

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 TWCC-60 was received in the Medical Review Division on 9/9/02. The disputed dates of service, included dates prior to 9/9/01 that were not eligible for review because of the one-year limitation as per 133.308(e)(1), Therefore, the disputed dates of service eligible for review by the IRO begin 9/24/01.

The amount of the fees due the requestor not considered medically necessary exceeded the amount the IRO considered medically necessary. On this basis, the Medical Review Division has reviewed the IRO decision and determined that **the requestor did not prevail** on the issues of medical necessity. Therefore, upon receipt of this Order and in accordance with §133.308(q)(9), the Commission hereby **Declines to order the respondent** to refund the requestor for the paid IRO fee.

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 work hardening program, FCEs prior to 9/24/01, office visits prior to 9/24/01 and the psychological interview and therapy were found to not be medically necessary. The FCEs dated on or after 9/24/01 and the office visits between the date of 9/24/01 and 11/21/01 were considered medically necessary. The respondent raised no other reasons for denying reimbursement.

This Decision is hereby issued this 6th day of December 2002.

Noel L. Beavers
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 9/24/01 through 11/21/01 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 6th day of December 2002.

Roy Lewis, Supervisor
Medical Dispute Resolution
Medical Review Division

November 12, 2002

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

MDR Tracking #: M5-03-0214-01
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

___ was injured while at work on ___. ___ was her treating physician. ___ referred ___ to ___ on 5/16/01 for an FCE to determine her return to work status. ___ participated in an active rehabilitation treatment program from 7/16/01 to 8/22/01, followed by a work hardening program from 9/25/01 to 11/7/01.

The carrier submitted a job description. It mentions responsibilities, but does not specifically mention tolerances. It is difficult to assign a physical demand capacity given this job description.

An EMG/NCV was performed on 4/2/02 that was read as a normal electrodiagnostic evaluation of the lower extremities. No focal neuropathy or radiculopathy was noted.

A lumbar MRI was performed on 4/3/01 that was read as “No specific positive findings noted on MRI of lumbar spine”

The FCE performed on 5/16/01 noted cervical spine MRI results that included “multiple herniations at C3-4, C4-5, and C5-6 levels.” ___ complained of cervical and lumbar spine pain. She was able to perform at a light-medium physical demand level during the FCE. Her required physical demand capacity was heavy, as defined by DOT job #381.687-014.

___, orthopedist, evaluated ___ on 7-3-01. ___ clinical impression included a cervical spine strain, multilevel disc herniation in the cervical spine, cervical spine and bilateral trapezial muscle spasm, lumbar spine strain, lumbar spine muscle spasm, and right IT band tendonitis. A recommendation for more active therapy was provided along with a prescription for anti-inflammatory medication.

___ evaluated ___ again on 8/2/01 and discontinued pain medication and muscle relaxants due to GI complaints by ___. He noted unrestricted motion of the cervical spine. Pain was recreated upon lumbar spine flexion and there was tenderness along the right IT band.

Daily physical therapy notes from 7/16/01 through 8/22/01 were reviewed.

A preauthorization request was submitted to ___ on 8/16/01 requesting further therapy.

___, TWCC designated doctor, determined that ___ was at MMI on 8/29/01 and assigned her a 0% whole person impairment. It was noted that a NCV was performed by ___, and it was read as essentially normal.

An FCE performed on 9/24/01 noted cervical spine MRI results that included “multiple herniations at C3-4, C4-5, and C5-6 levels.” ___ complained of cervical and lumbar spine pain. She was able to perform at a medium physical demand level during the FCE. Her required physical demand capacity was heavy, as defined by DOT job #381.687-014.

Work Hardening daily activity schedules dated from 9/25/01 through 11/7/01 were reviewed.

An FCE performed on 11/21/01 noted cervical spine MRI results that included “multiple herniations at C3-4, C4-5 and C5-6 levels.” ___ complained of cervical and lumbar spine

pain. She was able to perform at a medium-heavy physical demand level during the FCE. Her required physical demand capacity was heavy, as defined by DOT job #381.687-014.

