

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 10-11-02.

The IRO reviewed therapeutic exercises, office visits, unlisted therapeutic procedure, supplies/materials, massage therapy and ultrasound therapy rendered from 04-15-02 through 05-15-02 that was denied based upon "U".

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 \$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 not the only issue** to be resolved. The services performed from 04-15-02 to 04-29-02 were medically necessary with the exception of office visits coded 99212 for dates of service 04-18-02, 04-24-02, 04-25-02 and 04-29-02. Additionally only three (3) modalities of services at any given physical medicine session were medically necessary. CPT code 97124 on date of service 04-15-02 was not authorized as it represented a fourth modality. Services performed after 04-29-02 were not considered medically necessary. This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division.

On 09-17-03, 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
3-27-02	97110	\$140.00 (1 unit @ \$35.00 X 4 units)	\$0.00	D	\$35.00	Rule 133.307 (g)(3)(A-F)	See rationale below. No reimbursement is recommended.
3-27-02	99070-PH	\$7.00 (1 unit)	\$0.00	D	DOP	Rule 133.307 (g)(3)(A-F)	Requestor did not submit relevant information to support delivery of service. No reimbursement recommended.

DOS	CPT CODE	Billed	Paid	EOB Denial Code	MARS	Reference	Rationale
3-27-02	99212	\$32.00 (1 unit)	\$0.00	D	\$32.00	Rule 133.307 (g)(3)(A-F)	Requestor did not submit relevant information to support delivery of service. No reimbursement recommended.
3-27-02	97265	\$43.00 (1 unit)	\$0.00	D	\$43.00	Rule 133.307 (g)(3)(A-F)	Requestor did not submit relevant information to support delivery of service. No reimbursement recommended.
3-27-02	97124	\$56.00 (1 unit @ \$28.00 X 2 units)	\$0.00	D	\$28.00	Rule 133.307 (g)(3)(A-F)	Requestor did not submit relevant information to support delivery of service. No reimbursement recommended.
3-27-02	97139- PH	\$35.00 (1 unit)	\$0.00	D	DOP	Rule 133.307 (g)(3)(A-F)	Requestor did not submit relevant information to support delivery of service. No reimbursement recommended.
5-15-02	97124	\$56.00 (1 unit @ \$28.00 X 2 units)	\$0.00	No EOB	\$28.00	Rule 133.307 (g)(3)(A-F)	Requestor submitted relevant information to support delivery of service. Reimbursement is recommended in the amount of \$28.00 X 2 = \$56.00
5-15-02	97265	\$43.00 (1 unit)	\$0.00	No EOB	\$43.00	Rule 133.307(g)(3)(A- F)	Requestor submitted relevant information to support delivery of service. Reimbursement is recommended in the amount of \$43.00
TOTAL		\$412.00	\$0.00				The requestor is entitled to reimbursement in the amount of \$99.00

**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 03-27-02 through 05-15-02 in this dispute.

This Findings and Decision and Order are hereby issued this 15<sup>th</sup> day of April 2004.

Debra L. Hewitt  
Medical Dispute Resolution Officer  
Medical Review Division

DLH/dlh

Enclosure: IRO Decision



7600 Chevy Chase, Suite 400  
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### NOTICE OF INDEPENDENT REVIEW DECISION

**Date:** April 5, 2004

**Requester/ Respondent Address :** Rosalinda Lopez  
TWCC  
4000 South IH-35, MS-48  
Austin, Texas 78704-7491

**RE: Injured Worker:**  
**MDR Tracking #:** M5-03-2499-01  
**IRO Certificate #:** 5242

Forté has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Texas Workers' Compensation Commission (TWCC) has assigned the above referenced case to Forté for independent review in accordance with TWCC Rule §133.308 which allows for medical dispute resolution by an IRO.

Forté has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, relevant medical records, any documents utilized by the parties referenced above in making the adverse determination, and any documentation and written information submitted in support of the appeal was reviewed.

