

MDR Tracking Number: M5-03-3119-01

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 titled Medical Dispute Resolution of a Medical Fee Dispute, 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 7-29-03.

The IRO reviewed FCEs and work hardening program rendered from 8-1-02 through 9-23-02.

The Medical Review Division has reviewed the enclosed IRO decision and determined that **the requestor did not prevail** on the majority of the medical necessity issues. The IRO has determined that the work hardening program was **not** medically necessary. The IRO concluded that the FCE on 8-1-02 was medically necessary and the FCE on 9-19-02 was **not** medically necessary. Therefore, the requestor is not entitled to reimbursement of the IRO fee.

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

This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division.

On 9-24-03, the Medical Review Division submitted a Notice to the 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\$ (Maximum Allowable Reimbursement)	Reference	Rationale
9-9-02	97545WHAP	\$128.00	0.00	No	\$64.00/hr for CARF	96 MFG Med GR II E and Rule 133.307(g)(3)	Relevant information was submitted to support delivery of services rendered. Recommend reimbursement of \$1,216.00.
	97546WHAP	320.00		EOB			
9-10-02		128.00					
9-24-02		192.00					
		128.00					
		320.00					
TOTAL		\$1,216.00	0.00				The requestor is entitled to reimbursement of \$1,216.00.

The above Findings and Decision are hereby issued this 27th day of January 2004.

Dee Z. Torres
Medical Dispute Resolution Officer
Medical Review Division

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 Order is applicable for dates of service 8-1-02, 9-9-02, 9-10-02, and 9-24-02 in this dispute.

This Order is hereby issued this 27th day of January 2004.

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

January 27, 2004

Rosalinda Lopez
Texas Workers' Compensation Commission
Medical Dispute Resolution
Fax: (512) 804-4868

AMENDED DECISION
Addressing FCE on 8/19/02 under Decision

Re: MDR #: M5-03-3119-01
IRO Certificate No.: IRO 5055

___ has performed an independent review of the medical records of the above-named case to determine medical necessity. In performing this review, ___ reviewed relevant medical records, any documents provided by the parties referenced above, and any documentation and written information submitted in support of the dispute.

The independent review was performed by a matched peer with the treating health care provider. This case was reviewed by a physician who is Certified in Chiropractic Medicine.

Clinical History:

The patient injured his neck while at work on ___. He began treatment with a chiropractor who diagnosed a cervical sprain/strain and treated the patient with physical medicine modalities for three weeks before releasing the patient back to work with restriction on 01/28/02.

The patient changed treating chiropractors, was released from his work duties and treated with physical therapy for the next 15 weeks. A cervical spine MRI was obtained on 02/07/02, which revealed a mild 1-2 mm bulging of the C5-6 disk. On 04/12/02 the patient was again released to return to work with restrictions.

On 06/11/02 the patient again changed treating chiropractors and was released from his work duties and was provided more treatment in the form of physical modalities. Thereafter the chiropractor referred the patient to a work hardening program.

Cervical and thoracic plain film radiographs were obtained on 06/11/02. These films were read at unremarkable. Electrodiagnostic testing performed on 07/22/02 was negative relative to cervical radiculopathy.

Physical performance evaluations were performed as follows:

08/1/02 the patient could perform at a light-medium physical demand capacity when documentation indicated the required physical demand capacity was a very heavy demand capacity.

On 08/19/02 the patient could perform at a medium-heavy physical demand capacity when documentation indicated the required physical demand capacity was a very heavy demand capacity;

On 09/13/02 the patient could perform at a medium-heavy physical demand capacity when documentation indicated the required physical demand capacity was a very heavy demand capacity.

On 10/03/02 the patient could perform at a medium physical demand capacity when documentation indicated the required physical demand capacity was a very heavy demand capacity.

Disputed Services:

Functional Capacity Evaluation and work hardening for the dates of service in dispute of 08/01/02 through 09/06/02 and 09/23/02.

