

THIS DECISION HAS BEEN APPEALED. THE
 FOLLOWING IS THE RELATED SOAH DECISION NUMBER:
 SOAH DOCKET NO. 453-04-6005.M5

MDR Tracking Number: M5-03-3043-01

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, 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 07-23-03.

The IRO reviewed physical performance testing, therapeutic exercises, joint mobilization, motor nerve conduction study, H/F reflex study, sensory nerve conduction test, manual traction, range of motion testing, conductive paste/gel, office visit and medical disability exam rendered from 08-21-02 through 04-02-03 that was denied based upon "U".

The Medical Review Division has reviewed the IRO decision. The IRO has not clearly determined the prevailing party over the medical necessity issues. Therefore, in accordance with §133.308(q)(2)(C), the commission shall determine the allowable fees for the health care in dispute, and the party who prevailed as to the majority of the fees for the disputed health care is the prevailing party.

DOS	CPT CODE	Billed	Paid	EOB Denial Code	MAR\$ (Maximum Allowable Reimbursement)	Reference	Rationale
8-22-02 through 11-22-02 (15 DOS)	97265	\$645.00 (1 unit @ \$43.00 X 15 DOS)	\$0.00	U	\$43.00	IRO Decision	No reimbursement recommended.
9-25-02	95851	\$36.00 (1 unit)	\$0.00	U	\$36.00	IRO Decision	No reimbursement recommended.
9-18-02	95900-27	\$256.00 (4 units)	\$89.60	U	\$64.00	IRO Decision	No reimbursement recommended.
9-18-02	95904-27	\$384.00 (6 units)	\$134.40	U	\$64.00	IRO Decision	No reimbursement recommended.
9-18-02	95935-27	\$212.00 (4 units)	\$37.10	U	\$53.00	IRO Decision	No reimbursement recommended.
9-19-02	97750	\$387.00 (1 unit @ \$43.00 X 9 units)	\$0.00	U	\$43.00	IRO Decision	No reimbursement recommended.
9-25-02	97122	\$35.00 (1 unit)	\$0.00	U	\$35.00	IRO Decision	No reimbursement recommended.

9-26-02	A4558	\$18.00 (1 unit)	\$0.00	U	DOP	IRO Decision	No reimbursement recommended.
11-15-02	99213	\$48.00 (1 unit)	\$0.00	U	\$48.00	IRO Decision	Reimbursement recommended in the amount of \$48.00
4-2-03	99455- L5WP	\$403.00 (1 unit)	\$0.00	U	DOP	IRO Decision	Reimbursement recommended in the amount of \$403.00

DOS	CPT CODE	Billed	Paid	EOB Denial Code	MAR\$ (Maximum Allowable Reimburse -ment)	Reference	Rationale
8-21-02 through 12-10-02 (50 DIS)	97110	\$8,540.00 (4 units @ \$140.00 X 28 DOS and 6 units @ \$210.00 X 22 DOS total of 244 units billed)	\$1,890.00 (1 unit @ \$35.00 X 44 DOS for a total of 44 units and payment of \$1,540 and 2 units @ \$70.00 X 5 DOS for a total of 10 units total payment of \$350.00	U	\$35.00	IRO Decision	IRO recommended no more than 2 units per service date 08-21-02 through 12-20-02 (50 DOS) for a total of 100 units. Payment has been received in the amount of \$1,890.00 (\$35.00 X 54 units). Additional payment is recommended for the remaining 46 units in the amount of \$35.00 X 46 units = \$1,610.00
12-13-02 through 1-13-03 (13 DOS)	97110	\$2,730.00 (6 units @ 210.00 X 13 DOS)	\$455.00	U	\$35.00	IRO Decision	No reimbursement recommended.
TOTAL		\$13,694.00					The requestor is entitled to reimbursement of \$2,061.00

The IRO concluded that therapeutic exercises (97110) for more than two (2) units per service date between 08-21-02 and 12-10-02 and after date of service 12-10-02 were not medically necessary as well as joint mobilization (97265), range of motion testing (95851), motor nerve conduction study (95900-27), sensory nerve conduction test (95904-27), H/F reflex study (95935-27), physical performance testing (97750), manual traction (97122) and conductive past gel (A4558) were not medically necessary. The IRO concluded that office visit (99213) for date of service 11-15-02, medical disability exam for date of service 04-02-03 and two units of therapeutic exercises (97110) between dates of service 08-21-02 and 12-10-02 were medically necessary.

