

Clear Resolutions Inc.

An Independent Review Organization
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Austin, TX 7831

November 7, 2006

DWC Medical Dispute Resolution
Fax: (512) 804-4868

Delivered via Fax

Patient / Injured Employee _____
TDI-DWC #: _____
MDR Tracking #: M2-07-0032-01
IRO #: 5327

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, information provided by the treating doctor(s), including but not limited to:

- Demographic form, noted, 01/06/05
- Emergency Room nurse's notes, 01/06/05 and 01/10/06
- X-ray, chest, 01/10/05
- Emergency Room, report, 01/11/05
- X-ray, left shoulder, noted, 01/12/05
- X-ray, lumbosacral spine, 01/12/05

- Note from Dr. Riley regarding office visit, 02/18/05
- Initial psychological evaluation, 04/06/05
- Office visit, Dr. Riley, 04/29/05, 07/22/05, 09/01/05, 10/13/05, 12/06/05, 01/03/06, 02/14/06, 05/16/06 and 09/05/06
- History and Physical, Dr. Henry, 05/16/05
- Labs, noted, 05/24/05
- EKG, noted, 05/24/05
- MRI, lumbar spine without contrast, 05/27/05
- Office visit, Dr. Henry, 06/13/05, 09/12/05, 10/10/05, 01/09/06, 02/06/06, 05/01/06, 06/21/06 and 08/14/06
- Office visit, Harold Hall, PA-C, 07/08/05
- Appeal regarding denial for facet injections, Shawn Henry, 07/11/05
- Operative report, 07/14/05, 01/25/06, 04/04/06
- Shoulder evaluation, physical therapy, noted, 07/18/05
- Physical therapy note regarding left shoulder, noted, 07/20/05
- Dr. Wasserburger, Impairment Rating, 10/05/05
- Office visit, Dr. Small, 01/25/06
- CT post discogram, 04/04/06
- Dr. Garcia, 06/21/06
- Dr. Kurzner, 08/28/06
- Note request for records, 09/28/06
- Note from attorney, 10/04/06

CLINICAL HISTORY

The Patient is a 45 year old male, who sustained injuries to his left shoulder and exacerbated his prior low back pain on _____. X-rays of the lumbosacral spine on 01/13/05 showed mild degenerative changes at T12-L1 and L2-3. He began treating for depression, and suicidal ideations in 04/05. Dr. Henry evaluated the Patient on 05/16/05 for complaints of low back and intermittent right leg pain. There was some tenderness to palpation over the L4-5 and L5-S1 regions, mostly on the right, otherwise the examination was normal. X-rays that day including flexion and extension films showed no evidence of instability, a compression fracture involving the superior endplate of the L1 vertebral body which was difficult to tell if it was old or new. An MRI of the lumbar spine on 05/27/05 showed unchanged dehydration and desiccation of the L5-S1 disc, unchanged paracentral L5-S1 disc protrusion which continued to replace fat within the anterior epidural space near to the expected origin of the right S1 nerve root and an unchanged small radial tear or fissure within the displaced disc.

The Patient had continued low back pain. Dr. Wasserburger performed an MMI/impairment rating exam on 10/05/05 for continued pain on the right side from the central aspect out towards the right iliac crest with a pins and needles type sensation. The exam that day noted intermittent limping on the right lower extremity, increased pain on the right with left single limb balance with right knee and hip flexion, and on the right lumbosacral junction in prone left knee flexion with hip extension. Right knee flexion with hip extension caused a slight increase in pain on the right and right thigh thrust maneuver was slightly positive. Right sided Patrick's was tighter on the left, but did not necessarily produce lumbosacral junction or right SI pain. Right sided lumbar facet/SI pain was diagnosed. Dr. Wasserburger did not feel the Patient was at maximum medical improvement in regards to his lumbar spine; only the left shoulder.

Finally on 01/25/06 the Patient underwent lumbar zygapophysial joint injection bilaterally at L4-5 and L5-S1 facet joints without any relief of the back pain. A lumbar discogram of L3-4, L4-5 and L5-S1 performed on 04/04/06 showed concordant pain at L3-4 with

a central annular fissure and concordant pain at L5-S1. The post CT showed a disc/bulge protrusion in the central/right paracentral region of L5-S1. L3-4 and L4-5 were normal. An artificial disc replacement of L3-4 and L5-S1 was recommended. This was denied on 06/21/06 and 08/28/06 due to being investigational. A note from the attorney dated 10/04/06 indicated that the Patient had an Independent Medical Examination on 09/12/06 by Dr. Golovko who stated that the Patient's problems may be stemming more from the SI joint as opposed to the discs and thus raised concern regarding the effectiveness of the proposed procedure in alleviating the symptoms. This is under dispute.

DISPUTED SERVICE (S)

Under dispute is the concurrent and/or prospective medical necessity of arthroplasty @ L3-4, L5-S1, LOS 2-3.

DETERMINATION / DECISION

The Reviewer agrees with the determination of the insurance carrier.

RATIONALE / BASIS FOR THE DECISION

The Patient has been treating for low back and right lower extremity pain and has diagnoses of low back pain with some internal derangement at L5-S1, diskogenic pain at L3-4 and L5-S1, and right sided lumbar facet/sacroiliac pain. An L3-4, L5-S1 arthroplasty was recommended. Artificial disc replacement at this time lacks long-term well controlled peer reviewed literature which proves its effectiveness or provides similar or superior results than the standard fusion. Thus, artificial disc replacement would not be considered mainstream orthopedics and therefore remains investigational. Further clinical trials are necessary to determine the effects on adjacent segments. Therefore, the Reviewer cannot recommend the proposed arthroplasty of L3-4, L5-S1 as being medically necessary.

Screening Criteria

General:

In making his determination, the Reviewer had reviewed medically acceptable screening criteria relevant to the case, which may include but is not limited to any of the following: Evidence Based Medicine Guidelines (Helsinki, Finland); Texas Medical Foundation: Screening Criteria Manual (Austin, Texas); Texas Chiropractic Association: Texas Guidelines to Quality Assurance (Austin Texas); Texas Medical Foundation: Screening Criteria Manual (Austin, Texas); Mercy Center Guidelines of Quality Assurance; any and all guidelines issued by DWC or other State of Texas Agencies; standards contained in Medicare Coverage Database; ACOEM Guidelines; peer-reviewed literate and scientific studies that meet nationally recognized standards; standard references compendia; and findings; studies conducted under the auspices of federal government agencies and research institutes; the findings of any national board recognized by the National Institutes of Health; peer reviewed abstracts submitted for presentation at major medical associates meetings; any other recognized authorities and systems of evaluation that are relevant.

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:

Shawn Henry, DO
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Fax: 817-429-4547

Transcontinental Ins. Co. / Law Office of Jeffery Lust
Attn: James Cassidy
Fax: 214-220-5614

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.

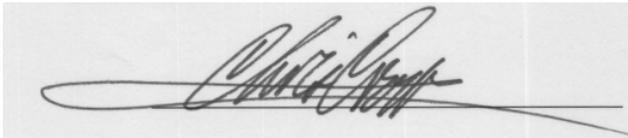
If you are disputing the decision (other than a spinal surgery prospective decision), the appeal must be made directly to a district court in Travis County (see Texas Labor Code §413.031). An appeal to District Court must be filed not later than 30 days after the date on which the decision that is the 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 7th day of November, 2006.

Name and Signature of Clear Resolutions Inc. Representative:

Clear Resolutions Inc.



Chris Crow, President