April 11, 2006

DWC Medical Dispute Resolution
7551 Metro Center Suite 100
Austin, TX 78744

Patient: ___
DWC #: ___
MDR Tracking #: M2-06-0959-01
IRO #: 5284

Specialty IRO has been certified by the Texas Department of Insurance as an Independent Review Organization. The TDI-Division of Workers' Compensation has assigned this case to Specialty IRO for independent review in accordance with DWC Rule 133.308, which allows for medical dispute resolution by an IRO.

Specialty IRO has performed an independent review of the proposed care 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.

This case was reviewed by a licensed Psychologist and Ph.D. with a specialty in Psychology. The reviewer is on the DWC ADL. The Specialty IRO 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 Specialty IRO 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

Mr. ___ was injured on ___ while using a hammer to break up concrete. The patient states that at that time, he felt a severe pain in his lower back but was told to rest and continued to work the rest of the day. He states that the next day, his pain was so severe that he was unable to go work and at that time presented at the local hospital in San Marcos, Texas. He was taken off work for several days and given a prescription for pain medication. He returned to work for approximately one week; however, the pain reportedly only intensified. On 02-10-03, he returned to the hospital where he was reevaluated and given more pain medications. An MRI was performed on 02-18-03 which indicated disc pathology at L4-5 and L5-S1. An EMG indicated L5 radiculopathy. Epidural steroid injections did not provide permanent pain relief. An IDET procedure also did not provide permanent relief. A follow-up discogram indicated L4-5 and L5-S1 pathology. Dr. Scott Spann performed a two-level 360 degree fusion at L4 through

S1 on 08-17-04. The patient repeated physical therapy for an additional six weeks post surgery. A functional capacity evaluation was performed on 02-02-05. On 09-26-05, Mr. ___ received an intrathecal preservative-free morphine pump trial; however, the pump trial was unsuccessful due to the patient's adverse side effects to the medication. A request for a chronic pain program was submitted by Dr. William Lawson on 11-15-05.

With regard to psychological history, there is no report of psychological symptoms or concerns on any evaluations, doctor's notes, or procedural notes prior to March 31, 2004. The referral question is unclear, but it appears that the patient completed two indivudal therapy sessions with Abel Chapa, M.Ed, LPC on 3/31/04 and 4/6/04. After an evaluation, the patient completed individual counseling with Synthesis Inc. on 05-26-04, 06-30-04, 07-07-04, and 07-09-04. The purpose of the individual therapy sessions was to teach breathing exercises, recognition of stressors, and understanding basic cognitive and emotional dynamics. Results of a Beck Depression Inventory indicated minimal depressive symptoms both pre and post-therapy. The Beck Anxiety Inventory indicated a moderate level of anxiety pre-therapy with an overall mild level of anxiety post-therapy. A pain mental health evaluation was completed by Nueva Vida Behavioral Health Associates on 12-22-05 as a result of Dr. Lawson's referral to a CPMP. At that time, the patient was administered the Minnesota Multiphasic Personality Inventory-II, SCL-90-R, Adaptive Functioning Questionnaire, Beck Depression Inventory, Beck Anxiety Inventory, Coping Inventory for Stressful Situations, clinical interview, compressive pain questionnaire, comprehensive pain interview, Mental Status Examination, McGill Pain Questionnaire, Pain Experience Scale, Modified Back Pain and Disability Questionnaire, Neck and Back Pain Questionnaire, Diagnostic Characteristics of Chronic pain, Psychosocial Pain Inventory-Revised, and Psychosocial Stressors. The results of the evaluation indicated an Adjustment Disorder, chronic, related to injury/medical condition with Depressed Mood, and Pain Disorder associated with work-related injury/medical condition and psychological factors. As a result of the evaluation, 12 individual psychotherapy sessions were requested. An initial denial and adverse determination of services on 01-25-06 suggested that "Cesar responded in a highly defensive manner which may underestimate the degree of his psychological problem. Interpretation of the testing is provided and states there is a likelihood he may have a thought disorder which prevents him from understanding his problem. He lacks insight about psychological factors involved in his problem. According to his profile, he may benefit from behavioral modification to alter unusual symptom pattern. As indicated above, this patient is reporting minimal affective symptoms. The results of the MMPI-II are invalid. Interpretation of this test does not suggest this patient is likely to benefit from the requested services based on documentation of objective/subjective information, this request is not reasonable or necessary."