On this basis, the total amount recommended for reimbursement (\$2,061.00) does not represent a majority of the medical fees of the disputed healthcare and therefore, the requestor did not prevail in the IRO decision. Consequently, the requestor is not owed a refund of the paid IRO fee.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

On 09-30-03, 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	MAR\$	Reference	Rationale
9-11-02	95999-WP	\$384.00 (\$64.00 per unit X 6 units)	\$192.00	No EOB	DOP	Rule 133.307 (g)(3)(A-F)	Requestor submitted relevant information to meet documentation criteria. Additional reimbursement recommended in the amount of \$192.00
TOTAL		\$384.00	\$192.00				The requestor is entitled to reimbursement in the amount of \$192.00

This Decision is hereby issued this 3rd day of May 2004.

Debra L. Hewitt
 Medical Dispute Resolution Officer
 Medical Review Division
 DLH/dlh

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 8-21-02 through 04-02-03 in this dispute.

This Order is hereby issued this 3rd day of May 2004.

Roy Lewis, Supervisor
 Medical Dispute Resolution
 Medical Review Division
 RL/dlh

September 19, 2003,
Amended April 26, 2004

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

MDR Tracking #: M5-03-3043-01
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 Chiropractic. The reviewer is on the TWCC Approved Doctor List (ADL). 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

___, a 33-year-old male, sustained an on the job injury to his right upper extremity while working as a maintenance worker for an apartment complex. He was moving a refrigerator into an apartment on ___ when he felt a sharp popping sensation with pain to his right shoulder. He presented usually to his family ___, was x-rayed and taken off work. He was then fired from his job on 7/2/02. He then presented to ___, a chiropractor, on 8/20/02 complaining of right shoulder area pain, with reduced motion and numbness to the anterior shoulder and upper arm area. Diagnosis of shoulder tenosynovitis/bursitis, tendonitis and muscle spasms was made and the patient was placed on a conservative treatment plan of rehab with adjunctive physiotherapeutic modalities, five times per week for two weeks and then four times per week thereafter. He was also referred to and seen by ___, a medical doctor that same day, and diagnosed with a work comp lifting injury resulting in right shoulder internal derangement. Recommendation was to continue conservative therapy with a prescription of Darvocet, Soma, Celebrex and future MRI if necessary. Patient did not seem to respond to care as expected, and was referred for MRI on 9/4/02. This revealed a Hill Sachs compression deformity of the humeral head laterally, probable rotator cuff or focal inflammation with active acromioclavicular inflammation and inferior soft tissue projection causing impingement of the supraspinatous muscle and tendon. There was also some subclavicular and acromion bursitis identified.

The patient was also sent for electrodiagnostic studies on 9/18/02, interpreted to reveal an ulnar nerve conduction block over both elbows, left side worse than right, otherwise normal study. A "physical performance evaluation" was performed on 9/19/02. The patient was referred to ____, an orthopedic surgeon on 10/3/02. Following a diagnosis of rotator cuff tear of the right shoulder with impingement, he recommended arthroscopic investigation. This was performed on 10/17/02 and was followed up with physical therapy a few weeks later. Physical therapy continued without any alteration in frequency or type of application almost daily up until last available treatment notes on 1/15/03. An impairment rating was performed on 4/2/03, apparently following a work hardening program. No information concerning the work hardening program is available. He was assigned a 10% whole person impairment rating, although I am not sure exactly how this was derived. No worksheets are available for calculation purposes.

Concerning the treatment notes and documentation overall, unfortunately, the records all appear to be of the computerized, "canned" variety. They are repetitious, contain minimally clinically useful information and do not show significant progress / substantive change in treatment, given the lack of progress with the course of care. Unfortunately this provides precious little clinical insight as to the patient's status, his progression or improvement/response to care. The doctor makes reference that the patient was scheduled for arthroscopic surgery on 10/10/02, and yet continued on the same on deviating course of care multiple times per week up until the day before surgery. Even upon the patient's follow-up after surgery on 10/25/02, there is no reference to the surgery, either subjectively by the patient or objectively noting any change in the description of pain/objective findings (which are essentially exactly the same as the date prior to the surgery). Surgery would seem to produce at least a little change in the patient subjective/objective picture.

There is also no documentation outlining exactly what type of therapeutic exercises were performed, without any available indication of the number of reps/sets, etc. that would normally accompany such an intensive program of care. This patient underwent essentially an hour to an hour and a half of one-on-one exercises, almost daily up until 1/13/03. No progression / response / deviation to the program is indicated.

The only outcome measurements available consist of three sets of evaluations, namely dynamic lift tests, static strength test and a "work endurance test" on 1/15/03, 2/4/03 and 4/28/03. These were performed after the end of the available treatment notes. There was an improvement in the dynamic lift tests: the patient was apparently unable to complete any of the lift tests on the first examination, 9 lift tests on the second examination and 18 lift tests on the 3rd. The fact that the patient could not even lift 20 pounds at the waist level after five months of daily, intensive exercise (over eighty hours of one-on-one instruction) seems a little strange. It also correlates poorly with the performance of the static tests, which did result in improvement in the number of lift tests along with strength between first and second evaluations, however a decrease in strength in most all of the lift tests on the 3rd test. There did not seem to be any difference in the "work endurance tests".

