

September 11, 2006

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

CLAIMANT: ___

EMPLOYEE: ___

POLICY: M2-06-1910-01

CLIENT TRACKING NUMBER: M2-06-1910-01/5278

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, 8/29/06 – 2 pages
- Medical Dispute Resolution Request/Response, 8/29/06 – 3 pages
- Table of Disputed Services, undated – 1 page
- Review Determinations, 7/25/06-7/14/06 – 4 pages

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Records Received from Dr. Henderson:

- Request for Preauthorization for Surgery, 7/11/06 – 1 page
- Chart Notes, 5/25/05–7/24/06 – 4 pages
- MRI of the Lumbar Spine, 4/21/05 – 1 page
- Prescription, 5/17/05 – 1 page
- Lumbar X-Rays, 5/19/05 – 1 page
- Patient Information Form, 2/10/05 – 3 pages
- Patient Progress Notes, 2/11/05–8/28/06 – 9 pages
- Pain Management Progress Notes, 2/17/06 – 1 page
- Office Notes, 1/11/06–6/19/06 – 13 pages
- Texas Worker's Compensation Work Status Reports, 2/10/05–8/18/06 – 24 pages
- Functional Capacity Evaluation, 3/3/05 – 19 pages

Records Received from the Respondent:

- Letter to MRIOA, 9/5/06 – 1 page
- Independent Review Organization Summary, 9/5/06 – 2 pages
- Spinal Surgery Sheet, undated – 5 pages
- Various Articles, various dates – 14 pages
- Brief Summary, undated – 7 pages
- References for Screening Criteria, undated – 3 pages
- Review Determinations, 1/26/06–7/14/06 – 7 pages
- Employer's First Report of Injury or Illness, 2/7/05 – 1 page
- Chart notes, 5/25/05–7/24/05 – 23 pages
- Texas Worker's Compensation Work Status Reports, 2/10/05–8/18/06 – 22 pages
- Consultation Note, 2/14/06 – 2 pages
- Letter of Medical Necessity, 2/22/05 – 1 page
- Functional Capacity Evaluation, 3/3/05 – 21 pages
- MRI of the Lumbar Spine, 4/21/05 – 1 page
- Lumbar X-Rays, 5/19/05 – 1 page
- Investigation Letter and Results, 6/28/05 – 7 pages
- Pain Management Progress Notes, 8/29/05–2/17/06 – 2 pages
- Postoperative Note, 2/2/06–3/2/06 – 2 page
- Patient Progress Notes, 2/11/05–8/28/06 – 9 pages

Summary of Treatment/Case History:

This is a 33-year-old female who was lifting some stoneware at work. She suffered a twisting extension injury. She has had chronic lower back pain. The doctor reports that she has an unstable level at L5–S1 with bilateral pars defect in association with grade one spondylolisthesis. The MRI scan identifies a decreased signal at L5–S1 and degenerative changes at L2–3. Flexion extension x–

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rays have not been identified. Epidural steroid injections were apparently denied. The examination shows a negative straight leg raising test and no motor or sensory dysfunction.

The patient has had two epidural steroid injections with the reported improvement in the radicular symptoms. She has no clinical deficits described and she has no neurological findings. She is noted to have a normal gait pattern with no neurological findings and negative nerve tension signs on examination.

Questions for Review:

Item(s) in dispute: Preauthorization request for anterior interbody fusion L5-S1 (#22558), retroperitoneal exposure and discectomy L5-S1 (#64999), anterior fixation (#22851), posterior decompression L5-S1 (#63047), transverse process fusion L5-S1 (#22612), posterior internal fixation (#22840), bone graft allograft (#20930), bone graft autograft in situ (#20936), bone graft autograft iliac crest (#20938), bone marrow aspirate (#38241), cyber tech TLSO (#L0637), and a 2-3 day length of stay.

Explanation of Findings:

Prior to considering a spinal fusion, it should be verified that the patient's pain is real, chronic, intolerable, is accompanied by either neurological deficit, significant nerve tension signs, and restricted motion with physical findings of the same, neurological deficit, instability, positive electrodiagnostic studies, positive MRI or CT scan evidence of either disc herniation or significant stenosis.

Preferably, work modifications and ergonomic evaluation have been completed and permanent modified work duties should have been offered and tried before considering surgical treatment.

This patient is reported to have developed lower back pain following her work duties. She is noted to have chronic lower back pain, L5-S1 spondylolisthesis with spondylitic defect, history of breast cancer with surgical treatment, cholecystectomy, anxiety, and depression. She is not a smoker.

Though the medical progress reports indicate that she has severe back pain and radiating pain down the leg, the physical examination reports do not identify nerve tension signs, neurological deficit, or restricted motion.

The supplied medical records suggest that the patient is socially, personally, and functionally independent.

Though she is noted to have chronic prescriptions for medication, the indication in the medical records does not substantiate the ongoing pain complaints.

