

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective January 1, 2002 and Commission Rule 133.305 and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor prevailed** on the issues of medical necessity. Therefore, upon receipt of this Order and in accordance with §133.308(q)(9), the Commission hereby orders the respondent and non-prevailing party to **refund the requestor \$460.00** for the paid IRO fee. For the purposes of determining compliance with the order, the Commission will add 20 days to the date the order was deemed received as outlined on page one of this order.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

Based on review of the disputed issues within the request, the Medical Review Division has determined that **medical necessity was the only issue** to be resolved. The treatments (including NCV's, Sensory exam & H/F reflex, interferential therapy, ultrasound, preparatory muscle conditioning, myofascial release, office visit on 9/11/02, FCE's, neuromuscular re-education, preparatory muscle conditioning, physical performance) were found to be medically necessary. The respondent raised no other reasons for denying reimbursement for these treatment charges.

The respondent is prohibited from asserting additional denial reasons relative to this Decision upon issuing payment to the requestor in accordance with this Order (Rule 133.307(j)(2)).

This Finding and Decision is hereby issued this 21st day of January 2003.

Carol R. Lawrence, Medical Dispute Resolution Officer
Medical Review Division

On this basis, and pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay the unpaid medical fees in accordance with the fair and reasonable rate as set forth in Commission Rule 133.1(a)(8) plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this order. This Order is applicable to dates of service 9/5/01 through 3/18/02 in this dispute.

The respondent is prohibited from asserting additional denial reasons relative to this Decision upon issuing payment to the requestor in accordance with this Order (Rule 133.307(j)(2)).

This Order is hereby issued this 21st day of January 2003.

David R. Martinez, Manager
Medical Dispute Resolution
Medical Review Division

December 23, 2002

Revised January 21, 2003

David Martinez
TWCC Medical Dispute Resolution
4000 IH 35 South, MS 48
Austin, TX 78704

MDR Tracking #: M5-03-0006-01
IRO #: 5251

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

___ has performed an independent review of the care rendered 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 Doctor of Chiropractic. The ___ 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 ___ for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to the dispute.

CLINICAL HISTORY

On ___, ___ suffered a compensable work injury while performing her normal duties as a housekeeper for ___. On that date she lifted one end of a sofa bed and felt pain in her lower left abdominal region. She reported the incident to her manager. Subsequently she was taken to ___ where she was diagnosed with a hernia. The hernia was surgically corrected on July 26, 2001. On August 16, 2001 she presented to ___ with complaints of postoperative pain, pain in her low back and left leg with parasthesia.

DISPUTED SERVICES

Under dispute is the medical necessity of services rendered from 9/5/01 through 11/6/01.

DECISION

The reviewer both agrees and disagrees with the prior adverse determination.

Treatment found to be medically necessary includes the following:

- 9/5/01: NCV, sensory exam and H/F reflex
- 9/7/01, 9/11/01, 10/8/01, 10/10/01 (97032, 97035, 97110, 97250) Interferential therapy, 2 units; ultrasound, 2 units; preparatory muscle conditioning, 3 units; and myofascial release, one unit
- 9/11/02 (99212) Established patient visit
- 9/17/01 (E0745, 99071, A4630) The EMS home unit, educational supplies and DME
- 9/17/01, 10/22/01 (97750) Functional capacity evaluations
- 9/24/01, 9/25/01, 9/27/01, 10/1/01, 10/3/01, 10/5/01, 10/9/01, 10/11/01, 10/12/01, 10/15/01, 10/16/01, 10/18/01, 10/22/01, 10/23/01, 10/24/01, 10/25/01, 10/26/01, 10/29/01, 10/30/01, 10/31/01, 11/1/01, 11/2/01, 11/5/01, 11/6/01, 11/7/01, 11/9/01, 11/12/01, 11/13/01, 11/14/01, 11/15/01, 11/19/01, 11/20/01, 11/21/01, 12/4/01, 12/5/01, 12/11/01, 12/12/01, 12/21/01, 12/26/01, 1/4/02, 1/7/02, 1/8/02 (97112 and 97110) Per each date, neuromuscular re-education, one unit; and preparatory muscle conditioning, seven units, except on 10/15/01 (97110) eight units were billed, but only seven were medically necessary.
- 10/26/01 (95900) NCV Study
- 11/19/01, 12/17/01 and 1/8/02 (97750) Test or measurement of physical performance, partially medically necessary. The reviewer finds medical necessity for 97750 eight times on 11/19/01, 12/17/01 and 1/8/02 (i.e., eight sessions of 15 minutes each for a total of two hours per day).