Various services have been denied for payment based on medical necessity and is thus referred for medical dispute resolution purposes through the IRO process.

DISPUTED SERVICES

Under dispute is the medical necessity of physical performance testing, therapeutic exercises, joint mobilization, motor nerve conduction study, H/F reflex study, sense nerve conduction test, manual traction, range of motion testing, conductive paste gel, office visit, and medical disability examination from 8/21/02 through 4/2/03.

DECISION

The reviewer both agrees and disagrees with the prior adverse determination.

1. Concerning code 99213: The reviewer finds establishment of medical necessity for this service, provided on 11/15/02.
2. Concerning code 99455-L5WP: The reviewer finds establishment of medical necessity for this service, provided on 4/02/03.
3. Concerning code 97110: The reviewer does not find establishment of medical necessity for more than 2 (TWO) units of therapeutic exercises per service date between 08/21/02 and 12/10/02, which involves payment of an additional 46 units of 97110 between these dates. The reviewer does not find establishment of medical necessity for this service beyond 12/10/02.
4. Concerning code 97265: The reviewer does not find establishment of medical necessity for this service for any of the disputed dates.
5. Concerning code 95851: The reviewer does not find establishment of medical necessity for this service provided on 9/25/02.
6. Concerning code 95900-27, 95904-27 and 95935-27: The reviewer does not find establishment of medical necessity for these services provided on 9/18/02.
7. Concerning code 97750: The reviewer does not find establishment of medical necessity for such testing provided on 9/19/02.
8. Concerning code 97122: The reviewer does not find establishment of medical necessity for manual traction provided on 9/25/02.
9. Concerning code A4558: The reviewer does not find establishment of medical necessity for conductive paste gel provided on 9/26/02.

BASIS FOR THE DECISION

1. Concerning code 99213: The reviewer finds establishment of medical necessity for this service, provided on 11/15/02.

There is adequate documentation proving the patient was encountered on this date. There is no

rationale provided as to why this date of service was targeted for not being medically necessary by the carrier.

2. Concerning code 99455-L5WP: The reviewer finds establishment of medical necessity for this service, provided on 4/02/03.

Documentation supports a final office visit encounter with the patient that included an impairment rating. There is no rationale provided as to why this date of service was targeted for not being medically necessary by the carrier.

3. Concerning code 97110: The reviewer does not find establishment of medical necessity for more than 2 (TWO) units of therapeutic exercises per service date between 08/21/02 and 12/10/02, which involves payment of an additional 48 units of 97110 between these dates. I do not find establishment of medical necessity for this service beyond 12/10/03.

The patient suffered a rotator cuff injury with some internal derangement of the right shoulder, which proceeded to surgery. Prior to the surgical intervention, a two-month trial period of conservative care is appropriate, with the inclusion of therapeutic activities/exercises. Unfortunately there is no documentation supporting the type of exercises performed, duration, sets, reps, etc. to support any more than two units per encounter date. Postoperatively, it is also appropriate to include therapeutic exercises, however the same limitations, supporting more than two units per encounter date, exist. In the absence of continuing care being defended by either subjective or object means in the documentation provided, a six-week postoperative course of stretching and strengthening is deemed to have been medically necessary. The documentation does not support necessity for continuation of care beyond 6 weeks postoperatively.

4. Concerning code 97265: The reviewer does not find establishment of medical necessity for this service for any of the disputed dates.

Joint mobilization was billed in conjunction with manual traction, on each date of service. Manual traction is a form of joint mobilization and it is therefore duplicative to bill for joint mobilization when manual traction of the shoulder was performed/billed for on the same date of service. There is absolutely no rationale or indication provided as to how these therapies were distinct or separate from one another, or which type of therapeutic effect was provided that differentiated one from another.

5. Concerning code 95851: The reviewer does not find establishment of medical necessity for this service provided on 9/25/02.

Range of motion is an essential component of the evaluation/management service that was billed on 9/25/03, and should not have been billed separately. The clinical rationale was provided for the requirement for this test separate from the above the required components no separate documentation was provided depicting the results of this test.

6. Concerning code 95900-27, 95904-27 and 95935-27: The reviewer does not find establishment of medical necessity for these services provided on 9/18/02.

No clinical rationale was provided for the requirement for these tests. The documentation did not

provide for any clinical indication that there was any interference in the peripheral nerves necessitating such extensive neurodiagnostics,

7. Concerning code 97750: The documentation does not include appropriate rationale for such testing and does not include sufficient results from the testing for the reviewer to find it medically necessary.

___ 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,