

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 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 05-15-03. Per Rule 133.308(e)(1) dates of service 04-03-02 through 05-14-02 were not timely filed.

The IRO reviewed therapeutic procedures, office visits with manipulations, myofascial release, manual traction, ultrasound therapy and aquatic therapy rendered from 05-20-02 through 07-31-02 that was denied based upon "V".

The Medical Review Division has reviewed the IRO decision and determined that the requestor **did not prevail** on the issues of medical necessity. Consequently, the requestor is not owed a refund of the IRO fee.

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 08-15-03, 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 following table identifies the disputed services and Medical Review Division's rationale:

DOS	CPT CODE	Billed	Paid	EOB Denial Code	MARS	Reference	Rationale
5-15-02 through 5-16-02 (2 DOS)	97110	\$392.00 (8 units @ \$49.00 per unit)	\$0.00	No EOB	\$35.00	Rule 133.307 (g)(3)(A-F)	See rationale below. No reimbursement recommended.
5-15-02 through 5-16-02 (2 DOS)	99213-MP	\$136.00 (2 units @ \$68.00 per unit)	\$0.00	No EOB	\$48.00	Rule 133.307 (g)(3)(A-F)	Requestor submitted relevant information to support delivery of service. Recommend reimbursement of \$48.00 X 2 DOS = \$96.00
5-15-02 through 5-16-02	97122	\$98.00 (2 units @	\$0.00	No EOB	\$35.00	Rule 133.307 (g)(3)(A-F)	Requestor submitted relevant information to support delivery of service.

DOS	CPT CODE	Billed	Paid	EOB Denial Code	MARS	Reference	Rationale
(2 DOS)		\$49.00 per unit)					Recommend reimbursement of \$35.00 X 2 DOS = \$70.00
5-15-02	97035	\$31.00	\$0.00	No EOB	\$22.00	Rule 133.307 (g)(3)(A-F)	Requestor submitted relevant information to support delivery of service. Reimbursement recommended in the amount of \$22.00
5-15-02 through 5-16-02 ( 2 DOS)	97250	\$122.00 (2 units @ \$61.00 per unit)	\$0.00	No EOB	\$43.00	Rule 133.307 (g)(3)(A-F)	Requestor submitted relevant information to support delivery of service. Reimbursement recommended in the amount of \$43.00 X 2 DOS = \$86.00
TOTAL		\$779.00	\$0.00		\$554.00		The requestor is entitled to reimbursement in the amount of \$274.00

**RATIONALE:** Recent review of disputes involving CPT code 97110 by the Medical Dispute Resolution section as well as analysis from recent decisions of the State Office of Administrative Hearings indicate overall deficiencies in the adequacy of the documentation of this code both with respect to the medical necessity of one-on-one therapy and documentation reflecting that these individual services were provided as billed. Moreover, the disputes indicate confusion regarding what constitutes “one-on-one”. Therefore, consistent with the general obligation set forth in Section 413.016 of the Labor Code, the Medical Review Division (MRD) has reviewed the matters in light of the Commission requirements for proper documentation.

The MRD declines to order payment for code 97110 because the daily notes did not clearly delineate the severity of the injury that would warrant exclusive one-to-one treatment.

### 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 8-28-01 through 12-28-01 in this dispute.

This Findings and Decision and Order are hereby issued this 12th day of March 2004.

Debra L. Hewitt  
 Medical Dispute Resolution Officer  
 Medical Review Division

DLH/dlh

August 12, 2003

Re: Medical Dispute Resolution  
MDR #: M5-03-2312-01

\_\_\_ 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 Certified in Chiropractic Medicine.

**Clinical History:**

This male claimant suffered a work-related injury on \_\_\_. He felt immediate pain over his right lumbar spine, was taken to the emergency room immediately after the accident and was released with pain medication later the same day. Conservative chiropractic care was initiated on 03/04/02. MR imaging of the lumbar spine on 03/09/02 showed a 2.0 mm disk bulge at L4-L5 with desiccation of disk material and a 5.0 mm central disk herniation at L5-S1 with desiccation of disk material. Nerve conduction velocity (NCV) testing performed on 03/26/02 revealed findings that were suggestive of an L-5 and S-1 radiculopathy, more evident on the left at L-5.

The claimant was referred to an M.D. on 04/30/02 who ordered a lumbar epidural steroid injection series which was performed on 06/10/02, 07/22/02 and 08/19/02.

Functional Capacity Evaluation (FACE) on 07/10/02 showed continued decrease in the claimant's physical demands and possible anxiety/depression factors were evident.

**Disputed Services:**

Therapeutic procedures, office visits with manipulations, myofascial release, manual traction, ultrasound therapy, aquatic therapy.

**Decision:**

The reviewer agrees with the determination of the insurance carrier in this case. The disputed services were not medically necessary.

**Rationale:**

The treating provider failed to establish the necessity of continued passive therapeutics in the treatment of this patient's medical condition. Passive treatment applications continued to be applied to treat this patient's condition even though they were not noted to have therapeutic benefit beyond 05/04/02. There is no data presented in the medical records reviewed that warrants continued utilization of a passive treatment algorithm.

There is a true lack of function baseline data until the 07/10/02 FCE. It is apparent that the patient has deficits in his lifting physical demands. The relevance of the anxiety/depression questionnaire is not sufficient to warrant the patient's progression to upper level therapeutics such as work hardening.

The aforementioned information has been taken from the following guidelines of clinical practice and/or peer-reviewed references:

- Kankanpaa, M., Taimela, S., Airakfinen, O., Hanninene, O. *The Efficacy of Active Rehabilitation in Chronic Low Back Pain: Effect on Pain Intensity, Self-Experienced Disability, and Lumbar Fatigability.* Spine, 1999, May 15; 24(10): 1034-42
- Kelly, B.T., Riskin, L.A., Kirkendall, D.P., Speer, K.P. *Shoulder Muscle Activation During Aquatic and Dry Land Exercises in Non-Impaired Subjects.* J. Orthop. Sports Phys. Ther., 2000, April; 30(4):204-10.
- *Overview of Implementation of Outcome Assessment Case Management in the Clinic Practice.* Washington State Chiropractic Association: 2001, 54 p.
- *Unremitting Low Back Pain, North American Spine Society Phase III Clinical Guidelines for Multi-Disciplinary Spine Care Specialists.* North American Spine Society; 2000, 96 p.

ADDITIONAL COMMENTS:

It is appropriate for this patient to have rehabilitation instruction to successfully implement a home rehabilitation program. The program would require periodic supervision and instruction on activity progression. It is vital to the management of this patient's condition that the implementation of passive and manipulative therapeutics ceases, and that the patient be directed in active, patient-driven treatment applications.

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,