An appeal was requested by Ms. Paula Hernandez, M.S., L.P.C., and a second adverse determination was recommended on 02-14-06. The denial states, "There is some question regarding the validity of the MMPI-II using the assessment. The validity profile was reviewed from data provided by A. Zuflacht. This is suspicious of either a conscious attempt to distort the test findings or a major psychiatric illness. The conclusion in the report is that there is a likelihood that he may have a thought disorder, and according to his profile, he may benefit from behavioral modification. The validity of either of these is in question since the provider did not

have the profile to discuss. Nevertheless, this should be done before any pharmacological or psychotherapeutic intervention is provided. Moreover, there are no controlled studies, extent evidence, base standards, or randomized clinical trials supporting the use of unimodal psychotherapeutic techniques producing reliable functional improvements with this type of chronic benign pain syndrome. The attached scores relating to pain management e.g. reduced pain level or coping and control of diagnosed emotional and behavioral sequelae of the pain problems are not empirically supported. This focus is specifically prescribed in this type of patient because such a strategy may reinforce psychological, environmental, and psychosocial factors that promote chronic pain states. These factors have not been ruled out by the current evaluation." On 03-03-05, Dr. Eugene O'Brien prescribed the patient a 20% whole person impairment rating.

RECORDS REVIEWED

1. Determination Letter by UniMed Direct dated 02-14-06.
2. Determination Letter by UniMed Direct dated 01-25-06.
3. Office Visit Note by Vivek Mahendru, M.D., dated 11-18-05, 09-19-05, 08-17-05, 12-03-03, 11-03-03, 09-17-03, 07-21-03, 06-30-03, 05-21-03, 04-15-03, 04-30-03.
4. MRI - Lumbar Spine Examination by Vivek Mahendru, M.D., dated 02-05-05.
5. Procedure Note by Vivek Mahendru, M.D., dated 09-26-05.
6. Follow-up Reevaluation by Vivek Mahendru, M.D., dated 09-27-05.
7. Response to Denial Letter by Andrea Zuflacht, M.S., L.P.C., dated 01-30-06.
8. Report by William M. Lawson, D.C., dated 11-15-05.
9. Pain Mental Health Evaluation by Paula Hernandez, M.S., L.P.C., dated 09-22-05.
10. MMPI-II Chronic Pain Program Interpretive Report dated 09-22-05.
11. Battery for Health Improvement-II Enhanced Interpretive Report dated 07-05-05.
12. Follow-up Visit by Scott Spann, M.D., dated 10-27-04.
13. Report of Medical Evaluation by Eugene O'Brien, M.D., dated 10-22-04.
14. Operative Report by Robert Markus, M.D., dated 08-17-04.
15. Initial Evaluation by Ryan Dohlman, M.S., P.T., dated 09-09-04.
16. Chart Note by Advanced Physical Therapy dated 09-09-05, 09-13-05, 09-15-05, 09-17-05, 09-20-05, 09-27-05, 09-29-05, 09-30-05, 10-06-05, 10-07-05, 10-08-05, 10-11-05, 10-13-04, 10-14-05, 10-18-05, 10-20-05.
17. Chart Note by Scott Spann, M.D., dated 11-06-04, 09-24-04, 08-28-04, 08-26-04, 08-16-04, 06-24-04, 01-09-04.
18. Explanation of Diagnostic Findings by William Lawson, D.C., date 09-15-04.
19. Physician's Review of Diagnostic Studies by William Lawson, D.C., dated 09-15-04, 07-07-04, 02-18-04, 01-21-04, 01-07-04, 07-30-03, 07-16-03, 06-25-03, 06-11-03.
20. Follow-Up Visit Note by Vivek Mahendru, M.D., dated 10-01-04.
21. Progress Note by William Lawson, D.C., dated 09-23-04.

