

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

SOAH DOCKET NO. 453-04-4338.M5

MDR Tracking Number: M5-03-2027-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution-General, 133.307 titled Medical Dispute Resolution of a Medical Fee Dispute, 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. This dispute was received on 4-16-03.

The IRO reviewed hospital services rendered on 4-23-02 through 4-27-02 that were denied as unnecessary medical.

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 \$650.00** 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.

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

On 8-7-03, 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 requestor failed to submit medical records in accordance with Rule 133.307(g)(3) and Section 413.011(b) to support the fee dispute and challenge insurance carrier's position. The EOB that represents how much of the \$65,523.33 applies to the semi-private room was not submitted. The Medical Review Division is unable to determine how much is in dispute; therefore, no reimbursement is recommended.

The above Findings and Decision are hereby issued this 22nd day of January 2004.

Dee Z. Torres
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 4-23-02 through 4-27-02 in this dispute.

This Order is hereby issued this 22nd day of January 2004.

Roy Lewis, Supervisor
Medical Dispute Resolution
Medical Review Division
RL/dzt

August 5, 2003

Re: MDR #: M5-03-2027-01
IRO Certificate No.: IRO 5055

___ has performed an independent review of the medical records of the above-named case to determine medical necessity. In performing this review, ___ reviewed relevant medical records, any documents provided by the parties referenced above, and any documentation and written information submitted in support of the dispute.

The independent review was performed by a matched peer with the treating health care provider. This case was reviewed by a physician who is Board Certified in Orthopedic Surgery.

Clinical:

This 43-year-old female claimant injured her back at work on ____. After failure of conservative treatment, she had surgery on 05/01/01. She underwent spinal fusion at L4-5 and L5-S1. She failed to maintain improvement and had recurrent back pain, as well as radicular symptoms. The pre-op evaluation on 04/22/02 noted, "She has some evidence of graft absorption and possible hardware loosening in the base of her spine in the S-1 screws, with possible pseudoarthrosis at that level." She was readmitted for removal of hardware and re-arthrodesis of the back.

Disputed Services:

Removal of hardware and re-arthrodesis of the back that included the following:

- Pharmacy (generic and non-generic drugs)
- pulmonary function
- hand-held nebulizer
- cardiology
- med-surg supplies
- laboratory services
- physical therapy

- room and board – semi private
- general radiology & diagnostic X-ray
- OR services
- anesthesia services
- blood administration
- recovery room

Decision:

The reviewer disagrees with the determination of the insurance carrier and is of the opinion that the surgical procedure in question was medically necessary in this case.

Rationale:

The reviewer was not provided access to the surgeon's complete records. However, the decision relative to the validity of the operation is based on the assumption that x-ray evidence of graft absorption and loosening of the screws and developing pseudoarthrosis existed, as was stated by the surgeon. This would have resulted in back pain, indicating a probable surgically induced instability requiring re-evaluation, probable re-fusion, and re-application of appropriate hardware.

Additional Comments:

These comments are not within the purview of this report and are made for additional information only. Some of the post-operative charges made by the hospital, which will be noted below, are questionable and appear not to be usual and customary:

- an LSD back brace on 04/23/02 for \$4,715.00, this is a post-op brace that seems excessive
- septal bulb syringe for \$73.31, which seems expensive
- Symphony PCS kit for \$2,530.00, appears to be questionable, as does a Stryker IPPS drill bit for \$575.00, and an Andrews frame kit for approximately \$2,000.00
- a marking pen for \$18.98
- something called a Symphony machine for \$253.00, the use of which is unclear
- Osteofil bone paste for \$7,820.00, and also another charge for autologous growth factor for \$8,200.00, which appears to be a duplication of charges; however, I am not sure.
- anesthesia for five hours for \$8,625.00, and \$600.00 worth of supplies seems high, as does the two-hour recovery room stay charge of \$6,000.00.

According to Texas Labor Code 408:021(a), an employee is entitled to the care reasonably required in association with their injury and the treatment thereof. If the patient's condition is not stable, the care to maintain and promote healing is medically necessary.

I am the Secretary and General Counsel of ___ and I certify that the reviewing healthcare professional in this case has certified to our organization that there are no known conflicts of interest that exist between him and any of the treating physicians or other health care providers or any of the physicians or other health care providers who reviewed this case for determination prior to referral to the Independent Review Organization.

Sincerely,