The independent review was performed by a Physical Medicine and Rehabilitation/Chiropractic physician reviewer who is board certified in Physical Medicine and Rehabilitation. The Physical

Medicine and Rehabilitation/Chiropractic physician reviewer has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians 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 this case.

### **Clinical History**

This claimant is now a 42 year old female with a date of injury of \_\_\_\_\_. Her height is 61 inches, weight initially 155 pounds. She was first seen on 9/18/00 for evaluation at First Rio Valley Medical for the \_\_\_\_\_ reported injury after panning food from a brasier. She lifted the brasier and felt immediate pain to her neck and right shoulder. She left her job and used ice at home for 3 days and then sought treatment at First Rio Valley. On her initial evaluation her diagnoses were neck sprain, brachial neuritis or radiculitis, myalgia, and myositis, possible displacement of the cervical intervertebral. There was an MRI of the cervical spine performed on 11/16/00 that showed minimal anular disc bulge at C4/5 and C5/6 levels causing mild anterior cerebrospinal fluid space effacement without stenosis. The had plain cervical spine x-rays on 9/18/00 which were interpreted by Dr. Church, chiropractor, that showed early facet arthrosis and he states positive biomechanical alterations. She had a right shoulder MRI due to those complaints on 5/21/01 which showed a rotator cuff tear with evidence of impingement syndrome. After reviewing the notes it appears this did clear from the orthopedic surgeons she saw. In past medical history in the records reviewed it is noted this is significant for an injury to the cervical spine on 11/25/97. They do not give mechanism of injury or what treatment was provided for this injury. It is noted she did not have any surgical procedures. Therefore, there is lack of information in the medical records regarding an injury prior to this date of complaint on 11/25/97. The claimant subsequently underwent electrodiagnostic studies on 9/20/00. This is only 5 days following her injury. Nerve changes and muscle changes following an acute injury will take 6-8 weeks to be reflected in electrodiagnostic testing. Therefore, anything discovered in this test would have been pre-existing as this type testing was performed too early from injury date to document injury from the \_\_\_\_\_ incident. Therefore, all these testings are related to pre-existing conditions by medical standards and guidelines for electrodiagnostic testing post injury. Notes then are picked up on 3/13/02 when the claimant returned back to First Rio Valley for an exacerbation of her neck pain and some pain in the front of her right shoulder with some tingling and numbness into her fingers bilaterally. It is noted that the claimant does have mild bilateral carpal tunnel syndrome that was found on the 9/20/00 testing. She is seen by Dr. Howell, chiropractor, on this exam date. He diagnoses displacement of the cervical intervertebral disc, brachial neuritis or radiculitis, neuropathy and carpal tunnel syndrome. In this letter provided by Rio Valley Medical, determination by guidelines they state by the provider was at initial phase of care for acute exacerbation of a chronic condition. It appears this claimant's original plan of treatment care following injury was joint mobilization, physical medicine modalities and rehab measures every day for 2 weeks then decreasing to 3 times per week for 6 weeks. List of modalities are aquatic therapy, ultrasound, interferential current, massage and gentle joint mobilization. Re-evaluation was in 6 weeks initially. On the 3/13/02 re-evaluation the claimant now is being seen for her exacerbation of neck pain. This is reported as slight to moderate and frequent. She is also having some right shoulder complaints that are reported slight and frequent. She has numbness and tingling into the fingers which is reported slight and frequent. She has headaches also that are slight and frequent. Medications are being given, it appears, by Patrick McAllister, M.D. of Celebrex and Skelaxin. Range of motion testing on this date are nearly all normal. Impression is chronic sprain/strain of the cervical spine. Her diagnosis remains the same as it was initially when first seen on 9/18/00. Plan now is conservative care at 3 times per week for 4 weeks, doctor is Sam Allen, D.C. Modalities are exercise,