Treatment found not to be medically necessary includes the following:

- 9/5/01: Temperature gradient studies were not medically necessary; office consultation for new or established patient
- 9/7/01, 10/8/01, 10/9/01, 10/10/01 (99213) Established patient office visits
- 12/6/01, 12/7/01, 12/13/01, 12/17/01, 12/19/01, 1/9/02, 1/11/02, 1/16/02, 1/23/02, 1/30/02, 2/13/02, 2/27/02, 3/11/02, 3/18/02 (992123MP) Established patient office visits with manipulation

- 10/10/01 76856WP, 99273, 76800WP Diagnostic ultrasound, pelvic; confirmatory consultation; diagnostic ultrasound, spinal
- 10/26/01 (95934) This is not a valid code
- 10/26/01 (99242) Consultation
- 10/26/01 (99090) Analysis of clinical data stored in the computer

BASIS FOR THE DECISION

9/5/01: NCV, sensory exam and H/F reflex were medically necessary. The doctor-patient relationship is paramount. The responsibilities of the treating doctor are removed with the insurance carrier's claim of non-compensability.

In accordance with Texas Labor Code 408.021 (a), **an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; (3) or enhances the ability of the employee to return to work or retain employment.**

When the insurance carrier's claim of non-compensability causes treatment to be limited, delayed, denied and possibly provided in an uncoordinated fashion, the treating doctor's role in resolving the patient's injuries becomes much more difficult. Signs and symptoms exhibited by the patient and the necessity of documentation of injury make this NCV/sensory testing medically necessary.

9/5/01: Regarding temperature gradient studies, the reviewer agrees with the previous adverse determination. No records documenting the performance of the studies were provided. Skin temperature is measured as part of the NCV study, but typically not billed under 93740 times three.

9/5/01: Office consultation for new or established patient was not documented. There were no records documenting that a consultation had been performed. The three key components that must be included in a consultation coded 99241 are a focused history, focused examination and straightforward medical decision.

Regarding established patient office visits (99213) on 9/7/01, 10/8/01, 10/9/01, 10/10/01, based on TWCC guidelines for Peer Review/Utilization Review Certification Guidelines by Greg Fisher, D.C., chapter 16 pages 166-6: **For E/M procedures of established patients, two of the three components (history, examination, medical decision making) must be met or exceeded for a particular level of E/M service.** At the level of 99213: presenting problem is low to moderate; the history is expanded; the examination is also expanded and the decision-making is low. The office visit notes for the above dates do not meet requirements in at least two of the criteria.

9/7/01, 9/11/01, 10/8/01, 10/10/01 (97032, 97035, 97110, 97250) Interferential therapy, 2 units; ultrasound, 2 units; preparatory muscle conditioning, 3 units; and myofascial release, one unit were found to be medically necessary and appropriate, in accordance with Texas Labor Code 408.021 (a), as noted above.

9/11/02 (99212) Established patient visit was found to be medically necessary, per TWCC guidelines for Peer Review/Utilization Review Certification Guidelines by Greg Fisher, D.C., chapter 16 pages 166-6, as noted above.

9/17/01 (E0745, 99071, A4630) The EMS home unit, educational supplies and DME supplies were medically necessary and appropriate. According to the TWCC Spine Treatment Guidelines effective 6/1/95: **TENS is listed as one of the types of intervention to be used in the primary level of care.**

9/17/01, 10/22/01 (97750) Functional capacity evaluations were medically necessary. According to the TWCC Spine Treatment Guidelines effective 6/1/95: **Once the injured worker has sufficiently recovered, an F.C.E. is usually performed to determine whether or not the injured worker is considered a candidate for a work hardening or work conditioning program.** These tests are usually performed to determine the injured worker's level of physical ability and his capability to return to work. The need for establishment and determination of the level of function that the patient can perform is appropriate and medically necessary.

