

**THIS DECISION HAS BEEN APPEALED. THE
FOLLOWING IS THE RELATED SOAH DECISION NUMBER:
SOAH DOCKET NO. 453-04-0670.M5**

MDR Tracking Number: M5-03-0842-01

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 chiropractic treatment and diagnostic studies rendered from 3-11-02 to 8-30-02 that were denied based upon "U" or "V".

The Medical Review Division has reviewed the IRO decision. The IRO has not clearly determined the prevailing party over the medical necessity issues. Therefore, in accordance with §133.308(q)(2)(C), the commission shall determine the allowable fees for the health care in dispute, and the party who prevailed as to the majority of the fees for the disputed health care is the prevailing party.

DOS	CPT CODE	Billed	Paid	EOB Denial Code	MAR\$ (Maximum Allowable Reimbursement)	Reference	Rationale
7-29-02 7-30-02 7-31-02 8-1-02 8-6-02 8-7-02 8-8-02 8-9-02 8-12-02 8-13-02 8-15-02 8-16-02 8-20-02 8-28-02 8-29-02 8-30-02	97110 (3)	\$114.00	\$0.00	V	\$35.00 / 15 min X 3 = \$105.00	Section 408.021(a)	IRO concluded these services were medically necessary; therefore reimbursement of 16 dates X \$105.00 = \$1680.00 is recommended.
8-5-02	97110	\$23.00	\$0.00	V	\$35.00 / 15 min	Section 408.021(a)	IRO concluded these services were medically necessary; therefore reimbursement of \$23.00 is recommended.
7-29-02 7-30-02 7-31-02 8-1-02 8-5-02 8-6-02 8-7-02 8-8-02 8-9-02	97530 (2)	\$76.00	\$0.00	V	\$35.00 / 15 min X 2 = \$70.00	Section 408.021(a)	IRO concluded these services were medically necessary; therefore reimbursement of 17 dates X \$70.00 = \$1190.00 is recommended.

8-12-02 8-13-02 8-15-02 8-16-02 8-20-02 8-28-02 8-29-02 8-30-02							
7-29-02 7-30-02 8-6-02 8-7-02 8-8-02 8-12-02 8-15-02 8-16-02	97112 (3)	\$114.00	\$0.00	V	\$35.00 / 15 min X 3 = \$105.00	Section 408.021(a)	IRO concluded these services were medically necessary; therefore reimbursement of 8 dates X \$105.00 = \$840.00 is recommended.
7-31-02 8-1-02 8-9-02 8-13-02 8-20-02 8-28-02 8-29-02 8-30-02	97112 (2)	\$76.00	\$0.00	V	\$35.00 / 15 min X 2 = \$70.00	Section 408.021(a)	IRO concluded these services were medically necessary; therefore reimbursement of 8 dates X \$70.00 = \$560.00 is recommended.
8-5-02	97112	\$45.00	\$0.00	V	\$35.00 / 15 min (\$43.00)	Section 408.021(a)	IRO concluded these services were medically necessary; therefore reimbursement of \$43.00 is recommended.
7-31-02 8-1-02 8-2-02 8-5-02 8-9-02 8-13-02 8-20-02 8-28-02 8-29-02 8-30-02	97116	\$40.00	\$0.00	V	\$38.00 / 15 min	Section 408.021(a)	IRO concluded these services were medically necessary; therefore reimbursement of 10 dates X \$38.00 = \$380.00 is recommended.
TOTAL		\$4716.00					The requestor is entitled to reimbursement of \$4716.00.

The IRO concluded that all physical therapy services provided from 7-24-02 through 8-30-02 were medically necessary. The office visits with manipulations from 3/11/02 through 8-30-02, the physical therapy visits from 5-13-02 through 7-15-02, and the NCV studies on 8-28-02 were not medically necessary.

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

Consequently, the commission has determined that **the requestor prevailed** on the majority of the medical fees (\$4716.00). 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.

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

On April 4, 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:

Neither party submitted EOBs for the following disputed services; therefore, the Medical Review Division is unable to determine the insurance carrier's rationale for denying reimbursement. The following services will be reviewed in accordance with the Commission's *Medical Fee Guideline*.

DOS	CPT CODE	Billed	Paid	EOB Denial Code	MAR\$ (Maximum Allowable Reimbursement)	Reference	Rationale
1-28-02 5-13-02 5-20-02 7-23-02 7-24-02 7-25-02 7-26-02 9-9-02	99213 MP	\$48.00	\$0.00	No EOB	\$48.00	CPT code Description	Progress notes support billed service, reimbursement of 8 dates X \$48.00 = \$384.00.
5-13-02	97032	\$23.00	\$0.00	No EOB	\$22.00 / 15 min	CPT code Description	Progress note supports electric stimulation, reimbursement of \$22.00 is recommended.
5-13-02	97250	\$45.00	\$0.00	No EOB	\$43.00	CPT code Description	Progress note supports myofascial release, reimbursement of \$43.00 is recommended.
7-22-02	97750FC (5 units)	\$550.00	\$0.00	No EOB	\$100.00 / hr	Medicine GR (I)(E)(2)(a)	FCE report supports billed service, reimbursement of \$500.00 is recommended.
7-23-02 7-24-02 7-25-02 7-26-02 9-9-02	97110 (3 units)	\$114.00	\$0.00	No EOB	\$35.00 / 15 min X 3 + \$105.00	Medicine GR (I)(A)(9)(b)	Progress note does not support therapeutic procedures performed for 45 minutes, documentation indicates therapeutic procedures were performed on one to one supervision; therefore, one unit will be reimbursed. Reimbursement of 5 dates X \$35.00 = \$175.00 is recommended.

