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**Notice of Independent Medical Review Determination**

Dated: 8/27/2013

[REDACTED]

[REDACTED]

[REDACTED]

Employee:

Claim Number:

Date of UR Decision:

Date of Injury:

IMR Application Received:

MAXIMUS Case Number:

[REDACTED]

7/9/2013

8/17/2011

7/12/2013

CM13-0001318

- 1) MAXIMUS Federal Services, Inc. has determined the request for lumbar decompression and instrumented fusion, autograft, allograft, synthetic graft, bone marrow aspiration, iliac crest bone graft L5-S1 **is medically necessary and appropriate.**
- 2) MAXIMUS Federal Services, Inc. has determined the request for a two (2) - three (3) night patient stay **is medically necessary and appropriate.**
- 3) MAXIMUS Federal Services, Inc. has determined the request for an assistant surgeon **is medically necessary and appropriate.**
- 4) MAXIMUS Federal Services, Inc. has determined the request for pre-op medical clearance **is medically necessary and appropriate.**
- 5) MAXIMUS Federal Services, Inc. has determined the request for a lumbar corset **is medically necessary and appropriate.**
- 6) MAXIMUS Federal Services, Inc. has determined the request for aquatic therapy two (2) times a week for four (4) weeks **is not medically necessary and appropriate.**
- 7) MAXIMUS Federal Services, Inc. has determined the request for land therapy two (2) times a week for six (6) weeks **is medically necessary and appropriate.**

## INDEPENDENT MEDICAL REVIEW DECISION AND RATIONALE

An application for Independent Medical Review was filed on 7/12/2013 disputing the Utilization Review Denial dated 7/9/2013. A Notice of Assignment and Request for Information was provided to the above parties on 7/16/2013. A decision has been made for each of the treatment and/or services that were in dispute:

- 1) MAXIMUS Federal Services, Inc. has determined the request for lumbar decompression and instrumented fusion, autograft, allograft, synthetic graft, bone marrow aspiration, iliac crest bone graft L5-S1 **is medically necessary and appropriate.**
- 2) MAXIMUS Federal Services, Inc. has determined the request for a two (2) - three (3) night patient stay **is medically necessary and appropriate.**
- 3) MAXIMUS Federal Services, Inc. has determined the request for an assistant surgeon **is medically necessary and appropriate.**
- 4) MAXIMUS Federal Services, Inc. has determined the request for pre-op medical clearance **is medically necessary and appropriate.**
- 5) MAXIMUS Federal Services, Inc. has determined the request for a lumbar corset **is medically necessary and appropriate.**
- 6) MAXIMUS Federal Services, Inc. has determined the request for aquatic therapy two (2) times a week for four (4) weeks **is not medically necessary and appropriate.**
- 7) MAXIMUS Federal Services, Inc. has determined the request for land therapy two (2) times a week for six (6) weeks **is medically necessary and appropriate.**

### Medical Qualifications of the Expert Reviewer:

The independent Medical Doctor who made the decision has no affiliation with the employer, employee, providers or the claims administrator. The physician reviewer is Board Certified in Orthopedic Surgery, and is licensed to practice in California. He/she has been in active clinical practice for more than five years and is currently working at least 24 hours a week in active practice. The Expert Reviewer was selected based on his/her clinical experience, education, background, and expertise in the same or similar specialties that evaluate and/or treat the medical condition and treatments and/or services at issue.

### Case Summary:

Disclaimer: The following case summary was taken directly from the medical records by [REDACTED] dated June 19, 2013.

"This is a 55-year-old gentleman employed by [REDACTED] as a driver. He is seen today in the presence of a professional interpreter. He was injured during the course of employment on August 17, 2011, while handling a heavy communication antenna. The forklift operator shifted the antenna which caused this to tip over. He indicates that the

antenna was falling towards him so he used his hands to push off of it to avoid the antenna landing on him. After that, he developed back pain with radiation to the right buttock area. He also reported left pectoralis pain and has previously seen Dr. [REDACTED] who felt that his was costochondritis. The patient was also seen by Dr. [REDACTED] for costochondritis.

I am evaluating the patient for his lumbar spine condition. I reviewed the imaging studies which show an unstable L5-S1 spondylolisthesis.”

