines Chapter 12, page 307
- Official Disability Guidelines, Treatment in Worker's Comp, 4th edition, 2006, Low Back, page 814
- Rothman and Simeone, The Spine, Volume II, 5th edition, page 936

CERTIFICATION BY OFFICER

Clear Resolutions has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. Clear Resolutions has made no determinations regarding benefits available under the injured employee's policy.

As an officer of Clear Resolutions Inc., I certify that there is no known conflict between the Reviewer, Clear Resolutions and/or any officer/employee of the IRO with any person or entity that is a party to the dispute.

Clear Resolutions is forwarding, by mail or facsimile or electronic means, a copy of this finding to the DWC, the Injured Employee, the Respondent, the Requestor, and the Treating Doctor.

Sincerely,
Clear Resolutions Inc.

Chris Crow
President & Chief Resolutions Officer

Cc:

Liberty Mutual Fire Insurance / Hammerman & Gainer
Attn: Carol Crewey
Fax: 603-334-8064

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.

The party appealing this decision shall deliver a copy of its written request for a hearing to other party involved in this dispute.

I hereby certify, in accordance with DWC Rule 102.4 (h), that a copy of this Independent Review Organization decision was sent to the carrier, requestor, patient (and/or the patient's representative) and the DWC via facsimile, U.S. Postal Service or both on this 20th day of September, 2006.

Name and Signature of Clear Resolutions Inc. Representative: