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**Notice of Independent Medical Review Determination**

Dated: 11/8/2013

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

Employee: [REDACTED]  
Claim Number: [REDACTED]  
Date of UR Decision: 7/25/2013  
Date of Injury: 5/10/2012  
IMR Application Received: 8/1/2013  
MAXIMUS Case Number: CM13-0005692

- 1) MAXIMUS Federal Services, Inc. has determined the request for **L4-S1 posterior lumbar interbody fusion with instrumentation, neural decompression, iliac crest marrow aspiration/harvesting, and possible junctional levels is not medically necessary and appropriate.**
- 2) MAXIMUS Federal Services, Inc. has determined the request for a **front wheel walker is not medically necessary and appropriate.**
- 3) MAXIMUS Federal Services, Inc. has determined the request for an **ice unit is not medically necessary and appropriate.**
- 4) MAXIMUS Federal Services, Inc. has determined the request for a **bone stimulator is not medically necessary and appropriate.**
- 5) MAXIMUS Federal Services, Inc. has determined the request for **TLSO is not medically necessary and appropriate.**
- 6) MAXIMUS Federal Services, Inc. has determined the request for a **3-1 commode is not medically necessary and appropriate.**
- 7) MAXIMUS Federal Services, Inc. has determined the request for a **medical clearance with Dr. Sean Leoni is not medically necessary and appropriate.**

## INDEPENDENT MEDICAL REVIEW DECISION AND RATIONALE

An application for Independent Medical Review was filed on 8/1/2013 disputing the Utilization Review Denial dated 7/25/2013. A Notice of Assignment and Request for Information was provided to the above parties on 8/21/2013. 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 a **L4-S1 posterior lumbar interbody fusion with instrumentation, neural decompression, iliac crest marrow aspiration/harvesting, and possible junctional levels** is not medically necessary and appropriate.
- 2) MAXIMUS Federal Services, Inc. has determined the request for a **front wheel walker** is not medically necessary and appropriate.
- 3) MAXIMUS Federal Services, Inc. has determined the request for an **ice unit** is not medically necessary and appropriate.
- 4) MAXIMUS Federal Services, Inc. has determined the request for a **bone stimulator** is not medically necessary and appropriate.
- 5) MAXIMUS Federal Services, Inc. has determined the request for a **TLSO** is not medically necessary and appropriate.
- 6) MAXIMUS Federal Services, Inc. has determined the request for a **3-1 commode** is not medically necessary and appropriate.
- 7) MAXIMUS Federal Services, Inc. has determined the request for a **medical clearance with Dr. Sean Leoni** is not 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.

### Expert Reviewer Case Summary:

This claimant is a 33-year-old male with complaints of back pain. On 7/26/12, he was seen in clinic for evaluation of his low back pain. He stated that he developed an onset of back pain to his low back in 2005, attributing his symptoms to wearing a gun belt and having been involved in the use of force in altercations with suspects. Lumbar spine complaints included constant pain to the low back that radiated down the lower extremities, aggravated by lying down, bending, lifting, twisting or other similar activities. He reported paresthesias in the lower extremities. He denied taking current medications. Surgical history was significant for an elbow surgery. Upon examination,

he stood 6 feet 5 inches tall and weighed 250 pounds. Lumbar spine examination revealed pain and tenderness to the mid to distal lumbar segments, and standing flexion and extension were guarded and restricted. A radicular pain component was seen in the lower extremities, right side more pronounced than the left, appearing to be in the L5-S1 root and dermatome with some L4-5 dermatomal overlap. X-rays of the lumbar spine revealed disc space height loss at L5-S1. On 10/6/12, an MRI of the lumbar spine was obtained and revealed that at L4-5, disc height was maintained, and there was partial dehydration of the disc. There was also a 3 to 4 mm posterior disc protrusion with encroachment on the thecal sac but not on the foramina. There was compromise on the traversing nerve roots, and the facet joints were satisfactory. There was superimposed acquired canal stenosis with the anteroposterior (AP) diameter of the canal measuring 0.9 cm. At L5-S1, there was a 2 to 3 mm retrolisthesis with a 20% decrease in the height of the disc, which was dehydrated. There was a 3 mm pseudo and/or true posterior disc protrusion, most marked centrally to the left paracentral direction. There was also an annular tear noted in relationship to the posterior aspect of the disc. There was encroachment on the epidural fat and left transverse process, and there was compromise of the traversing left nerve root. There were also Modic changes in the adjacent vertebral body endplates. There was also encroachment on the foramina bilaterally with compromise of the exiting nerve roots bilaterally. There was also a 5 mm Schmorl's node in the anterosuperior aspect of S1. The facet joints appeared satisfactory. The exam was read by [REDACTED], MD. On 10/23/12, electromyography (EMG) and nerve conduction studies were performed by [REDACTED], MD, indicating evidence of mild acute L5 radiculopathy to the right. He was seen back in clinic on 2/07/13 with an evaluation by [REDACTED], DO. He complained of persistent pain to the low back aggravated by bending, pushing or sitting or standing or other similar activities. Examination of the lumbar spine at that time revealed tenderness from the mid to distal lumbar segments, and there was pain with terminal motion. Seated nerve root test was positive, and there was dysesthesia in a right L5 and S1 dermatome. On 4/18/13 and 4/23/13, this claimant was seen in physical therapy. It was noted at that time on 4/23/13 that he had undergone 5 physical therapy visits. On 7/25/13, the claimant was seen back in clinic by [REDACTED], PA-C. Lumbar spine examination revealed tenderness from the mid to distal lumbar segments with pain with terminal motion. Seated nerve root test was positive, and there was dysesthesias in the L5-S1 dermatome. "There was some weakness of the ankles and toes with possible foot drop."