#### **Documents Reviewed for Determination:**

The following relevant documents received from the interested parties and the documents provided with the application were reviewed and considered. These documents included:

- Application for Independent Medical Review
- Utilization Review by [REDACTED] (dated 7/9/13)
- Employee’s Medical Records by [REDACTED] (dated 5/8/13 & 6/19/13)
- Employee’s Medical Records by [REDACTED], MD (dated 7/19/12 thru 10/24/12)
- Employee’s Medical Records by [REDACTED] (dated 5/31/13)
- Employee’s Medical Records by [REDACTED], MD (dated 7/24/12 thru 6/11/12)
- Request for Authorization for Medical Treatment (dated 7/2/13)
- Low Back Complaints (ACOEM Practice Guidelines, 2<sup>nd</sup> Edition, 2004, Chapter 12); pg. 307, 310, 301
- Official Disability Guidelines (ODG) – Low Back Chapter, Fusion (spinal), Hospital length of stay, Back brace post-operative (fusion), Lumbar supports
- American Academy of Orthopedic Surgeons – Surgical Assistant Procedure Coverage
- National Guideline Clearinghouse – Recommendations, Preoperative Evaluation Algorithm Annotations
- Chronic Pain Medical Treatment Guidelines – Aquatic Therapy, pg 22

#### **1) Regarding the request for lumbar decompression and instrumented fusion, autograft, allograft, synthetic graft, bone marrow aspiration, iliac crest bone graft L5-S1:**

##### Medical Treatment Guideline(s) Relied Upon by the Expert Reviewer to Make His/Her Decision:

The Claims Administrator based its decision on the American College of Occupational and Environmental Medicine (ACOEM), 2<sup>nd</sup> Edition, (2004), Low Back Complaints, pg. 307, 310, which is part of the California Medical Treatment Utilization Schedule (MTUS). The provider did not dispute the guidelines used by the Claims Administrator. The Expert Reviewer found the guidelines used by the Claims Administrator relevant and appropriate for the employee’s clinical circumstance.

Rationale for the Decision:

The employee sustained an injury on 8/17/11. Per medical records submitted and reviewed, the employee underwent bilateral intra-articular facet injections at L5-S1 on 4/2/12 with no improvement. The employee continues to experience pain in the lower back that travels from the right hip and right leg down to his foot and heel, with episodes of numbness and tingling. The medical records submitted indicate the current diagnosis is unstable, grade 1 isthmic spondylolisthesis at L5-S1. The employee is currently taking Ketoprofen, Norflex, Omeprazole, Vicodin, pain ointment, and Astrazen (Vimovo). The request is for lumbar decompression and instrumented fusion, autograft, allograft, synthetic graft, bone marrow aspiration, iliac crest bone graft L5-S1.

Per ACOEM guidelines, patients with increased spinal instability (not work-related) after surgical decompression at the level of degenerative spondylolisthesis may be candidates for fusion. Medical records submitted and reviewed show the employee's diagnosis is spondylolisthesis unresponsive to very thorough conservative care. The request for lumbar decompression and instrumented fusion, autograft, allograft, synthetic graft, bone marrow aspiration, iliac crest bone graft L5-S1 is medically necessary and appropriate.

**2) Regarding the request for a two (2) - three (3) night patient stay:**

Medical Treatment Guideline(s) Relied Upon by the Expert Reviewer to Make His/Her Decision:

The Claims Administrator based its decision on the Official Disability Guidelines (ODG) (2009), Low Back Chapter, Hospital length of stay, which is a medical treatment guideline that is not part of the California Medical Treatment Utilization Schedule (MTUS). The Claims Administrator stated no section of the CA MTUS is applicable and relevant to the issue at dispute. The provider did not dispute the guidelines used by the Claims Administrator. The Expert Reviewer found the guidelines used by the Claims Administrator relevant and appropriate for the employee's clinical circumstance.

Rationale for the Decision:

The employee sustained an injury on 8/17/11. Per medical records submitted and reviewed, the employee underwent bilateral intra-articular facet injections at L5-S1 on 4/2/12 with no improvement. The employee continues to experience pain in the lower back that travels from the right hip and right leg down to his foot and heel, with episodes of numbness and tingling. The medical records submitted indicate the current diagnosis is unstable, grade 1 isthmic spondylolisthesis at L5-S1. The employee is currently taking Ketoprofen, Norflex, Omeprazole, Vicodin, pain ointment, and Astrazen (Vimovo). The request is for a two (2) - three (3) night patient stay

The ODG recommends the median length of stay (LOS) based on type of surgery, or best practice target LOS for cases with no complications. The ODG indicates the stay for a lumbar fusion with no complications is 3 days. The request for a two (2) - three (3) night patient stay is medically necessary and appropriate.