DISPUTED SERVICES

Disputed items include FCE's, office visits, a psych interview and individual psychological therapy from 9/24/01 through 11/21-01.

DECISION

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

The reviewer agrees with the prior adverse determination regarding the following:

- FCE's prior to 9/24/01
- Office visits prior to 9/24/01
- Psychological interview and psychological therapy
- Work Hardening program

The reviewer disagrees with the prior adverse determination regarding the following:

- FCE's dated on or after 9/24/01
- Office visits between the dates of 9/24/01 and 11/21/01

BASIS FOR THE DECISION

The functional capacity evaluations were necessary to determine ___ current functional abilities and determine the appropriateness of rehabilitation. The Texas Medical Fee Guidelines allow for up to three FCE's to be performed. However, due to the failure to meet the time limit constraints for submitting medical disputes, only the FCE's dated on or after 9/24/01 should be paid. ___ required that these evaluations be performed to determine medical care and formulate an appropriate treatment plan. In the dictionary of occupational titles, there are a potential three listings for janitorial services that may apply in this situation. ___ chose the job listing with the heaviest physical demand rating. In his summary he discussed his choice, and it is well justified. The job description submitted in the carrier's documentation is a list of job responsibilities. However, no tolerances are listed and therefore no quantification of physical demand could be performed.

___ submitted a preauthorization request for additional physical rehabilitation. No documentation of a preauthorization number or pre-certification number was provided. According to the scope of the review, though, it is pointless to determine the medical appropriateness of the active therapy. This fell before the dates requested for review, due to administrative time constraints of submitting medical dispute resolution.

The Texas Medical Fee Guidelines allow for an injured worker to have access to her treating physician. The office visits were therefore appropriate between the dates of 9/24/01 and 11/21/01.

The main issue in this case is the question of medical necessity of work hardening. TWCC Guidelines and CARF guidelines have an extensive discussion regarding the difference between a work hardening candidate and a work conditioning candidate. The initial FCE revealed decreased physical demand capacity. As stated in the Texas Medical Fee Guidelines:

“Entrance/admission criteria shall enable the program to admit: persons who are likely to benefit from the program; persons whose current levels of functioning due to illness or injury interferes with their ability to carry out specific tasks required in the workplace; persons whose medical, psychological, or other conditions do not prohibit participation in the program; and persons who are capable of attaining specific employment upon completion of the program.”

Further criteria listed in the spinal treatment guidelines were used to determine medical necessity of work hardening:

“The tertiary phase of care is interdisciplinary, individualized, coordinated and intensive. It is designed for the injured employee who demonstrates physical and psychological changes consistent with a chronic condition. Psychosocial issues such as substance abuse, affective disorders and other psychological disorders may be present. There is documented inhibition of physical function evidence by pain sensitivity, and non-organic signs such as fear which produce a physical inhibition or limited response to reactivation treatment. This phase of care may also be indicated for the injured employee whose physical capacity to work still does not meet the current or expected job requirements after adequate treatment, thereby causing an inability to return to full duty. This situation would be evidenced by an excessive transition period of light duty or significant episodes of lost work due to a need for continued medical treatment. This phase of care is also indicated for those injured employees who cannot tolerate either initial or intermediate phases of care.”

___ benefited somewhat from the program as demonstrated in the last functional capacity evaluation that was performed. She progressed from a light medium physical demand capacity to a medium-heavy physical demand capacity in only six weeks time. She was unable to perform at the physical demand level required by her employer prior to the entrance of the work hardening program. No psychological records were available to the reviewer to determine if there were psychological issues, psychosocial issues, or affective disorders. The documentation of the work hardening program was not performed as prescribed within the parameters of CARF Guidelines or TWCC Guidelines. No weekly summaries were provided. Only daily activity checklists were available for review. The documentation did not substantiate the need for interdisciplinary care. ___ did not meet the minimum criteria for a work hardening candidate. Work hardening was therefore not necessary because the minimum entrance criterion was not met.

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,