

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 office visits, physical therapy, mechanical traction, electrical stimulation, special reports, radiologic exam of lower spine and supplies were found to be medically necessary. The requestor withdrew dates of service 12/15/01, 2/25/02, 3/4/02 and 3/11/02. The respondent raised no other reasons for denying reimbursement for these office visits, physical therapy, mechanical traction, electrical stimulation, special reports, radiologic exam of lower spine and supplies charges.

This Finding and Decision is hereby issued this 7th day of March 2003.

Carol R. Lawrence
Medical Dispute Resolution Officer

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 11/15/01 through 4/5/02 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 7th day of March 2003.

Roy Lewis, Supervisor
Medical Dispute Resolution
Medical Review Division

RL/cl

February 18, 2003

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

MDR Tracking #: M5-03-0946-01
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

___ sustained an injury to his lumbar spine on ___. He was lifting heavy in his employment as a "loader." He felt his injury occurred when he lifted a box that weighed between 75-80 pounds. He had the onset of lower back pain with radiating pain to the right leg. He was initially seen at a medical center and received prescription medication. He also underwent x-rays and an MRI of the lumbar spine. On 11/5/01 he sought the care of the Treating Doctor who took x-rays and then began a course of treatment consisting of spinal manipulation, mechanical traction, electrical muscle stimulation and moist heat

and ice packs. Subsequently, he began work hardening at an outside facility. During this time, the patient was examined by the Treating Doctor once per week. He continued to have problems and underwent NCV testing and had findings reported as L5 root irritation. He had a neurosurgical consult at which time surgery was not recommended. Epidural steroid therapy was recommended by the neurosurgeon, however, the patient declined. The patient underwent a designated doctor examination on March 8, 2002, which found that the patient had not reached MMI. The patient underwent functional capacity testing and was released to return to work with restrictions on 4/5/02. He was assigned an MI date of 4/1/02 and was assessed a 5% impairment rating.

According to the documentation, the carrier assigned the case for peer review within three weeks from commencing care at the Treating Doctor's clinic. The peer review was performed by ___ ("peer reviewer") on 11/28/01. According to the uncontroverted letter by the Treating Doctor's attorney, the peer review report (a) recommended a denial of all care actually rendered by the Treating Doctor, (b) recommended a denial of all future care by the Treating Doctor and (c) failed to base its recommendations on any rationales or analysis.

DISPUTED SERVICES

Under dispute are physical therapy, mechanical traction, electrical stimulation, special reports as insurance, radiologic exam of the lower spine, supplies and MP office visits.

DECISION

The reviewer disagrees with the prior adverse determination.

BASIS FOR THE DECISION

Based on the documentation and standards of medical necessity as set forth in Texas Labor Code, Section 408.021 and TWCC Rules regarding responsibilities of a treating doctor, the reviewer finds that all of the care rendered by the Treating Doctor was medically necessary.

Initially, the Treating Doctor took x-rays to rule out fracture. As early as 11/14/01, the patient's condition was noted as progressing, including relief from pain. A break in treatment occurred from 11/14/01 to 11/26/01 due to family issues as noted in the 11/26/01 report. Treatment was re-initiated on 11/26/01. A comparison of the 12/14/01 exam to the 11/5/01 exam reveals that the Patient improved in all of the ROM categories that were previously abnormal, demonstrating his progress as a result of treatment. SOAP notes from 12/17/01, 12/19/01, 12/21/01 and 12/28/01 all reflect improvement in the condition.

On 1/7/02, the patient underwent an FCE to determine his ability to return to work. The patient's PDC level was rated at light/medium and his job was rated as heavy. Based upon good response to active care, but demonstrating deficits in his ability to return to

work, the patient was entered into a work hardening program. During that time period, ___ was examined by the Treating Doctor as part of his responsibilities of assessing the patient's injury and response to treatment.

at the request of the carrier, the patient was examined by a TWCC-assigned designated doctor to determine MMI and IR on 3/8/02. The designated doctor determined that the patient had not reached MMI at that point, and indicated a prospective MMI date of 4/26/02.

While the EOBs and the attorney letter both reference the existence of a peer review report dated 11/28/01, this peer review report was not provided to the IRO as part of the relevant materials. Based on the uncontroverted representation by the Treating Doctor relating to this peer review, the review report is irrelevant due to the fact that it failed to articulate any rationales or analysis in support of its denial recommendations. Its recommendations regarding future care are also irrelevant as inconsistent with TWCC Rule 133.301(a) and Texas Labor Code, Section 408.021, both of which require care to be reviewed in an after-the-fact fashion.

At all relevant times, the Treating Doctor's care satisfied components 1-4 of Texas Labor Code, Section 408.021 and was consistent with the responsibilities of a treating doctor. For those stated reasons, the reviewer finds all of the care in question to be medically necessary.

___ 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,