### **3) Regarding the request for an assistant surgeon:**

#### Medical Treatment Guideline(s) Relied Upon by the Expert Reviewer to Make His/Her Decision:

The Claims Administrator based its decision on the American Academy of Orthopedic Surgeons – Surgical Assistant Procedure Coverage, which is a medical treatment guideline that is not part of the California Medical Treatment Utilization Schedule (MTUS). The Claims Administrator stated no section of the CA MTUS is applicable and relevant to the issue at dispute. The provider did not dispute the guidelines used by the Claims Administrator. The Expert Reviewer determined that the MTUS does not address the issue at dispute. The Expert Reviewer relied on the Milliman Care Guidelines, Inpatient and Surgical Care, 17th Edition, 22830 Y Exploration of Spinal Fusion, which is a medical treatment guideline that is not part of the MTUS.

#### Rationale for the Decision:

The employee sustained an injury on 8/17/11. Per medical records submitted and reviewed, the employee underwent bilateral intra-articular facet injections at L5-S1 on 4/2/12 with no improvement. The employee continues to experience pain in the lower back that travels from the right hip and right leg down to his foot and heel, with episodes of numbness and tingling. The medical records submitted indicate the current diagnosis is unstable, grade 1 isthmic spondylolisthesis at L5-S1. The employee is currently taking Ketoprofen, Norflex, Omeprazole, Vicodin, pain ointment, and Astrazen (Vimovo). The request is for an assistant surgeon.

Per the Milliman Care Guidelines, an assistant surgeon is allowed with lumbar fusion procedures. The requested procedure is medically necessary and appropriate. The request for an assistant surgeon is medically necessary and appropriate.

### **4) Regarding the request for pre-op medical clearance:**

#### Medical Treatment Guideline(s) Relied Upon by the Expert Reviewer to Make His/Her Decision:

The Claims Administrator based its decision on the National Guideline Clearinghouse – Recommendations, Preoperative Evaluation Algorithm Annotations, which is not part of the California Medical Treatment Utilization Schedule (MTUS). The Claims Administrator stated no section of the CA MTUS is applicable and relevant to the issue at dispute. The provider did not dispute the guidelines used by the Claims Administrator. The Expert Reviewer found the Official Disability Guidelines (ODG) Treatment in Worker's Comp 18<sup>th</sup> Edition, 2013 Updates, Low back chapter, Pre-op testing, which is a medical treatment guideline that is not part of the California Medical Treatment Utilization Schedule (MTUS) relevant and appropriate for the employee's clinical circumstance.

#### Rationale for the Decision:

The employee sustained an injury on 8/17/11. Per medical records submitted and reviewed, the employee underwent bilateral intra-articular facet injections at

L5-S1 on 4/2/12 with no improvement. The employee continues to experience pain in the lower back that travels from the right hip and right leg down to his foot and heel, with episodes of numbness and tingling. The medical records submitted indicate the current diagnosis is unstable, grade 1 isthmic spondylolisthesis at L5-S1. The employee is currently taking Ketoprofen, Norflex, Omeprazole, Vicodin, pain ointment, and Astrazen (Vimovo). The request is for pre-op medical clearance.

The ODG states that preoperative testing (e.g., chest radiography, electrocardiography, laboratory testing, urinalysis) is often performed before surgical procedures. These investigations can be helpful to stratify risk, direct anesthetic choices, and guide postoperative management, but often are obtained because of protocol rather than medical necessity. The decision to order preoperative tests should be guided by the patient's clinical history, comorbidities, and physical examination findings. The request for pre-op medical clearance is medical necessary and appropriate.

#### **5) Regarding the request for a lumbar corset:**

##### Medical Treatment Guideline(s) Relied Upon by the Expert Reviewer to Make His/Her Decision:

The Claims Administrator based its decision on the American College of Occupational and Environmental Medicine (ACOEM), 2<sup>nd</sup> Edition, (2004), Low Back Complaints, pg 301, which is part of the California Medical Treatment Utilization Schedule. The provider did not dispute the guidelines used by the Claims Administrator. The Expert Reviewer stated no section of the MTUS was applicable and relevant to the issue at dispute. The Expert Reviewer relied upon the Official Disability Guidelines (ODG), Low Back Chapter, Lumbar supports, which is a medical treatment guideline that is not part of the California Medical Treatment Utilization Schedule (MTUS).

##### Rationale for the Decision:

The employee sustained an injury on 8/17/11. Per medical records submitted and reviewed, the employee underwent bilateral intra-articular facet injections at L5-S1 on 4/2/12 with no improvement. The employee continues to experience pain in the lower back that travels from the right hip and right leg down to his foot and heel, with episodes of numbness and tingling. The medical records submitted indicate the current diagnosis is unstable, grade 1 isthmic spondylolisthesis at L5-S1. The employee is currently taking Ketoprofen, Norflex, Omeprazole, Vicodin, pain ointment, and Astrazen (Vimovo). The request is for a lumbar corset.