9/24/01, 9/25/01, 9/27/01, 10/1/01, 10/3/01, 10/5/01, 10/9/01, 10/11/01, 10/12/01, 10/15/01, 10/16/01, 10/18/01, 10/22/01, 10/23/01, 10/24/01, 10/25/01, 10/26/01, 10/29/01, 10/30/01, 10/31/01, 11/1/01, 11/2/01, 11/5/01, 11/6/01, 11/7/01, 11/9/01, 11/12/01, 11/13/01, 11/14/01, 11/15/01, 11/19/01, 11/20/01, 11/21/01, 12/4/01, 12/5/01, 12/11/01, 12/12/01, 12/21/01, 12/26/01, 1/4/02, 1/7/02, 1/8/02 (97112 and 97110)

Per each date, neuromuscular re-education, one unit; and preparatory muscle conditioning, seven units, were medically necessary and appropriate in accordance with Texas Labor Code 408.021 (a), as noted above, except on 10/15/01 (97110) eight units were billed, but only seven were medically necessary.

10/10/01 76856WP, 99273, 76800WP Regarding diagnostic ultrasound, pelvic; confirmatory consultation; diagnostic ultrasound, the reviewer agrees with the previous adverse determination.

The American Chiropractic Association's position on diagnostic ultrasound: The application of diagnostic ultrasound in the adult spine in the areas such as disc herniation, spinal stenosis and nerve root pathology is inadequately studied and its routine application for these purposes cannot be supported by evidence at this time.

The American College of Radiology's position: The use of diagnostic spinal ultrasound in the evaluation of pain or radiculopathy syndromes (facet joints and capsules, nerve and fascial edema, and other subtle paraspinal abnormalities) currently has no proven clinical utility as a screening, diagnostic or adjunctive screening tool.

10/26/01 (95900) NCV of three rather than four motor nerves was found to be medically necessary in accordance with Texas Labor Code 408.021 (a), as noted above.

10/26/01 (95934) This is not a valid code. Possibly it was meant to be 95904, though no record of sensory testing is included. The reviewer agrees with the previous adverse determination.

10/26/01 (99242) Regarding consultation, the reviewer agrees with the previous adverse determination, as no record of the consultation was included in the documentation.

10/26/01 (99090) Regarding analysis of clinical data stored in the reviewer agrees with the previous adverse determination, as no record of that analysis being performed was found in the documentation provided.

11/19/01, 12/17/01 and 1/8/02 (97750) Test or measurement of physical performance, partially medically necessary. The need for documentation or improvement in the level of function is appropriate and medically necessary. However, the amount of time necessary to perform the testing documented would not take more than two hours. Therefore, the reviewer finds medical necessity for 97750 eight times on 11/19/01, 12/17/01 and 1/8/02 (i.e., eight sessions of 15 minutes each for a total of two hours per day).

12/6/01, 12/7/01, 12/13/01, 12/17/01, 12/19/01, 1/9/02, 1/11/02, 1/16/02, 1/23/02, 1/30/02, 2/13/02, 2/27/02, 3/11/02, 3/18/02 (992123MP) Established patient office visits with manipulation, the reviewer agrees with the previous adverse determination based on TWCC guidelines for Peer Review/Utilization Review Certification Guidelines by Greg Fisher, D.C., chapter 16 pages 166-6, as noted above. The office visit notes for the above dates do not meet the requirements in at least two of the criteria. The only indication that manipulation was performed was the word *manipulation* having been circled, except on 9/6/01, 8/29/01 and 8/31/01 when the comment “activator until suture heals” was documented, though no listings were present.

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

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

___ is forwarding this finding by US Postal Service to the TWCC.

Sincerely,