

MDR Tracking Number: M5-03-2051-01

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 **or January 1, 2003** and Commission Rule 133.305 and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division (Division) assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent.

The Division has reviewed the enclosed IRO decision and determined that **the requestor did not prevail** on the issues of medical necessity. The IRO agrees with the previous determination that the FCE and work hardening program were not medically necessary. Therefore, the requestor is not entitled to reimbursement of the IRO fee.

Based on review of the disputed issues within the request, the Division has determined that medical necessity was the only issue to be resolved. As the treatment was not found to be medically necessary, reimbursement for dates of service from 4-15-02 through 5-3-02 is denied and the Division declines to issue an Order in this dispute.

This Decision is hereby issued this 12<sup>th</sup> day of June 2003.

Dee Z. Torres  
Medical Dispute Resolution Officer  
Medical Review Division  
DZT/dzt

June 9, 2003

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

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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 Medical Doctor with a specialty in Occupational Medicine and board certification in Family Practice. 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

\_\_\_ is a 49-year-old male who sustained an injury on \_\_\_. He was climbing down a ladder when he slipped and fell. He was subsequently diagnosed with lumbalgia and treated conservatively.

By review of the records, it appears that he initially saw \_\_\_, and was then referred \_\_\_. Review of \_\_\_ notes show that the patient was treated with medications, physical therapy, epidural steroid injections, and underwent two NCV/EMG studies of the lower extremities. He also had an IME done by \_\_\_, orthopedic surgeon, and was lastly evaluated by \_\_\_, an orthopedic surgeon. \_\_\_ was also treated with work hardening.

\_\_\_ underwent surgery by \_\_\_ on 7/3/02 for a laminectomy of the lumbar spine with fusion. The last note from \_\_\_ is dated 12/23/02 and the impression is myofascial cervical pain and he recommends trigger point injections.

#### DISPUTED SERVICES

Under dispute is the medical necessity of a work hardening program and a functional capacity evaluation provided from 4/18/02 through 5/3/02.

#### DECISION

The reviewer agrees with the prior adverse determination.

#### BASIS FOR THE DECISION

To begin with, the reviewer finds that \_\_\_ notes, except for the initial note of 9/25/01, are not detailed as far as \_\_\_ complaints and findings. Examples are the notes of 10/12/01, 11/2/01 and 11/12/01. The note of 10/12/01 shows that the complaint is that \_\_\_ still has over a week of therapy left and has had only a few days. He is feeling about 70% better so far. Under the objective part of the note are noted the vital signs. This mentions the results of the EMG and nerve conduction study. However, there is no mention of any findings on the physical exam. The note of 11/2/01 shows the complaint to be that \_\_\_ continues to complain of low back pain and notes pain at night. He stopped the Celebrex yesterday in anticipation of a possible epidural. However, the objective part of the note shows only the vital signs and that the therapy note shows that he received pelvic traction up to 115 pounds with some pain still noted, which was better with the therapy. However, there is not note of any findings on the physical examination, other than the vital signs. The note of 11/12/01 shows the objective findings only to be the vital signs. While the Functional Capacity Evaluation (FCE) done on 12/12/01 showed that \_\_\_ required work at the very heavy PDC level and that the testing showed that he functioned at the medium PDC level, it should be noted that \_\_\_ did not act on the FCE until 3/15/02, which was over three

months after the FCE was done. On \_\_\_ note of 3/15/02 he makes the statement that the patient says that his back is doing much better and has to lift up to 95 pounds at the workplace. He also states that the patient saw \_\_\_ and he recommended that he return to work full time. \_\_\_ made the statement that the FCE performed in December indicated that the patient was not able to return to work. He then ordered work hardening five times a week for four weeks at \_\_\_.

The notes from \_\_\_ leading to the dates in question which are from 4/18/02 to 5/3/02 show the note of 3/29/02 to make the comment that \_\_\_ experienced low back pain after an Independent Medical Evaluation by \_\_\_. The letter of 4/2/02 by \_\_\_ also makes the note that, though \_\_\_ has not completely recovered, he has significantly improved up until recently. He mentions the increased pain after \_\_\_'s evaluation. The note of 4/12/02 notes that \_\_\_ state that he has to lift 80 pounds at work. On the plan \_\_\_ states that the patient is able to return to work under limitations from his FCE. The note of 4/26/02 showed that \_\_\_ mentioned the possibility of a surgical referral on the following visit in one week. The note of 5/15/02 showed that \_\_\_ mentions that the RFCE suggested that \_\_\_ was not at MMI. The note of 5/28/02 shows that \_\_\_ states that, if work hardening was denied, he would place \_\_\_ at MMI status based on his current limitations. Finally, the note of 8/26/02 showed that the patient had a laminectomy of the lumbar spine with fusion by \_\_\_, orthopedic surgeon, on 7/3/02.

\_\_\_ notes make it very difficult for the reviewer to determine whether the patient was at work or not. On the note of 3/15/02, \_\_\_ notes that \_\_\_ states that he has to lift up to 95 pounds at the workplace. However, the reviewer is unsure if this means that he is at work or not. The statement that the FCE performed in December indicated that \_\_\_ was not able to return to work is not correct. A FCE helps to determine an individual's functional capacity, but does not determine MMI status. Furthermore, \_\_\_ waited over three months to act on the FCE of 12/12/01. At that point, he should have requested another FCE to determine what the functional level was at that time. Even though the two FCEs show that \_\_\_ does have an improvement, we do not know his true functional capacity when he started the work hardening on 3/20/02.

Furthermore, the note of 3/15/02 shows that \_\_\_ notes that \_\_\_ recommended that \_\_\_ return to full work, which apparently he did not do. Also, the note of 3/1/02 notes that \_\_\_ is considering MMI on the follow-up visit of 3/15/02, which he did not do, based on the results of the FCE done on 12/12/01.

Even though \_\_\_ notes that the patient had increased pain to the lumbar spine after having undergone an IME by \_\_\_, he notes this on the visit of 3/29/02, which is after his recommendation for work hardening for four weeks at \_\_\_ on 3/15/02.

Therefore, \_\_\_ notes are very confusing. He does not document much on the objective part of his notes. The reader of his notes cannot tell whether this patient is at work or not. Furthermore, he did not act on the initial FCE of 12/12/01 on a timely basis. He acted on the FCE results more than three months after. At that time, he should have ordered another FCE to see the functional capabilities at that time and then determine whether he was a candidate for work hardening. Also, \_\_\_ was considering MMI status two weeks after the visit of 3/1/02, which was prior to the date in question, 4/18/02. \_\_\_ recommended that the patient return to full work. However, he was not returned to full work because of the FCE results done over three months prior.

Even though this patient probably would have benefited from a work hardening program, the documentation available for this review shows that \_\_\_ did not act on the initial FCE in a timely basis. He should have requested a follow-up FCE in March when work hardening was started. Beyond that, \_\_\_ note of 3/1/02 shows that he was considering MMI status on the follow-up visit of 3/15/02, although he did not do so because of the FCE findings.

Therefore, because \_\_\_ mentioned the possibility of MMI on the visit of 3/15/02, because he did not place \_\_\_ at MMI status on that date because of the FCE results done in December 10, 2002, because an FCE by itself does not determine MMI status, and because a follow-up FCE was not done at the time that work hardening was ordered and started, the reviewer finds that there was no document of the medical necessity for the work hardening program and the FCE done from 4/18/02 through 5/3/02.

\_\_\_ 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,