

**THIS DECISION HAS BEEN APPEALED. THE FOLLOWING IS THE RELATED SOAH DECISION NUMBER:**

**SOAH DOCKET NO. 453-04-0013.M5**

MDR Tracking Number: M5-03-0433-01

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 IRO reviewed the aquatic therapy, massage therapy, therapeutic exercise, supplies, physical medicine procedures, Phonophoresis and Phonophoresis supplies rendered from 2-1-02 to 3-18-02 that were denied based upon "U.

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(r)(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 not the only issue** to be resolved

This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division.

On February 14, 2003, the Medical Review Division submitted a Notice to requestor to submit additional documentation necessary to support the charges and to challenge the reasons the respondent had denied reimbursement within 14 days of the requestor's receipt of the Notice.

The following table identifies the disputed services and Medical Review Division's rationale:

Services denied without an EOB will be reviewed in accordance with Commission's *Medical Fee Guideline*.

DOS	CPT CODE	Billed	Paid	EOB Denial Code	MAR\$ (Maximum Allowable Reimbursement)	Reference	Rationale
1-28-02 1-30-02 2-1-02 2-13-02 2-15-02	97110	\$140.00	\$0.00	No EOB	\$35.00/15 min	Medicine GR (I)(A)(9)(b) (I)(A)(11)(a) (I)(C)(9)	Documentation supports billed service 5 X \$140.00 = \$700.00.
2-4-02 2-6-02 2-18-02 2-20-02 2-22-02 2-25-02 3-1-02 3-4-02 3-6-02 3-8-02 3-11-02 3-13-02 3-14-02 3-18-02 3-27-02 3-28-02 4-1-02 4-2-02 4-3-02 4-8-02 4-10-02 4-15-02 4-17-02 4-18-02	97110	\$70.00	\$0.00	No EOB	\$35.00/15 min	Medicine GR (I)(A)(9)(b) (I)(A)(11)(a) (I)(C)(9)	Documentation supports billed service 24 X \$70.00 = \$1680.00.
2-11-02	97110	\$105.00	\$0.00	No EOB	\$35.00/15 min	Medicine GR (I)(A)(9)(b) (I)(A)(11)(a) (I)(C)(9)	Documentation supports billed service \$105.00.
1-28-02 1-30-02 2-22-02 2-25-02 3-2-02 3-4-02 3-6-02 3-8-02 3-11-02 3-13-02 3-18-02 3-27-02 4-1-02	97113	\$208.00	\$0.00	No EOB	\$52.00/15 min	Medicine GR (I)(A)(9)(b) (I)(C)(9)	Documentation supports billed service 21 X \$208.00 = \$4368.00.

4-2-02 4-3-02 4-8-02 4-9-02 4-10-02 4-15-02 4-17-02 4-18-02							
3-1-02	97113	\$156.00	\$0.00	No EOB	\$52.00/15 min	Medicine GR (I)(A)(9)(b) (I)(C)(9)	Documentation supports billed service \$156.00.
3-14-02	97113	\$104.00	\$0.00	No EOB	\$52.00/15 min	Medicine GR (I)(A)(9)(b) (I)(C)(9)	Documentation supports billed service \$104.00.
2-18-02	97124	\$56.00	\$0.00	No EOB	\$28.00/15 min		Documentation supports billed service \$56.00.
3-1-02 3-4-02 3-6-02 3-8-02 3-11-02 3-13-02 3-18-02 3-26-02 3-27-02 3-28-02 4-1-02 4-2-02 4-3-02 4-9-02 4-10-02 4-15-02 4-17-02 4-18-02	97124	\$28.00	\$0.00	No EOB	\$28.00/15 min		Documentation supports billed service 18 X \$28.00 = \$504.00.
2-19-02	99214	\$71.00	\$0.00	No EOB	\$71.00	E/M GR (IV)(B)	Documentation supports billed service \$71.00.
2-19-02	99078	\$475.00	\$30.00	No EOB	DOP	General Instructions GR (IV) Section 413.011(d)	Physician educational services rendered to patients in a group setting. Documentation does not support that additional reimbursement is due based upon Section 413.011(d).
2-20-02	99211	\$18.00	\$0.00	No EOB	\$18.00	E/M GR (IV)(B)	Documentation supports billed service \$18.00.
3-26-02 3-27-02 3-28-02 4-1-02 4-2-02 4-3-02 4-8-02 4-9-02 4-10-02 4-15-02 4-17-02	97139PH	\$35.00	\$0.00	No EOB	DOP	Medicine GR (I)(C)(1)(r)	Documentation supports billed service 12 X \$35.00 = \$420.00.