#### **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 of Independent Medical Review
- Utilization Review Determination
- Medical Records from Claims Administrator
- Medical Treatment Utilization Schedule (MTUS)

#### **1) Regarding the request for L4-S1 posterior lumbar interbody fusion with instrumentation, neural decompression, iliac crest marrow aspiration/harvesting, and possible junctional levels :**

### Section of the Medical Treatment Utilization Schedule Relied Upon by the Expert Reviewer to Make His/Her Decision

The Claims Administrator based its decision on the the American College of Occupational and Environmental Medicine (ACOEM), 2<sup>nd</sup> Edition pgs. 305-306, which are part of the MTUS. The Expert Reviewer also based his/her decision on the Official Disability Guidelines, Low Back Chapter, which are not part of MTUS.

The Expert Reviewer based his/her decision on the American College of Occupational and Environmental Medicine (ACOEM), 2<sup>nd</sup> Edition, low back chapter and pgs. 308-307, which are part of the MTUS, and the Official Disability Guidelines (ODG), Low Back Chapter, aswell as E J Bone Joint Surg Br 2012 vol. 94-B no. SUPP XXXVI 7 NRICHMENT OF SKELETAL STEM CELLS FROM BONE MARROW TO ENHANCE SKELETAL REGENERATION - A NOVEL CLINICAL TECHNIQUE JO Smith1, JI Dawson1, A Aarvold1, AMH Jones1, JN Ridgway2, SJ Curran2, DG Dunlop1 and ROC Oreffo1 which are not part of MTUS.

### Rationale for the Decision:

MTUS guidelines indicate that there is no good evidence from controlled trials that spinal fusion alone is effective for treating any type of acute low back problems in the absence of spinal fractures, dislocations or spondylolisthesis if there is instability and motion in the segment operated on. The ODG specifically states that “spinal instability criteria include lumbar intersegmental movement of more than 4.5 mm.” In this case the medical records submitted for review indicate that an MRI revealed that there is a 2 to 3 mm retrolisthesis at L5-S1 but does not indicate if there is motion at that segment. Therefore, although the employee has electrodiagnostic evidence of a mild acute L5 radiculopathy on the right and MRI studies revealing disc pathology with encroachment of the neural elements at both L4-5 and L5-S1, there is no instability in the lumbar spine. There is a lack of documentation of rationale for proceeding with a fusion versus laminectomy as the facet joints are normal at both of those levels. Performing a laminectomy and/or decompression would not remove significant facet bone to create iatrogenic instability. The request includes iliac crest bone marrow aspiration. The MTUS and ODG do not specifically address this issue. In a peer-reviewed article by Smith and colleagues the authors indicate, “The ability to rapidly enrich BMA demonstrates potential for an intraoperative application to enhance bone healing and offers an immediate capacity for a clinical application to treat many scenarios associated with local bone stock loss. Further in vivo analysis is ongoing prior to clinical tests” (J Bone Joint Surg, 2012). This would indicate that at this time, there is a lack of a clear consensus among peer-reviewed literature to support this procedure at this time and it is therefore, experimental and/or investigational. As such, it cannot be considered a standard of care. The request also includes junctional levels, but does not specifically state which levels would be considered as possible junction levels although the most reasonable one would be L3-4. The MRI reveals that at L3-4, there is a 40% decrease in height of the disc with signal intensity maintained. There was a 2 to 3 mm posterior disc protrusion at that level with encroachment on the thecal sac, and there was no compromise on the traversing or exiting nerve roots. There was a 3 mm anterior disc protrusion, and the facet joints appeared normal. As such, at L3-4, there is a lack of documentation to indicate the medical necessity for a fusion at that level as there is no instability noted at L3-4, and the facet joints are

normal and decompressing that level would not create iatrogenic instability in all likelihood. **The request for L4-S1 posterior lumbar interbody fusion with instrumentation, neural decompression, iliac crest marrow aspiration/harvesting, and possible junctional levels is not medically necessary and appropriate.**

- 2) **Regarding the request for a front wheel walker :**  
Since the primary procedure is not medically necessary, none of the associated services are medically necessary.
- 3) **Regarding the request for an ice unit :**  
Since the primary procedure is not medically necessary, none of the associated services are medically necessary.
- 4) **Regarding the request for a bone stimulator :**  
Since the primary procedure is not medically necessary, none of the associated services are medically necessary.
- 5) **Regarding the request for a TLSO:**  
Since the primary procedure is not medically necessary, none of the associated services are medically necessary.
- 6) **Regarding the request for a 3-1 commode :**  
Since the primary procedure is not medically necessary, none of the associated services are medically necessary.
- 7) **Regarding the request for a medical clearance with Dr. Sean Leoni:**  
Since the primary procedure is not medically necessary, none of the associated services are medically necessary.

**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,

Paul Manchester, MD, MPH  
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.