

MDR Tracking Number: M5-03-2641-01

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 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. The dispute was received on 6-18-03.

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.

Based on review of the disputed issues within the request, the Medical Review Division has determined that **medical necessity was the only issue** to be resolved. The requestor submitted a letter of withdrawal for disputed date of service 9-23-02 since the carrier paid for this charge. The hot/cold packs, electrical stimulation, therapeutic exercises, massage, therapeutic activities, ultrasound, and work hardening program on 7-9-02 through 9-16-02 were found to be medically necessary. The respondent raised no other reasons for denying reimbursement for the above listed services.

On this basis, and pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay 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 Order is applicable to dates of service 7-9-02 through 9-16-02 in this dispute.

The respondent is prohibited from asserting additional denial reasons relative to this Decision upon issuing payment to the requestor in accordance with this Order (Rule 133.307(j)(2)).

This Order is hereby issued this 11th day of September 2003.

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

August 4, 2003

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

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___ 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 and board certification in Physical Medicine and Rehabilitation. 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

___ was an employee of ___ who worked in the gardening section. She injured her back in the process of lifting materials. She was seen by ___ and an MRI was obtained that reported a probable annular fissure at L4/5, and a mild bulge of the annulus at L3/4, L4/5 and L5/S1 without neural compression. She underwent physical therapy that was based on the job requirement of lifting 60 lbs., however, her FCE determined that she could lift 20 lbs. She responded to therapies and was progressed into a work hardening program. Goals were set and she was started in a work conditioning program. She had therapy from the dates of 7/9/02 through 7/19/02. She then had a break in her therapy until 9/16/02 and received therapies on 9/16 and 9/23. A retrospective review by ___ determined that these treatments were not medically necessary.

DISPUTED SERVICES

Under dispute is the medical necessity of hot or cold packs, electrical stimulation, therapeutic exercises, massage therapy, therapeutic activities, ultrasound therapy and work hardening provided from 7/9/02 through 9/16/02.

DECISION

The reviewer disagrees with the prior adverse determination.

BASIS FOR THE DECISION

The review by ___ states that the therapy provided to ___ was not medically necessary because it included passive modalities. The notes of the treating therapist clearly state that active therapies were initiated. The passive modalities were provided as an adjunct to the active therapy. The patient progressed during that time in ROM and strength, though she did not achieve the goal of her employment requirements in the time frame covered by the denied charges. It appears that ___ made his determination more on the basis of the use of passive modalities. Since the patient was also receiving active therapies at that time, the reviewer finds that ___ did not apply the standards of care correctly.

___ 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,