4-18-02							
3-27-02 3-28-02 4-1-02 4-2-02 4-3-02 4-8-02 4-9-02 4-10-02 4-15-02 4-17-02 4-18-02	99070PH	\$7.00	\$0.00	No EOB	DOP	General Instructions GR (IV)	Documentation supports billed service 11 X \$7.00 = \$77.00.
4-2-02 4-3-02 4-8-02 4-9-02 4-10-02 4-17-02 4-18-02	99212	\$32.00	\$0.00	No EOB	\$32.00	CPT Code Description E/M GR (IV)(B)	Documentation supports billed service 7 X \$32.00 = \$224.00.
3-28-02	99080-69	\$15.00	\$0.00	No EOB	\$15.00	Rule 133.106(f)(1)	Documentation supports billed service \$15.00.
5-7-02	90801	\$180.00	\$0.00	No EOB	\$3.00/min	CPT Code Description	Documentation supports billed service \$180.00.
5-7-02	90899	\$120.00	\$0.00	No EOB	\$2.00/min	CPT Code Description	Documentation supports billed service \$120.00.
<b>TOTAL</b>		\$9273.00					The requestor is entitled to reimbursement of <b>\$8798.00.</b>

This Decision is hereby issued this 22nd day of July 2003.

Elizabeth Pickle  
Medical Dispute Resolution Officer  
Medical Review Division

**ORDER.**

Pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay for 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 Decision is applicable for dates of service 1-30-02 through 5-7-02 in this dispute.

This Order is hereby issued this 22nd day of July 2003.

Roy Lewis, Supervisor  
Medical Dispute Resolution  
Medical Review Division

January 31, 2003

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

MDR Tracking #: M5-03-0433-01  
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

\_\_\_ reports that he was injured on the job at \_\_\_ on \_\_\_. While carrying some plywood to place on top of a ditch, \_\_\_ fell and the plywood landed on his left thigh. Immediately following the injury, the patient felt pain in his low back and left leg. He kept working to finish his shift that day and went to \_\_\_ office for treatment the following day.

An MRI of the lumbar spine performed on 5/9/00 revealed a small canal with borderline combined lumbar spinal stenosis at L4/5, small left lateralizing subligamentous HNP, and chronic nuclear disc degenerative change at L2 without HNP or spinal stenosis.

Lower extremity diagnostic testing was performed on 6/14/00, revealing a mononeuropathy multiplex of the left peroneal and left tibial nerves, sensory neuropathy of right and left sural nerves, proximal motor neuropathy of the left peroneal nerve, proximal sensory neuropathy of the left tibial nerve, and L4 sensory radiculopathy of the left.

\_\_\_ performed lumbar surgery on 9/11/00. The following procedures were performed: lumbar laminectomy, decompression, gutter decompression bilateral, discectomy at L4/5, posterolateral fusion, interbody fusion, autogenous iliac bone grafting, application of autogenous iliac bone graft, application of internal fixation pedicle at L4/5, application of internal bone stimulator, application of adcon-L, and application of osteophil from Dynek. No complications were noted.

\_\_\_ performed a diagnostic epidurogram with caudal epidural steroid injection with catheter under fluoroscopy on 2/15/01. No complications were noted.

A MRI of the lumbar spine was performed on 5/14/01. It revealed a 2-3mm disc bulge at L2/3 that mildly impresses the dura but not the nerve roots, a 2mm disc bulge of L3/4 that mildly impresses the dura but not the nerve roots, L4/5 360 fusions and an epidural stimulating system at L5.

