

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

SOAH DOCKET NO. 453-04-1322.M5

MDR Tracking Number: M5-03-3211-01

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 8-7-03.

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 work hardening program and FCEs ON 12-20-02 TO 2-3-03 were found to be medically necessary. The respondent raised no other reasons for denying reimbursement for the above listed services.

The above Findings and Decision are hereby issued this 27th day of October 2003.

Dee Z. Torres
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 12-20-02 through 2-3-03 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 27th day of October 2003.

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

October 20, 2003

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

MDR Tracking #: M5-03-3211-01
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 Medical Doctor board certified and specialized in Physical Medicine and Rehabilitation. 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

___ injured his back lifting computer equipment on ___. He initiated treatment with ___ on 3/27/02. ___ transferred his care to ___ on 7/31/02. ___ evaluated him on 6/21/02 and recommended a thoracic MRI. The thoracic spine MRI dated 7/8/02 revealed mild generalized osteophytosis and no disc herniations. ___ 8/5/02 opined that further therapies were not necessary and the employee should be returned to work with restrictions. There was an IME on 8/30/02 by ___ who estimated he would reach MMI by 10/28/02. ___ requested EMGs of his upper extremities because of subjective weakness in his upper extremities. NCS and EMG studies by ___ 9/10/02 were normal. ___ confirmed the physical findings of tenderness in the upper thoracic area between the shoulder blades. The FCE dated 9/26/02 identified that he was capable of meeting light physical demand levels for DOL requirements. He did not meet medium level requirements of his job. His voluntary effort was fair and the validity was consistent. After four weeks of work hardening, he met the medium physical demand level for DOL (required for his work.)

He continued to have thoracic pain and his employer terminated him, but he was re-training for other work. A peer review dated 12/19/02 by ___ recommended no treatment was necessary after 6-8 weeks from the time of his injury. The patient had a psychological evaluation on 2/26/03 that identified mild to moderate depression. There was no evidence of symptom magnification or

malingering. He was noted to be very sensitive to his physical state, had mild agitation, irritability and anxiety associated with pain. The patient had healthy beliefs and attitudes about his eventual recovery and non-injury related stressors concerning financial problems at home.

DISPUTED SERVICES

Under dispute is the medical necessity of work hardening provided from 12/20/02 through 2/3/03.

DECISION

The reviewer disagrees with the prior adverse determination.

BASIS FOR THE DECISION

___ showed gradual improvement with his physical therapy. He did not demonstrate evidence of malingering or sub maximum effort. A psychologist noted that he needed a structured program for his best response. The demands of his job were medium PDL. Before he entered the work hardening program, his FCE documented that he was capable of light PDL work. Upon completion of the program he was able to meet the physical demands of the job that he as injured at. The carrier physician peer review statements appear to be similar in nature and lack specificity for this gentleman's condition. The providing doctors' information has met the standard of care, so the ___ reviewer finds that the treatment was 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,