general joint mobilization, phonophoresis, massage by the therapist on site. It is noted in this report that it states by Dr. Allen that the cervical spine range of motion is very limited in all ranges. This is disputed by the range of motion testing that was provided on the same. Her range of motion of the cervical spine is all practically normal limits. There is only a slight reduction in findings with extension and rotation. Therefore I feel this is an untrue statement in the records. There is a note on 3/27/02 for follow up with Dr. Robert Howell, D.C. and she is to return tomorrow. The claimant is seen for follow ups by Dr. Howell on 4/15/02, 4/17/02. It is noted on 4/17/02 that her pain has now increased to a 7/10, she started out at a level 5. She is on an exercise program that is described as a one on one and this is with 2 different providers. One is Cindy Alfaro, credentials unknown, and a chiropractor. These providers are both doing one on one during this claimant's exercise program per Dr. Howell. The claimant is also being seen by Booker Rogers, M.D. on dates of service for phonophoresis. These include 4/15/02, 4/17/02, 4/18/02, 4/24/02, 4/25/02, 4/29/02, 5/2/02, 5/15/02 for follow up exams with this physician to examine her skin evidently in the phonophoresis site. On 4/18/02 the claimant is slightly improving. She is having massage, phonophoresis and the one on one exercise plan. Notes are present from 4/24/02, 4/25/02, 4/29/02, 5/2/02, 5/15/02, all showing pain levels with the same treatment. On 4/22/02 her pain was a 10. Subsequently by 5/15/02 her pain is now at a 4. It is noted initially her pain was a 5.

### **Requested Service(s)**

The medical necessity of outpatient services rendered from 4/15/02 to 5/15/02.

### **Decision**

Services performed from 4/15/02 to 4/29/02 are considered to be medically necessary, with the exception of office visits, coded 99212 (4/18/02, 4/24/02, 4/25/02, and 4/29/02). Additionally, only 3 modalities of services at any given physical medicine session are supported by the literature. The following date of service and CPT codes are not authorized: 4/15/02-97124, as it represents a 4<sup>th</sup> modality.

### **Rationale/Basis for Decision**

The documentation would support that the claimant did suffer an exacerbation of her chronic neck pain with degenerative changes. Under the guidelines submitted by the provider this would fit the initial phase of care for an acute exacerbation of a chronic condition. According to the United States Guidelines by the Health and Human Services Department for the treatment of acute spine pain, recommendations are for one month of conservative care or 12 treatment sessions with a maximum of 3 modalities per treatment. This would be the maximum allowed for an original acute injury by guidelines. I feel documentation would allow for the 12 sessions for her acute exacerbation. However, modalities would be limited to 3 per session. With an acute condition this would include gentle joint mobilization, ultrasound, and therapeutic exercise with teaching of a home exercise program and release in 12 sessions, or one month, to a home program only. The one on one therapeutic activity that has been described with 2 providers participating along with this claimant as far as observing her is not usual or customary. This is not the standard of care. I feel that this is not medically necessary. Observation by the therapist is all that would be indicated. This claimant has had treatment in the past and I feel that she should be familiar with exercise and rehabilitation since she had already undergone a program with her original injury. It is noted on each date of service that there is a follow up visit charged. It is usual and customary that if therapy modalities are rendered on the same date of evaluation then the examination fee is considered part of the modality charge and is not billed separately as a reimbursable charge. Therefore I would not cover examination fees by the chiropractor with therapy modalities on the same dates of service, other than a monthly followup, as authorized on 4/17/02. The apparent claim that a physician need supervise

phonophoresis is not supported as medically necessary. The therapist could, if there were any local reaction, contact the physician at that point on an “as needed” basis, and charges for physician supervision are not necessary.

In accordance with Commission Rule 102.4(h), I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to TWCC via facsimile or U.S. Postal Service from the office of the IRO on this 13<sup>th</sup> day of April 2003.

Signature of IRO Employee:

Printed Name of IRO Employee: Deborah Raine