

MEDICAL CONTESTED CASE HEARING NO. 08096  
**M6-08-12564-01**

**DECISION AND ORDER**

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder.

**ISSUES**

A contested case hearing was held on June 24, 2008, to decide the following disputed issue:

Are bilateral L3 through S1 facet medial nerve blocks requested by Dr. S healthcare reasonably required in accordance with Texas Labor Code Section 408.021?

**PARTIES PRESENT**

Claimant/Petitioner appeared and was assisted by JA, Ombudsman.

Carrier/Respondent appeared and was represented by DP, Attorney.

**BACKGROUND INFORMATION**

Claimant injured his low back in a slip and fall incident on \_\_\_\_\_. He had a lumbar fusion surgery in 2003. Claimant has chronic lumbar pain and his present treating doctor is Dr. S.

Dr. S has Claimant in a pain management program. Claimant has undergone a spinal cord stimulator trial that was unsuccessful in controlling the back pain. Claimant is presently receiving oral narcotics and Dr. S has requested a facet medial nerve block for diagnostic purposes. If the diagnostic tests are positive, Dr. S would then request approval for a neurotomy. This, potentially, would reduce/control Claimant's pain with less oral narcotic medication.

It should be noted that Dr. S's initial request contained a typographical error that was not corrected until the IRO process. Dr. S requested facet median nerve blocks. The median nerve is in the upper extremities, not the lumbar spine. The appropriate nerve is the medial nerve. Although Dr. S's request referred to the wrong nerve, this was not misleading. Clearly, Dr. S and the Carrier understood the request to be facet medial nerve blocks at L3 through S1. At the CCH, the Parties agreed to the correct spelling of the medial nerve.

Dr. S's initial request for bilateral L3-S1 facet medial nerve blocks was made on February 14, 2008. The Carrier advised Dr. S by letter dated February 28, 2008 that the request for bilateral L3/S1 facet medial nerve blocks was not certified. The Carrier advised Dr. S of the reconsideration procedures.

On February 29, 2008, Dr. S submitted a request for reconsideration of the Carrier's initial denial. The Carrier, on March 6, 2008, provided a detailed utilization review by Dr. B that certified the requested procedure. Without explanation, Dr. S requested review by an

independent review organization (IRO) on March 10, 2008, as if his request had been denied on reconsideration.

This request for treatment then proceeded through the IRO process. The IRO decision stated that the previous adverse determination should be upheld. Following the adverse IRO decision, Claimant filed a request for a medical contested case hearing (MCCH).

Claimant contends that once the Carrier approved the requested medical treatment, that ended the review process. Any further review after the Carrier approval was improper and should be disregarded.

Division Rule 134.600(l) states that the Carrier shall not withdraw a preauthorization approval once issued. It is noted that under the facts of this case, the medical review process continued after the Carrier's approval of the medical treatment request. The clear intent of the above rule is to prohibit unnecessary time and expense when the issue has been resolved.

I find that the Carrier approved the bilateral L3-S1 facet medial nerve blocks as requested by Dr. S on March 6, 2008 and that approval became final as per Division Rule. At this point, there was no dispute to be referred to the IRO process for decision.

Even though all the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

## **FINDINGS OF FACT**

1. The parties stipulated to the following facts:
  - A. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
  - B. On \_\_\_\_\_, Claimant was the employee of (Employer).
2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. Dr. S, the present treating doctor, requested approval for bilateral L3 through S1 facet medial nerve blocks on February 14, 2008.
4. The Carrier, on reconsideration, certified approval of the bilateral L3 through S1 facet medial nerve blocks as requested by Dr. S.
5. The IRO decision is null and void.

## **CONCLUSIONS OF LAW**

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.

2. Venue is proper in the (City) Field Office.
3. Bilateral L3 through S1 facet medial nerve blocks requested by Dr. S are healthcare reasonably required in accordance with Texas Labor Code Section 408.021.

## **DECISION**

Bilateral L3 through S1 facet medial nerve blocks requested by Dr. S are healthcare reasonably required in accordance with Texas Labor Code Section 408.021.

## **ORDER**

Carrier is ordered to pay benefits in accordance with this decision, the Texas Workers' Compensation Act, and the Commissioner's Rules. Accrued but unpaid income benefits, if any, shall be paid in a lump sum together with interest as provided by law.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY**, and the name and address of its registered agent for service of process is:

**RUSSELL OLIVER, PRESIDENT  
6210 EAST HIGHWAY 290  
AUSTIN, TEXAS 78723**

Signed this 2nd day of July, 2008.

Donald E. Woods  
Hearing Officer