

THIS DECISION HAS BEEN APPEALED. THE FOLLOWING IS THE RELATED SOAH DECISION NUMBER:

SOAH DOCKET NO. 453-04-0995.M5

MDR Tracking Number: M5-03-2837-01

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 (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 July 7, 2003.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor prevailed** on the majority of the medical necessity issues. 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 the only issue** to be resolved. The therapeutic exercises, passive motion exercises and special reports for dates of service 8/14/02 through 9/30/02 **were found to be medically necessary**. The therapeutic exercises, passive motion exercises and special reports for dates of service 10/1/02 through 10/11/02 **were not found to be medically necessary**. The respondent raised no other reasons for denying reimbursement of gait training and therapeutic exercises charges.

This Findings and Decision is hereby issued this 19th day of September 2003.

Margaret Q. Ojeda
Medical Dispute Resolution Officer
Medical Review Division

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 8/14/02 through 9/30/02 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 19th day of September 2003.

Roy Lewis, Supervisor
Medical Dispute Resolution
Medical Review Division

MQO/mqo

September 18, 2003

NOTICE OF INDEPENDENT REVIEW DECISION

RE: MDR Tracking #: M5-03-2837-01

___ has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). ___ IRO Certificate Number is 5348. Texas Worker's Compensation Commission (TWCC) Rule §133.308 allows for a claimant or provider to request an independent review of a Carrier's adverse medical necessity determination. TWCC assigned the above-reference case to ___ for independent review in accordance with this Rule.

___ has performed an independent review of the proposed care to determine whether or not the adverse determination was appropriate. Relevant medical records, documentation provided by the parties referenced above and other documentation and written information submitted regarding this appeal was reviewed during the performance of this independent review.

This case was reviewed by a practicing physician on the ___ external review panel. The reviewer has met the requirements for the ADL of TWCC or has been approved as an exception to the ADL requirement. This physician is board certified in physical medicine and rehabilitation. The ___ physician reviewer signed a statement certifying that no known conflicts of interest exist between this physician and any of the treating physicians or providers or any of the physicians or providers who reviewed this case for a determination prior to the referral to ___ for independent review. In addition, the ___ physician reviewer certified that the review was performed without bias for or against any party in this case.

Clinical History

This case concerns a male who sustained a work related injury on ___. The patient reported that while at work he slipped and fell on a large Hopper, then fell down 7 to 8 feet to the ground. The patient underwent a lumbar fusion from the L1-L4 levels on 9/25/00. The patient then underwent a second lumbar surgery for removal of the screws placed in 9/00 and was later diagnosed with a staph infection. The present diagnosis for this patient is postoperative spinal fusion. Postoperatively the patient has been treated with physical therapy that included therapeutic exercises, passive and active therapy. The patient underwent a second spinal fusion on 3/15/02 with complicated postoperative course that included staph infection at posterior ilial crest bone graft site and development of pseudoarthrosis. The patient began physical therapy on 7/10/02 and continued through 10/11/02.

Requested Services

Therapeutic exercises, passive motion exercise device and special supplies from 8/14/02 through 10/11/02.

Decision

The Carrier's determination that these services were not medically necessary for the treatment of this patient's condition is partially overturned.

Rationale/Basis for Decision

The ___ physician reviewer noted that this case concerns a male who sustained a work related injury to his back on ___. The ___ physician reviewer also noted that the patient underwent a second spinal fusion on 3/15/02 that was followed by a course of postoperative physical therapy. The ___ physician reviewer indicated that the patient began physical therapy on 7/10/02 with 4 main goals. The ___ physician reviewer explained that these goals were to decrease the patient's pain level, improve functional endurance, increase functional range of motion and improve functional gait. The ___ physician reviewer also explained that the patient had precautions to be observed that included avoiding lumbar range of motion. The ___ physician reviewer indicated that by 8/26/02 the patient had made mild improvements in all areas (measured by range of motion, endurances, pain level, ADLs, gait). The ___ physician reviewer also indicated that by 9/13/02 the patient had achieved some of his short term goals and long term goals. The ___ physician reviewer explained that the patient had improved his functional endurance, tolerated thirty minutes of sustained aerobic exercise, and had significantly improved range of motion in LE-SLR and rotation. However, the ___ physician reviewer also explained that the patient had not met goals of decreasing his pain level and improving his gait pattern/functionality and therefore the physical therapy was continued. The ___ physician reviewer noted that on 9/30/02 the patient had not made much change in his goals that were not met and by 10/11/02 there was still no achievement of all long term goals although patient had clearly shown improvement in several areas/goals. Therefore, the ___ physician consultant concluded that the therapeutic exercises, passive motion exercise device and special supplies from 8/14/02 through 9/30/02 were medically necessary to treat this patient's condition. However, the ___ physician consultant also concluded that the therapeutic exercises, passive motion exercise device and special supplies from 10/1/02 through 10/11/02 were not medically necessary to treat this patient's condition.

Sincerely,