

MDR Tracking Number: M5-03-3259-01

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 August 13, 2003.

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 \$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 whirlpool, spray and stretch, massage therapy, aquatic therapy, electrical stimulation, office visit (CPT code 99211), and ultrasound therapy were found to be medically necessary. The CPM (97039-CM), and the office visits (CPT codes 99213 and 99214) were not found to be medically necessary. The respondent raised no other reasons for denying reimbursement of the whirlpool, spray and stretch, massage therapy, aquatic therapy, electrical stimulation, office visit (CPT code 99211), ultrasound therapy, CPM (97039-CM), and the office visits (CPT codes 99213 and 99214) charges.

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 4/14/03 through 6/5/03 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 23rd day of October 2003.

Margaret Q. Ojeda
Medical Dispute Resolution Officer
Medical Review Division

MQO/mqo

October 3, 2003
Amended October 16, 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 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 34-year-old female, sustained an on the job injury to her right knee his while working in the cafeteria with ___. Mechanism of injury consisted of a slip and fall, she was carrying a tray, slipped on some cheese sauce landing on her right knee. She continued at work for a few weeks taking Tylenol, then consulted with ___, a chiropractor on 2/20/03. Presenting complaints were right knee and kneecap pain, difficulty walking with popping, as well as right low back pain with lateralization down the right leg to the ankle with numbness to the big toe. X-rays of the low back and right knee were taken and read as normal. Diagnosis was of medial cartilage/meniscus tear right knee, with right ankle strain and lumbar sprain/strain. Patient was placed on a compresses conservative treatment regime consisting of manipulation to the lumbar spine, mobilization to the knee with adjunctive physiotherapeutic modalities, including whirlpool and aquatic therapy. She was taken off work and referred to ___, a medical doctor on 2/21/03, for pain medication and was prescribed ibuprofen and Darvocet. MRI was performed on 2/28/03 and read as normal. Patient was then referred to ___, an orthopedist on 3/17/03. He noted effusion indicative of intra-articular problem, with possibility of osteochondral injury work or meniscus he suggested ibuprofen compound cream, aggressive physical therapy consisting of quadriceps and hamstring, strengthening followed by intra-articular injection of Xylocaine. Eventually underwent arthroscopic surgery on 5/6/03 and was followed up by ___ utilizing ultrasound, continuous passive motion machine and whirlpool therapy.

DISPUTED SERVICES

Under dispute is the medical necessity of office visits, massage, aquatic therapy, ultrasound, whirlpool and unlisted modalities provided from 4/14/03 through 6/5/03.

DECISION

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

1. Concerning code 97022-22: the reviewer finds establishment of medical necessity for this service for any of the disputed dates.
2. Concerning code 97039-CM: the reviewer does not find establishment of medical necessity for this service for any of the disputed dates.
3. Concerning codes 97032, 97139, 97124, 97139, 97113, 99211, 97124: the reviewer finds establishment of medical necessity for these services for all dates billed.
4. Concerning code 97035: The reviewer finds establishment for this service for all of the disputed dates.
5. Concerning codes 99214 and 99213: The reviewer does not find establishment of medical necessity for these levels of service for any of the disputed dates.

BASIS FOR THE DECISION

Concerning codes 97022-22 and 97039-CM: I do not find establishment of medical necessity for these services for any of the disputed dates.

The patient was referred essentially for a focused post-surgical rehabilitation/strengthening program for the right knee. A prescription from ___ dated 5/9/03 indicated range of motion, strength and progressive resistance exercises. The documentation does not support the application of whirlpool or continuous passive motion, both of which are usually acute intervention strategies for patients and inappropriate for this phase of the patient's recovery.

Concerning codes 97032, 97139, 97124, 97139, 97113, 99211, 99214, 97124: I find establishment of medical necessity for these services for all dates billed.

Concerning code 97035: A period of post-operative conservative care is appropriate, with the inclusion of ultrasound for one month post-surgery. The application of this modality is appropriate.

Concerning codes 99213 and 99214: This patient was essentially referred for a focused post-surgical rehabilitation/strengthening program for the right knee with a prescription from ___ dated 5/9/03. The patient was assessed prior to the initiation of the program on 5/12/03 with a 99214 level of service. The case makeup and records do not establish the necessity of a service level of this complexity. The detailed history and exam level appears to be identical to that reported in the initial report and would not appear to be relevant to the implementation of a simple rehabilitation course for a post-surgical knee, particularly as the doctor had been the treating physician prior to the surgery. Even considering the above, the ultimate determining

factor is the low medical decision and management level required for this particular case. A 99214 level requires a moderately complex MDM, which is not the case here. At most, the level of service on 5/12/03 is described by 99213: expanded history and exam, with low complexity level medical decision and management level.

There is no indication of any different E&M level of service performed on 6/2/03, 6/3/03 or 6/5/03 as opposed to the prior service dates (as, for example service date 5/29/03) The records appear to be of a computerized, "canned" variety, providing little in the way of descriptive clinical insight as to the patient's progress, change in treatment course or medical management/decision making.

A period of postoperative conservative care is appropriate, with the inclusion of therapeutic activities/exercises. Unfortunately there is no documentation regarding the type of surgery performed, so I am assuming a land-based program was not appropriate for the patient, in which case it would be appropriate for an aquatics based program to be substituted. All other billed services seem appropriate given the patient's both pre-surgical and post surgical status.

___ 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,