\_\_\_ performed a trial spinal columnar stimulator with Medtronic dual electrode compact lead and reprogramming of the spinal columnar stimulator on 8/23/01.

\_\_\_ performed a permanent implantation of Medtronic dual electrodes compact lead and implantation of synergy battery and reprogramming of the spinal columnar stimulator on 10/4/01.

On 12/20/01, \_\_\_ wrote a letter stating that \_\_\_ was not currently a candidate for any gainful employment.

\_\_\_, a chiropractor, evaluated \_\_\_ on 1/22/02 and reported low back pain with radiating pain down both legs that was worse on the left. His activities of daily living were reduced because of his pain. He reported symptoms relating to depression and anxiety. Dyesthesia and lower extremity muscle weakness was noted upon neurological testing. Positive orthopedic tests relative to nerve root irritation were noted. Decreased lumbar range of motion was detected. \_\_\_ clinical impression included failed back syndrome, thoracic or lumbar neuritis, displacement of lumbar IVD without myelopathy, and neuropathy. \_\_\_ recommended aquatic therapy, stretching exercises and therapeutic massage.

#### DISPUTED SERVICES

Under dispute are aquatic therapy, massage therapy, therapeutic exercise, supplies, physical medicine procedures, phonophoresis and phonophoresis supplies rendered for \_\_\_ from 2/1/02 through 3/18/02.

#### DECISION

The reviewer disagrees with the prior adverse determination.

## BASIS FOR THE DECISION

According to rule 133.304(c)

*“At the time an insurance carrier makes payment or denies on a medical bill, the insurance carrier shall send, in the form and manner prescribed by the Commission, the explanation of benefits to the appropriate parties. The explanation of benefits shall include the correct payment exception codes required by the Commission’s instructions, and shall provide sufficient explanation to allow the sender to understand the reason(s) for the insurance carrier’s action(s). A generic statement that simply states a conclusion such as “not sufficiently documented” or other similar phrases with no further*

*description of the reason for the reduction or denial of payment do not satisfy the requirements of this section. The insurance carrier shall maintain documentation of the date it was sent the explanation of benefits, and shall either maintain a copy of the explanation of benefits or be able to electronically reproduce it. The explanation of benefits may be printed on the insurance carrier’s letterhead but must include all language required by the Commission.”*

The carrier did not present any documentation to substantiate its reason for denying payment for services other than to say that the care exceeded medically accepted UR criteria and TWCC treatment guidelines.

The Spinal Treatment Guidelines allow for this care in the tertiary phase of care. \_\_\_ condition at the time of treatment is consistent with the clinical indicators for tertiary phase of care as defined in Table III under phases of care.

*“This interdisciplinary, individualized and intensive treatment designed for injured employees already demonstrating physical and psychological changes consisted with chronic disability. In general, differentiation from intermediate treatment includes medical direction, intensity of services, severity of injury, and individualized programmatic protocols with integration of physician, mental health and disability or pain management services and specificity of physical/psychological assessment.”*

The goal of this care was

*“To represent the tertiary phase of nonoperative or postoperative treatments for severe cases, with the goal of giving injured employees an opportunity for cooperative activity in programs designed to achieve maximum medical improvement. Return to full duty work may not always be possible and may necessitate the introduction of post-medical vocational rehabilitation services by referral to Texas Rehabilitation Commission.”*

Aquatic therapy, massage therapy, therapeutic exercise, supplies, physical medicine procedures, phonophoresis and phonophoresis supplies were found to be medically necessary treatment and/or supplies for care of \_\_\_\_\_. The documentation presented indicates that \_\_\_\_\_ needed the treatment, the treatment was performed, and \_\_\_\_\_ benefited from the treatment. \_\_\_\_\_ injury required very individualized care that was interdisciplinary in nature. \_\_\_\_\_ improved as a result of the care provided.

\_\_\_\_\_ 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,