Decision:

The reviewer partially agrees with the determination of the insurance carrier as follows:

1. The work hardening program **was not medically necessary.**
2. The Functional Capacity Evaluation performed on 08/01/02 **was medically necessary.**
3. The Functional Capacity Evaluation performed on 08/19/02 **was not medically necessary.**

Rationale:

A Functional Capacity Evaluation was performed to gain data for:

1. Determining if this worker can perform at the physical demand level required by his employer at that time.
2. Determining what functional limitations may exacerbate the worker's symptoms.

3. Determining the worker's current safe work capacity.
4. Determining rehabilitation options.

The Functional Capacity Evaluation on 08/01/02 was a necessary part of the clinical decision-making process. The Functional Capacity Evaluation (FCE) on 08/19/02 was not necessary because since the work hardening program was not necessary, the FCE would then not be a necessary diagnostic tool to determine a course of clinical treatment of continued work hardening.

Treatment guidelines have an extensive discussion regarding the medical necessity and admission requirements of a work hardening program. The initial examination revealed decreased physical demand capacity. That, by itself, is not the only factor in determining admission requirements for the work hardening program. The rationale listed for placing the patient in a work hardening program included decreased PDC, poor endurance due to undocumented factors, decreased range of motion, and high subjective pain index noted in the form of the ___ Neck Disability pain questionnaire. As stated in the medical documentation, at the end of eight weeks of work hardening, the patient met his endurance and strength goals.

Further, treatment guidelines state "Entrance/admission criteria shall enable the program to admit:

- persons who are likely to benefit from the program;
- persons whose current levels of functioning due to illness or injury interfere with their ability to carry out the specific tasks required in the workplace;
- persons whose medical, psychological, or other conditions do not prohibit participation in the program; and
- persons who are capable of attaining specific employment upon completion of the program."

Further criteria listed in the spinal treatment guidelines were used to determine medical necessity of work hardening: "The tertiary phase of care is inter-disciplinary, individualized, coordinated, and intensive. It is designed for the injured employee who demonstrates physical and psychological changes consistent with a chronic condition. Psychosocial issues such as substance abuse, affective disorders, and other psychological disorders may be present. There is documented inhibition of physical function evidenced by pain sensitivity and non-organic signs such as fear which produce a physical inhibition or limited response to reactivation treatment. This phase of care may also be indicated for the injured employee whose physical capacity to work still does not meet the current or expected job requirements after adequate treatment, thereby causing an inability to return to full duty. This situation could be evidenced by an excessive transition period of light duty or significant episodes of lost work due to a need for continued medical treatment. This phase of care is also indicated for those injured employees who cannot tolerate either initial or intermediate phases of care."

There appears to be some difference of opinions regarding the required physical demand capacity of the patient. It is noted in this case that the requirements of a carpenter is a very heavy level. It is unknown, other than by interview of the patient, as to how this PDC was determined. No documentation from the employer to substantiate this claim is noted. The *Dictionary of Occupational Titles* published by the Department of Labor lists a construction carpenter as a medium physical demand capacity (860.381-022).

The patient benefited somewhat from the program as demonstrated in the last Functional Capacity Evaluation that was performed. He progressed from a light-medium to a medium-heavy physical demand capacity, but was unable to perform at the physical demand level required by his employer prior to entrance into the work hardening program. However, no psychological records were available other than the patient's participation in group psychological therapy sessions. No psychosocial issues were documented as being present. The patient did not meet the minimum criteria for a work hardening candidate. Work hardening was, therefore, not necessary because the minimum entrance criterion was not met.

I am the Secretary and General Counsel of ___ and I certify that the reviewing healthcare professional in this case has certified to our organization that there are no known conflicts of interest that exist between him and any of the treating physicians or other health care providers or any of the physicians or other health care providers who reviewed this case for determination prior to referral to the Independent Review Organization.

Sincerely,