The ODG recommends lumbar supports as an option for compression fractures and specific treatment of spondylolisthesis, documented instability, and for treatment of nonspecific low back pain. The requested lumbar off-the-shelf brace is medically necessary to give the claimant some stability, soft tissue control, and help decrease pain issues in the postoperative time frame. The request for a lumbar corset is medically necessary and appropriate.

**6) Regarding the request for aquatic therapy two (2) times a week for four (4) weeks:**

Medical Treatment Guideline(s) Relied Upon by the Expert Reviewer to Make His/Her Decision:

The Claims Administrator based its decision on the Chronic Pain Medical Treatment Guidelines (2009), Aquatic Therapy, pg 22, which is part of the California Medical Treatment Utilization Schedule (MTUS). The provider did not dispute the guidelines used by the Claims Administrator. The Expert Reviewer found the guidelines used by the Claims Administrator relevant and appropriate for the employee's clinical circumstance.

Rationale for the Decision:

The employee sustained an injury on 8/17/11. Per medical records submitted and reviewed, the employee underwent bilateral intra-articular facet injections at L5-S1 on 4/2/12 with no improvement. The employee continues to experience pain in the lower back that travels from the right hip and right leg down to his foot and heel, with episodes of numbness and tingling. The medical records submitted indicate the current diagnosis is unstable, grade 1 isthmic spondylolisthesis at L5-S1. The employee is currently taking Ketoprofen, Norflex, Omeprazole, Vicodin, pain ointment, and Astrazen (Vimovo). The request is for aquatic therapy two (2) times a week for four (4) weeks.

The MTUS Chronic Pain Guidelines recommend aqua therapy as an optional form of exercise therapy, where available, as an alternative to land-based physical therapy. Aquatic therapy can minimize the effects of gravity, so it is specifically recommended where reduced weight bearing is desirable, for example extreme obesity. Per medical records submitted and reviewed, there is nothing to suggest that the employee has failed land based therapy. The request for aquatic therapy two (2) times a week for four (4) weeks is not medically necessary and appropriate.

**7) Regarding the request for land therapy two (2) times a week for six (6) weeks:**

Medical Treatment Guideline(s) Relied Upon by the Expert Reviewer to Make His/Her Decision:

The Claims Administrator based its decision on the Post-Surgical Treatment Guidelines, which is part of the California Medical Treatment Utilization Schedule (MTUS). The provider did not dispute the guidelines used by the Claims Administrator. The Expert Reviewer found the guidelines used by the Claims Administrator relevant and appropriate for the employee's clinical circumstance.

Rationale for the Decision:

The employee sustained an injury on 8/17/11. Per medical records submitted and reviewed, the employee underwent bilateral intra-articular facet injections at L5-S1 on 4/2/12 with no improvement. The employee continues to experience pain in the lower back that travels from the right hip and right leg down to his foot and heel, with episodes of numbness and tingling. The medical records submitted indicate the current diagnosis is unstable, grade 1 isthmic

spondylolisthesis at L5-S1. The employee is currently taking Ketoprofen, Norflex, Omeprazole, Vicodin, pain ointment, and Astrazen (Vimovo). The request is for land therapy two (2) times a week for six (6) weeks.

The MTUS Post-Surgical Treatment Guidelines state an initial course of therapy means one half of the number of visits specified in the general course of therapy for the specific surgery in the postsurgical physical medicine treatment recommendation. The request for twelve visits is within the initial therapy guidelines. The request for land therapy two (2) times a week for six (6) weeks is medically necessary and appropriate.

**Effect of the Decision:**

The determination of MAXIMUS Federal Services and its physician reviewer is deemed to be the final determination of the Administrative Director, Division of Workers' Compensation. With respect to the medical necessity of the treatment in dispute, this determination is binding on all parties.

In accordance with California Labor Code Section 4610.6(h), a determination of the administrative director may be reviewed only if a verified appeal is filed with the appeals board for hearing and served on all interested parties within 30 days of the date of mailing of the determination to the employee or the employer. The determination of the administrative director shall be presumed to be correct and shall be set aside only upon proof by clear and convincing evidence of one or more of the grounds for appeal listed in Labor Code Section 4610.6(h)(1) through (5).

Sincerely;

Richard C. Weiss, MD, MPH, MMM, PMP  
Medical Director

cc: Department of Industrial Relations  
Division of Workers' Compensation  
1515 Clay Street, 18<sup>th</sup> Floor  
Oakland, CA 94612

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Disclaimer: MAXIMUS is providing an independent review service under contract with the California Department of Industrial Relations. MAXIMUS is not engaged in the practice of law or medicine. Decisions about the use or nonuse of health care services and treatments are the sole responsibility of the patient and the patient's physician. MAXIMUS is not liable for any consequences arising from these decisions.