22. Clinical Note by Vivek Mahendru, M.D., dated 09-01-04, 6-23-04, 04-22-04, 03-22-04, 01-14-04.
23. Behavioral Assessment by Felix Vallejo, M.A., L.P.C. and Kelly Stallings, M.S., L.P.C., dated 05-26-04.
24. Operative Report by Scott Spann, M.D., dated 08-17-04.
25. Intraoperative Spinal Report by Susan Bryant-Snure, M.D., dated 08-17-04.
26. Letter Regarding Comparative Muscle Testing and Range of Motion Study by William Lawson, D.C., 06-09-04.
27. Individual Psychotherapy Notes by Felix Vallejo, M.A., L.P.C. dated 06-30-04, 06-21-04, 07-09-04, 07-07-04.
28. Computerized Spinal Range of Motion Exam by Kevin Schrum, D.C., dated 04-14-04.
29. Progress Note by Dr. Vivek Mahendru, M.D., 07-23-04.
30. Letter of Review of Comparative Muscle Testing and Range of Motion Study with the Patient by William Lawson, D.C., dated 06-09-04.
31. Report of Medical Evaluation by Barna Richards, M.D., dated 05-24-04.
32. Letter of Medical Necessity for Electronic Muscle Testing with Results by Curtis Cooke, D.C., dated 05-27-04.
33. Range of Motion and Comparative Muscle Study by Trek Mobile Diagnostics dated 04-14-04.
34. Report of Medical Evaluation by Barna Richards, M.D., dated 05-21-04.
35. Letter by D. Rob Lee, M.D., P.A., dated April 21-04.
36. Individual Psychotherapy by Abel Chapa, M.Ed., L.P.C., dated 03-31-04 and 04-06-04.
37. Discogram by Anand Joshi, M.D., dated 03-03-04.
38. CT Scan Post Discogram by Anand Joshi, M.D., dated 03-03-04.
39. Progress Note by William Lawson, D.C., dated 03-10-04.
40. Progress Note by William Lawson, D.C., dated 02-04-04.
41. Office Visit by Anand Joshi, M.D., dated 01-27-04.
42. Office Visit by Scott Spann, M.D., dated 01-09-04.
43. Report of Medical Evaluation by Barna Richards, M.D., dated 10-10-03.
44. MRI of the Lumbar Spine by James Remkus, M.D., dated 12-18-03.
45. Operative Report by Vivek Mahendru, M.D., dated 08-07-03.
46. Report of Medical Evaluation by James Remkus, M.D., dated 12-18-03.
47. Functional Abilities Evaluation by Ryan Dohlman, M.S., P.T., dated 10-01-03.
48. Progress Note by Vivek Mahendru, M.D., dated 11-07-03.
49. Progress Note by Vivek Mahendru, M.D., dated 10-17-03.
50. Office Visit by William Lawson, D.C., dated 10-22-03, 08-18-03, 08-06-03, 08-05-03, 08-01-03, 07-30-03, 07-29-03, 07-25-03, 07-22-03, 07-19-03, 07-16-03, 07-10-03, 07-08-03, 07-07-03, 07-02-03, 07-01-03, 06-27-03, 06-26-03, 06-17-03, 06-16-03, 06-11-03, 06-10-03, 06-06-03, 05-29-03, 05-22-03, 05-19-03, 05-16-03, 05-12-03, 05-09-03, 05-07-03, 05-02-03, 05-01-03, 04-28-03, 04-24-03, 04-11-03, 04-10-03,

51. Physical Therapy Notes by Capital Work Rehab and Therapy, dated 08-25-03, 08-26-03, 08-27-03, 09-03-03, 09-04-03, 09-05-03, 09-08-03, 09-10-03, 09-12-03, 09-15-03.
52. Initial Evaluation by Dohlman, M.S., P.T., dated 08-25-03.
53. Progress Note by Vivek Mahendru, M.D., dated 08-27-03.
54. Computerized Muscle Testing and Range of Motion Study by Curtis Cooke, D.C., dated 07-16-03.
55. Computerized Muscle Testing and Range of Motion Study by Curtis Cooke, D.C., dated 06-11-03.
56. Operative Report by Vivek Mahendru, M.D., dated 07-14-03.
57. CT of the Lumbar Spine by J. Neal Rutledge, M.D., 07-14-03.
58. Procedure Note by Vivek Mahendru, M.D., dated 06-02-03, 04-30-03.
59. Report of Medical Evaluation by Milton Kirkwood, D.O., dated 07-09-03.
60. Special Investigation Report by Jim Storti dated 03-11-03.
61. Witness Statement for On-The-Job Accident by Salvador Garcia and Gilbert Perales dated 05-05-03.
62. Accident Report by Asphalt Paving Co. of Austin dated 02-03-03.
63. Clinic Notes from Central Texas Medical Center by Al Roschmann, M.D., dated 02-10-

REQUESTED SERVICE

The item in dispute is the prospective medical necessity of 12 sessions of individual psychotherapy to be administered 2 times a week for 6 weeks.

DECISION

The reviewer agrees with the previous adverse determination.