7-23-02 7-26-02 9-9-02	97530 (2)	\$76.00	\$0.00	No EOB	\$35.00 / 15 min X 2 = \$70.00	CPT code Description	Progress note does not support therapeutic activities performed for 30 minutes, documentation indicates therapeutic activities were performed on one to one supervision; therefore, one unit will be reimbursed; therefore, reimbursement of 3 dates X \$35.00 = \$105.00 is recommended.
7-24-02	97530	\$38.00	\$0.00	No EOB	\$35.00 / 15 min	CPT code Description	Progress note supports therapeutic activities performed; therefore, reimbursement of \$35.00 is recommended.
7-23-02 7-24-02 9-9-02	97112 (3 units)	\$114.00	\$0.00	No EOB	\$35.00 / 15 min X 3 + \$105.00	CPT code Description	Progress note supports neuromuscular re-education; however, does not document 45 minutes, documentation indicates neuromuscular education were performed on one to one supervision; therefore, one unit will be reimbursed; therefore, reimbursement of 3 dates X \$35.00 = \$105.00 is recommended.
7-25-02 7-26-02	97112 (2 units)	\$76.00	\$0.00	No EOB	\$35.00 / 15 min X 2 = \$70.00	CPT code Description	Progress note supports neuromuscular re-education; however, does not document 30 minutes, documentation indicates neuromuscular re-education was performed on one to one supervision; therefore, one unit will be reimbursed; therefore, reimbursement of 2 dates X \$35.00 = \$70.00 is recommended.
7-24-02 7-25-02 7-26-02	97116	\$40.00	\$0.00	No EOB	\$38.00	CPT code Description	Progress note supports gait training; therefore, reimbursement of 3 dates X \$38.00 = \$114.00 is recommended.
9-9-02	E0745RT	\$80.00	\$0.00	No EOB	DOP	General Instructions GR (III)	Report to support service was not submitted; therefore, DOP was not met. No reimbursement is recommended.
10-2-02	99215MP	\$103.00	\$0.00	No EOB	\$103.00	CPT code Description	The office visit report does not meet the code description requirements for a comprehensive office visit. Therefore, no reimbursement is recommended.

10-2-02	99080-73	\$15.00	\$0.00	No EOB	\$15.00	Rule 129.5(d)	Work Status Report does not support filing per Rule 129.5(d). Claimant still remained off work. No reimbursement is recommended.
TOTAL							The requestor is entitled to reimbursement of \$1553.00 .

This Decision is hereby issued this 22nd day of August 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 1-28-02 through 10-2-02 in this dispute.

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.

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

Roy Lewis
Medical Dispute Resolution Supervisor
Medical Review Division

NOTICE OF INDEPENDENT REVIEW DECISION

April 1, 2003

Rosalinda Lopez
Program Administrator
Medical Review Division
Texas Workers Compensation Commission
4000 South IH-35, MS 48
Austin, TX 78704-7491

RE:

MDR Tracking #: M5-03-0842-01
IRO Certificate #: IRO 4326

The ___ has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Texas Workers' Compensation Commission (TWCC) has assigned the above referenced 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 rendered care to determine if the adverse determination was appropriate. In performing this review, relevant medical records, any documents utilized by the parties referenced above in making the adverse determination, and any documentation and written information submitted in support of the appeal was reviewed.

The independent review was performed by a matched peer with the treating health care professional. This case was reviewed by a health care professional licensed in chiropractic care. ___ health care professional has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians 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 this case.

Clinical History

This patient sustained a work-related injury on ___ when he began to experience low back pain after lifting heavy pots. Treatment for the patient's symptoms included muscle relaxing medications, anti-inflammatory medications and physical therapy. The patient began chiropractic treatments on 12/02/01.

Requested Service(s)

Chiropractic office visits, manipulation, physical therapy, and nerve conduction velocity (NCV) studies provided from 03/1/02 through 08/30/02.

Decision

It is determined that the physical therapy services administered from 07/24/02 through 08/30/02 were medically necessary to treat this patient's condition.

It is determined that the office visits with manipulations from 03/11/02 through 08/30/02, the physical therapy visits from 05/13/02 through 07/15/02, and the NCV studies on 08/28/02 were not medically necessary to treat this patient's condition.

