

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective January 1, 2002 and Commission Rule 133.305 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 Medical Review Division has reviewed the IRO decision and determined that **the requestor did not prevail** on the issues of medical necessity. Therefore, in accordance with §133.308(q)(9), the Commission **Declines to Order** the respondent to refund the requestor for the paid IRO fee.

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 was found to not be medically necessary. The respondent raised no other reasons for denying reimbursement.

This Order is hereby issued this 29th day of January 2003.

Noel L. Beavers
Medical Dispute Resolution Officer
Medical Review Division

NLB/nlb

NOTICE OF INDEPENDENT REVIEW DECISION

Date: January 20, 2003

Requester/ Respondent Address : Rosalinda Lopez
TWCC
4000 South IH-35, MS-48
Austin, Texas 78704-7491

RE: MDR Tracking # M5-02-3175-01
IRO Certificate # 5242

___ has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Texas Workers' Compensation Commission (TWCC) has assigned the above referenced 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 proposed care to determine if the adverse determination was appropriate. In performing this review, relevant medical records, any documents utilized by the parties referenced above in making the adverse determination, and any documentation and written information submitted in support of the appeal was reviewed.

The independent review was performed by an orthopedic surgeon physician reviewer who is board certified in orthopedic surgery. The orthopedic surgeon physician reviewer has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians 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 this case.

Clinical History

Twisting injury to left foot in ___ while working as ___. Prior history of calcaneal fracture in ___ while at work, requiring 3 surgeries and eventual return to full duty. After ___ injury, seen by ___ and it was determined there was incomplete union of prior subtalar arthrodesis. A stimulator was implanted with apparent union of the arthrodesis. ___ was unable to return to full duty after work hardening program 8/28/01-10/05/01 according to FCE done on 10/30/01.

Requested Service(s)

Work hardening program

Decision

I agree with insurer, that the work hardening program was not medically necessary.

Rationale/Basis for Decision

The documentation includes an functional capacity exam showing functional deficits and a chart showing progress made over the 6 weeks of treatment. A work hardening program requires a multidisciplinary team, including things such as group psychological therapy, in order to qualify as a work hardening program. Included in the documentation are progress notes from throughout the course of the work hardening program. These include weekly measurements of progress in different categories of lifting. Also included are work hardening flow sheets. These include a documentation of the treatments performed for flexibility, strength, group strength, and aerobic exercise. There is also documentation of apparently some job specific exercise, such as ladder climbing, ramp, and stairs. There are also some behavioral notes, however, evidently the claimant's primary language is Spanish. Although the claimant attended these sessions, and there is documentation of participation, there are multiple notes which speak to a language barrier and difficulty in the sessions secondary to Spanish being his primary language. There is not one note, suggesting that any arrangements were made to accommodate his language. Considering the nature of psychological therapy, this would suggest that the claimant gained little or nothing from this part of the multidisciplinary program. The claimant progressed secondary to what amounts to a work conditioning program, and did well. And, given the handwritten documentation, which is difficult to read, it would appear that the claimant did not require a work hardening program, but would have progressed just as well with a work conditioning program. For this reason, it is my opinion that the work hardening program was not medically necessary.

This decision by the IRO is deemed to be a TWCC decision and order.

In accordance with Commission Rule 102.4(h), I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to the carrier, the requester and claimant via facsimile or U.S. Postal Service from the office of the IRO on this 20th day of January 2003.