BASIS FOR THE DECISION

Mr. ___ was injured on ___. He has completed both passive and active pain interventions which include physical therapy x 2, epidural steroid injections, IDET procedure, spinal fusion, morphine pump trial, medication management, and several months of chiropractic treatment as well as approximately six individual psychotherapy sessions. He was assigned an MMI rating by Dr. Eugene O'Brien on 03-03-05 of 20% whole person impairment rating. There is no prior history of workers' compensation claims. There is no prior history of psychological or psychiatric symptoms or treatment prior to his workers' compensation-related injury. Results of extensive testing including the Beck Depression Inventory and Beck Anxiety Inventory completed in May 2004 and again on July 19, 2004, and finally in September 2005 indicate consistently mild levels of depression overall and fluctuating anxiety symptoms ranging between the mid-to-moderate range. Further personality testing conducted in September 2005 suggests defensive profiles on several assessment tools including the Minnesota Multiphasic Personality Inventory-II and the Battery for Health Improvement. An evaluation conducted by Paula

Hernandez, M.S., L.P.C., on September 22, 2005, diagnoses the patient with an Adjustment Disorder with Depressed Mood and a Pain Disorder. In addition, the report suggests that Mr. ___ may be experiencing a thought disorder. Further indications from the MMPI-II validity profile suggest that "the patient may have attempted to show himself in a favorable manner and to minimize personal faults…he is likely to demand attention for somatic complaints. Further, he is experiencing unexplainable and bizarre physical symptoms. There is a likelihood that he may have a thought disorder which prevents him from understanding his problems. He lacks insight about psychological factors involved in his problems. According to his profile, he may benefit from behavioral modification to alter unusual symptom patterns."

In reviewing the records over the past three years, there is no evidence that this patient has demonstrated symptoms of a thought disorder. There is no evidence from several medical appointments, doctors' evaluations, and surgical procedures that this patient was experiencing any difficulties comprehending or understanding the procedures and treatment. Therefore, it is unlikely that this patient is experiencing a thought disorder and more likely that the patient approached the examination in a defended manner. There is no evidence that the patient was administered the testing in his native language, Spanish; if this were the case, the results would be likely skewed due to his poor understanding of English. However, the validity indexes for the Battery for Health Improvement and the Minnesota Multiphasic Personality Inventory-II do not indicate a lack of understanding of the questions asked. The validity indexes likely were raised due to the patient producing a highly defensive profile. In either case, defended profiles across two psychological assessments suggest that the patient is unlikely to benefit from insight-oriented therapy or long-term psychotherapy at this time. The patient has successfully completed six individual psychotherapy sessions and notes from those sessions suggest that the patient learned cognitive restructuring and specific behavioral modification techniques for pain reduction. Therefore, the need for additional services has not been established.

References

Minnesota Multiphasic Personality Inventory-II Psychological Assessment with the MMPI-II, by Friedman, Lewak, Nichols, and Webb (2001).

Specialty IRO has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. Specialty IRO has made no determinations regarding benefits available under the injured employee's policy. Specialty IRO believes it has made a reasonable attempt to obtain all medical records for this review and afforded the requestor, respondent and treating doctor an opportunity to provide additional information in a convenient and timely manner.

As an officer of Specialty IRO, Inc, dba Specialty IRO, I certify that the reviewing provider has no known conflicts of interest between that provider and the injured employee, the injured employee's employer, the injured employee's insurance carrier, the utilization review agent, or any of the treating doctors or insurance carrier health care providers who reviewed the case for decision before referral to the IRO.

Sincerely,

Wendy Perelli, CEO

Your Right To Appeal

If you are unhappy with all or part of this decision, you have the right to appeal the decision. The decision of the Independent Review Organization is binding during the appeal process.

If you are disputing the decision (other than a spinal surgery prospective decision), the appeal must be made directly to a district court in Travis County (see Texas Labor Code §413.031). An appeal to District Court must be filed not later than 30 days after the date on which the decision that is the subject of the appeal is final and appealable. If you are disputing a spinal surgery prospective decision, a request for a hearing must be in writing and it must be received by the Division of Workers' Compensation, Chief Clerk of Proceedings, within ten (10) days of your receipt of this decision.

Sincerely,

Wendy Perelli, CEO

I hereby certify, in accordance with DWC- Rule 102.4 (h), that a copy of this Independent Review Organization decision was sent to the carrier, requestor, claimant (and/or the claimant's representative) and the Division via facsimile, U.S. Postal Service or both on this 11th day of April 2006

Signature of Specialty IRO Representative:

Name of Specialty IRO Representative: Wendy Perelli