

MDR Tracking Number: M5-03-2418-01

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 (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 office visits, unlisted procedure of nervous system, hot/cold packs and special reports 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 the office visits, unlisted procedure of nervous system, hot/cold packs and special report fees were the only fees involved in the medical dispute to be resolved. As the treatment was not found to be medically necessary, reimbursement for dates of service from 6/3/02 to 2/24/03 is denied and the Division declines to issue an Order in this dispute.

This Decision is hereby issued this 25th day of July 2003.

Carol R. Lawrence
Medical Dispute Resolution Officer
Medical Review Division

CRL/crl

July 15, 2003

(Amended July 16, 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 Doctor of Osteopathy with a specialty and board certification in Pain Management. 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

This patient was injured on ___ when she attempted to sit in a chair that slid out from under her; she landed on her buttocks. At the time of the injury she was a 32-year-old morbidly obese female, approximately ___ pounds, with a history of diabetes.

___ evaluated her on 11/30/00 for complaints of lumbar pain radiating into both legs. She was noted to be 6 1/2 months pregnant. Reflexes and sensation and motor functions were all normal in the lower extremities, with negative straight-leg raising test.

On 5/2/01 a lumbar MRI was performed, and it was entirely normal. Several FCEs were then performed by the patient's treating doctor, ___, all of which demonstrated significant evidence of invalid testing, lack of effort, inappropriate illness behavior, and therefore, invalid results. These FCEs were performed on 5/3/01, 6/14/01 and 7/23/01. All of them demonstrated the same lack of validity and inappropriate pain behavior.

The patient saw ___, a physiatrist, on 8/15/01 for complaints of lumbar and bilateral buttock pain radiating to the right thigh. She was noted to weigh ___ pounds with a height of ___. A physical examination demonstrated no motor, sensory or neurologic deficits.

___ stated that she was not a candidate for fusion or IDET treatment, based on her morbid obesity, and recommended against lumbar discography.

An epidural steroid injection was performed by ___ on 1/25/02 and again on 2/8/02, neither of which provided any benefit whatsoever. On 6/3/02 the patient began a series of approximately 15-20 DRX spinal traction treatments, at the end of which her pain rating was no better, and in fact as worse than when she began treatment.

On 8/6/02 she underwent electrophysiologic studies consisting of motor nerve conduction study, sensory nerve conduction study, and somatosensory-evoked responses performed by a chiropractor, ___, a Chiropractic Neurologist.

Despite ___ recommendation against performing discography, this patient was referred to ___ on 9/18/02 for L3/4, L4/5 and L5/S1 discography. She was noted to have “partially concordant” pain at the L4/5 and L5/S1 levels, with no pain at the L3/4 level. The CT scan following the discogram demonstrated disc degeneration at L3/4, L4/5 and L5/S1, with broad-based disc protrusion but no disc herniation or neural impingement.

The patient returned to ___ on 12/16/02. He stated that the neurological exam showed “right L5/S1 radicular pain” despite the fact that the patient’s pain radiated only to the right thigh.

On 1/23/03 the patient was seen by ___, the physician assistant for ___, who recommended consideration of an IDET procedure. A physical exam demonstrated that the patient now weighed ___ pounds, with no tenderness in the lumbar spine, negative straight-leg raising bilaterally, an normal strength and sensation in both lower extremities. ___ continued to follow-up through 2/24/03, noting essentially the same physical examination and ongoing pain complaints.

A peer review was performed on 12/31/02 by ___ who pointed out the multiple FCE evidence of invalid effort and inappropriate behavior, the normal MRI, and the complete lack of objective evidence of structural pathology related to the work injury of 11/14/00. He stated that there was no medical necessity for non-surgical decompression to decompress herniated discs when, in fact, the MRI had specifically excluded such a diagnosis on 5/2/01.

DISPUTED SERVICES

Under dispute is the medical necessity of unlisted procedures of the nervous system, hot and cold packs, office visits and special reports provided from 6/3/02 through 2/24/03.

DECISION

The reviewer agrees with the prior adverse determination.

BASIS FOR THE DECISION

All of the objective studies performed on this patient demonstrated normal findings and no evidence of structural abnormality, damage, or harm to any part of her body. The gold standard of electrodiagnostic study involves needle EMG. Medical literature clearly supports that needle EMG is the only valid study to determine radiculopathy. In this case, the chiropractor performed surface-evoked potential and nerve conduction studies.

Discography, an inherently subjective test, also is inherently non-objective. Moreover, the patient reported only “partially concordant” pain when her discs were injected. This would not indicate a positive discogram test. Additionally, the data generated during the discogram does not meet standards of care, as it did not include the objective measurement of the pressure generated within the disc as a result of the injection.

Medical literature does not support the validity of discography when high pressure results from the injection of contrast dye during discography. Medical literature also does not support the validity of discography when more than 1.5-2 cc of contrast dye is injected into the disc. In this case, a volume greater than that was injected into each of the three discs with no objective pressure measurement as a result of the injection, rendering the discogram results invalid and of no clinical consequence.

Finally, the “DRX” treatments provided from 6/3/02 through at least 7/2/02 constitute treatment that has no valid scientific support. Although the treatment may be FDA approved, there are no peer-reviewed, scientific, double-blind studies that demonstrate either long-term efficacy or validity of this treatment. ___ himself states that the treatment is to decompress herniated discs. In this case, there is no objective evidence whatsoever of disc herniation on either the MRI, discogram or post-discogram CT. Therefore, by ___’s own documentation, the patient did not even meet what he states to be the indicated reason for this treatment. This treatment is essentially nothing more than overpriced, excessive spinal traction, and does not constitute reasonable or necessary treatment in any case, much less in this patient’s case, due to the facts listed above. In the absence of pathology, and with no scientific evidence of efficacy, the treatment supplied to this patient from 6/3/02 through 2/24/03 was not medically reasonable or necessary as related to the lumbosacral strain injury of ___ that produced no damage or harm to any structure or part of this patient’s body.

There is also more than ample evidence on multiple evaluations by ___ himself of the patient’s symptom magnification, invalid testing, inappropriate pain behavior, and probable functional overlay such that no treatment whatsoever could have been deemed medically reasonable or necessary for a patient such as this. There is ample evidence within the body of medical literature regarding chronic pain that clearly demonstrates the expected failure of any treatment provided to a patient with as clear and obvious a profile of symptom magnification and functional overlay as present here.

___ 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,