Rationale/Basis for Decision

This patient had an adequate trial of treatment with manipulation from 12/06/01 through 02/25/02 and demonstrated no appreciable benefits from the treatments administered. The patient entered care on 12/06/01 with pain complaints described as frequent and moderate pain that was present 50-75% of the time and the same findings were noted on 02/25/02. Current chiropractic treatment guidelines indicate that an adequate trial of care is defined as a course of two weeks each of different types of manual procedures (4 weeks), after which, in the absence of documented improvement, manual procedures are no longer indicated. Reference: Haldeman, S., Chapman-Smith, D., and Petersen, D., Guidelines for Chiropractic Quality Assurance and Practice Parameters, Aspen, Gaithersburg, Maryland, 1993. As the patient's care exceeded the time frame for care denoted above and no appreciable gains were noted, continued care was not indicated.

Branfort noted that, based on the most recent and comprehensive systematic reviews, there is moderate evidence of short-term efficacy for spinal manipulation in the treatment of both acute and chronic low back pain. There is insufficient data available to draw conclusions regarding the efficacy for lumbar radiculopathy. The evidence is also not conclusive for the long-term efficacy of

spinal manipulation for any type of low back pain. Reference: Branfort G. "Spinal manipulation: current state of research and its indications." Neuro Clin 1999 Feb; 17(1): 91-111.

Haldeman reported that manipulation appears to have its greatest effect immediately following treatment and during the initial two to six weeks of ongoing treatment. Haldeman noted that the effectiveness of manipulation for the management of back pain seems to be minimal at 3 months to 12 months. Reference: Haldeman, S. "Spinal manipulative therapy: A status report", Clinical Orthopedics and Related Research, 179:62-70, 1983.

The patient was treated with passive therapies on 05/13/02 and 07/15/02 (attended electrical stimulation and myofascial release) and the use of passive modalities is not indicated after the initial phase of treatment of a lumbar disorder.

The Philadelphia Panel found that therapeutic exercises were found to be beneficial for chronic, subacute, and post-surgery low back pain. Continuation of normal activities was the only intervention with beneficial effects for acute low back pain. For several interventions and indications (e.g., thermotherapy, therapeutic ultrasound, massage, electrical stimulation), there was a lack of evidence regarding efficacy. Reference: "Philadelphia Panel Evidence-Based Guidelines on Selected Rehabilitation Interventions for Low Back Pain". Physical Therapy. 2001;81:1641-1674.

The Agency for Health Care Policy and Research: Clinical Practice Guideline Number 14, "Acute Low Back Problems In Adults" indicates that "the use of physical agents and modalities in the treatment of acute low back problems is of insufficiently proven benefit to justify its cost". They did note that some patients with acute low back problems appear to have temporary symptomatic relief with physical agents and modalities. Therefore, the use of passive physical therapy modalities (hot/cold packs, electrical stimulation) is not indicated after the first 2-3 weeks of care.

The physical therapy services administered from 07/24/02 through 08/30/02 were medically necessary. Haldeman et al indicate that it is beneficial to proceed to the rehabilitation phase of care as rapidly as possible to minimize dependence on passive forms of treatment/care and reaching the rehabilitation phase as rapidly as possible and minimizing dependence on passive treatment usually leads to the optimum result. Reference: Haldeman, S., Chapman-Smith, D., and Petersen, D., Guidelines for Chiropractic Quality Assurance and Practice Parameters, Aspen, Gaithersburg, Maryland, 1993.

The nerve conduction velocity studies performed on 08/28/02 were not medically necessary for treatment. The documentation revealed no evidence that the doctor interpreting the study was present for the administration of the testing. According to the position statement of the American Academy of Electromyography and Clinical Neurophysiology, the electrodiagnostic medicine (EDX) consultation is an extension of the neurologic portion of the physical examination and requires detailed knowledge of the patient and his or her disease. Unlike many laboratory tests, EDX testing is not conducted in a standard fashion, but must be specifically designed for each individual patient. In addition, it is often necessary to modify or add to the procedure during the examination depending on the findings as they unfold. Only in this way can appropriate data be collected and the proper conclusions drawn. Collection of the clinical and electrophysiologic data should be entirely under the supervision of the qualified physician EDX consultant. The consultant may collect all of the data directly from the patient or may delegate collection of some data to a specifically trained non-physician or physician in a residency-training program or fellowship.

In the case of nerve conduction studies (NCS) and somatosensory evoked potential (SEP) testing, the physician need not be present in the room when the procedure is performed but should be

immediately available. Once the physician has determined the preliminary differential diagnosis on the basis of the patient's history and examination, a technologist may perform the NCS and SEP tests selected by the physician. The physician should be alerted immediately during the testing if any results appear to be unusual or unexpected, so that there is opportunity to reassess the differential diagnosis and develop alternative testing strategies. The patient should remain in the room until the supervising EDX consult has reviewed the NCS and SEP results. Reference: "Technologists Conducting Nerve Conduction Studies and Somatosensory Evoked Potential Studies Independently to be Reviewed by a Physician at a Later Time – POSITION STATEMENT, Muscle Nerve, 22:S8: 266, 1999.

Therefore, the physical therapy services administered from 07/24/02 through 08/30/02 were medically necessary while the office visits with manipulations from 03/11/02 through 08/30/02, the physical therapy visits from 05/13/02 through 07/15/02, and the NCV studies on 08/28/02 were not medically necessary

Sincerely,