Though the radiographic reports identify spondylitic defect and spondylolisthesis at L5–S1, there is medical record documentation of normal electrodiagnostic studies, and no evidence of instability is described though there is a claim of "mobility."

Investigative surveillance reports have identified a normal gait pattern and evidently the patient is able to drive and be socially independent and has also noted to be outside the house from 9:41 a.m. until 4:15 p.m. on the surveillance. There was no mention of abnormality of gait, difficulty in sitting, driving walking, entering, or exiting the vehicle.

Conclusion/Decision to Not Certify:

Item(s) in dispute: Preauthorization request for anterior interbody fusion L5–S1 (#22558), retroperitoneal exposure and discectomy L5–S1 (#64999), anterior fixation (#22851), posterior decompression L5–S1 (#63047), transverse process fusion L5–S1 (#22612), posterior internal fixation (#22840), bone graft allograft (#20930), bone graft autograft in situ (#20936), bone graft autograft iliac crest (#20938), bone marrow aspirate (#38241), cyber tech TLSO (#L0637), and a 2–3 day length of stay.

The requested services are not medically necessary.

Applicable Clinical or Scientific Criteria or Guidelines Applied in Arriving at Decision:

Surgery is appropriately considered for patients with unrelieved back and leg pain, persistent symptoms, persistent objective findings, neuropathy, or positive clinical findings corroborated by investigation with radiographs, MRI findings, and EMG studies.

Comorbidity factors should be excluded. The presence of a herniated disk, with spondylolisthesis indicates a poor outcome with discectomy alone, and usually suggests a spinal fusion at that level.

ACOEM guidelines Chapter 12, page 305

Referral for surgical consultation is indicated for patients who have:

- Severe and disabling lower leg symptoms in a distribution consistent with abnormalities on imaging studies (radiculopathy), preferably with accompanying objective signs of neural compromise
- Activity limitations due to radiating leg pain for more than one month or extreme progression of lower leg symptoms
- Clear clinical, imaging, and electrophysiologic evidence of a lesion that has been shown to benefit in both the short and long term from surgical repair
- Failure of conservative treatment to resolve disabling radicular symptoms

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ACOEM guidelines Chapter 12, page 306

Patients with comorbid conditions, such as cardiac or respiratory disease, diabetes, or mental illness, may be poor candidates for surgery. Comorbidity should be weighed and discussed carefully with the patient.

ACOEM guidelines Chapter 12, page 307

Patients with increased spinal instability after surgical decompression at the level of degenerative spondylolisthesis may be candidates for fusion.

It should be noted that the fusion rate is not related to the outcome or to the use of internal fixation. Such findings continue to question the whole premise of doing the fusion as dealing with the true source of the symptoms.

References Used in Support of Decision:

1. Milliman Care Guidelines, Inpatient and Surgical Care, 9th Edition, Lumbar spinal fusion
2. Krismer M. Fusion of the lumbar spine. A consideration of the indications. *Journal of Bone and Joint Surgery*. British Volume 2002; 84(6): 783
3. Kwon BK, et al. Indications, techniques, and outcomes of posterior surgery for chronic low back pain. *Orthopedic Clinics of North America*
4. Slosar PJ. Indications and outcomes of reconstructive surgery in chronic pain of spinal origin. *Spine* 2002; 27(22): 2555–62; discussion 63
5. Washington State Department of Labor and Industries. Guidelines for lumbar fusion (arthrodesis). Available at: http://www.guideline.gov/summary/summary.aspx?ss=6&doc_id=3423&string=lumbar+AND+fusion. Accessed September 24, 2003
6. "Persistent low back pain". Carragee EJ, *New England Journal of Medicine* 352: 18. 1891 – 1898
7. "Spinal fusion surgery—the case for restraint" by Deyo RA, et al. *New England Journal of Medicine* 350; seven pages 722 – 726
8. Fischgrund JS et al. degenerative lumbar spondylolisthesis with spinal stenosis: a prospect of randomized study comparing decompressive laminectomy and arthrodesis with and without spinal instrumentation. *Spine* 1997 December 15; 22 [24]: 2807 – 2812
9. Fritzell P et al. lumbar fusion versus nonsurgical treatment for chronic low back pain, a multicenter randomized controlled trial from the Swedish lumbar spine study group, *spine* 2001; 26: 2521 – 2532
10. Moller H et al. instrumented and non-instrumented posterolateral fusion and about spondylolisthesis -- a prospective randomized study: part two. *Spine* 2000 July 1; 25 [13]: 1716 -- 1721

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The physician providing this review is board certified in Orthopaedic Surgery. The reviewer has held academic appointments as Assistant Instructor at a state university, Assistant Professor of Orthopaedics, Assistant Professor of Neurosurgery and Director of an orthopaedic hospital spine center. The reviewer has been extensively published and has given numerous presentations and organized seminars in his field of expertise. The reviewer has been in active private practice since 1983.

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 11 day of Sep/2006.

Jamie Cook

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

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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: Jamie C ext 583

CC: requestor and respondent