

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.

ISSUE

A contested case hearing was held on August 4, 2008, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to outpatient cervical myelogram/CT for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Subclaimant appeared and was represented by Dr. S. Claimant appeared and was assisted by ombudsman, EJ. Respondent/Carrier appeared and was represented by JT, attorney.

BACKGROUND INFORMATION

Dr. S was the only witness at the August 4, 2008, CCH. Dr. S has recommended outpatient cervical myelogram/CT. The recommendation was denied by the Carrier. The IRO reviewer upheld the denial and provided the following rationale:

The claimant has been treating for an extensive period of time following what sounds like a relatively minor mechanism of injury in relation to the cervical spine. She has had ongoing subjective complaints of pain and numbness that have not been clearly supported on objective examination, imaging or electrodiagnostic testing. There is reference to symptom magnification with possible psychological overlay without reference to a psychiatric evaluation. While there is MRI evidence of mild disc bulging at C4-5 and C5-6; there were no encroachment, indentation or impingement components identified and this finding most likely represents a normal aging process. The foramina, facet joints and canal were all noted to be patent. The claimant has been treated with physical therapy, chiropractic management, and multiple medications and has remained off work. On 02/11/08 Dr. S stated the claimant's symptoms were getting worse without clearly outlining her functional or progressive neurological deficits. There is reference to a decreased left biceps reflex in relation to the right without a grading applied and with symmetrical strength and intact sensation. After a careful review of all medical records provided for review, there does not appear to be any surgical pathology and Dr. S has not indicated that surgery has been recommended. The Official Disability Guidelines support cervical myelography for use in surgical planning. There is no indication this claimant requires any surgical intervention; therefore, CT/myelogram evaluation would not be supported as medically necessary at this time.

Dr. S offered the following opening statement:

Claimant is a 50-year old female who has continued neck and shoulder pain. She has two disc levels in her neck that are degenerated and have 2-3 mm bulges, but not compressing the spinal cord. Her EMG is negative; however, this test is somewhat outdated. For that reason and with a patient who has continued complaints of this nature and with some findings on previous studies it is the standard of care to do further evaluation to update and find out if there is anatomical pathology that can be addressed surgically, and for that reason a CT/ myelogram was ordered in preparation for possible evaluation for operation and to be identify the anatomy.

Carrier opened by stating:

The IRO reviewer is correct in denying the cervical myelogram because the ODG supports cervical myelogram for surgical planning. It seems that all the doctors agree that these are two tiny 2-3 mm disc bulges without indentation or compression and there is no indication for surgery and there has been no request for surgery. Dr. V had mentioned surgery years ago, but Claimant is not even seeing Dr. V. Moreover Dr. M, DWC RME, found on August 7, 2007, that the MRI of the cervical spine was normal and she had significant symptom magnification. Based on the fact there is no objective evidence to overcome the ODG, and the ODG does not indicate that a cervical myelogram is necessary in this case, for that reason the IRO is correct.

Dr. S then offered the following testimony:

The ODG guidelines under Carrier Exhibit C, page 26 of 286 says that “Myelography” is not recommended except for surgical planning. Myelography or CT-myelography may be useful for preoperative planning. A 2-3 mm disc bulge at two separate discs is actually quite a large disc bulge, and that anything over a millimeter is considered serious and people have operations for those levels of disc herniations all the time including in my own practice. The 2-3 mm in the span of a spinal canal is quite a large space when you consider a spinal canal that anything under 10 mm is considered spinal stenosis. So when you consider a normal spinal canal to be 10 mm in diameter, even though millimeters are very very small increments of measurement and very tiny little measures in spaces in the world of the spinal canal it is very large it is what the spinal canal is it is a world of millimeters and every millimeter is a very significant thing and 2-3 mm in studies that are over a year old is very significant finding and for that reason I am planning to operate on those two discs but because of the age of the previous studies and because the MRIs do not give details about the bone they give primarily details about the soft tissues that I need more anatomic detail in order to know what the bone spurs look like, where they are located, so that when I encounter them, I will expect them to be there, and then I’ll know how to handle them and how to remove them based on the location as denoted by the CT/myelogram that I am asking for. So I would submit that per the ODG guidelines provided by the Carrier under the myelography section it is indicated for surgical planning and that is why I am doing it.

The ombudsman asked Dr. S the following question:

You have the decision of the IRO in front of you, Dr. S, (Carrier Exhibit B), and I am going to refer to page 5 where it says “Analysis and Explanation of the Decision,” the doctor documents that on February 11, 2008 you state the Claimant’s symptoms are

getting worse, but you don't outline her functional or progressive neurological deficits; can you discuss that further for us?

Dr. S testified:

That actually is incorrect, on my note of February 11, 2008, if you look on that page of that day under the "Reflex" section where I document the reflexes I documented her right biceps reflex as a grade "3" reflex which is basically normal and her left reflex as "1" which is basically abnormal. And then if you look at her motor exam or her strength exam of her muscles, I documented her left biceps muscle being about 4 out of 5, with 5 out of 5 being completely normal so she has a grade less strength in her left biceps muscle compared to the right which corresponds to her decreased reflexes on that side as well so the IRO's note is completely incorrect because on that particular day I did actually precisely document a difference in reflexes and muscle strength which corresponds to the same myotome and dermatome which corresponds to the area in her neck which is involved

Dr. S also went on to explain that the IRO reviewer contradicted himself when he first stated, that Dr. S stated the claimant's symptoms were getting worse without clearly outlining her functional or progressive neurological deficits., and then saying in the same paragraph that there is reference to a decreased left biceps reflex in relation to the right without a grading applied and with symmetrical strength and intact sensation." Dr. S testified that he is recommending a cervical discectomy and fusion.

The ODG guidelines provide that "Myelography" is not recommended except for surgical planning. Myelography or CT-myelography may be useful for preoperative planning. (Bigos, 1999) (Colorado, 2001).

Texas Labor Code Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Section 401.011(22-a) defines health care reasonably required as "health care that is clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with (A) evidence based medicine; or (B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community."

"Evidence based medicine" is further defined by Section 401.011(18-a) as the use of the current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts, and treatment and practice guidelines in making decisions about the care of individual patients. The Division of Workers' Compensation has adopted treatment guidelines under Division Rule 137.100. That rule requires that health care providers provide treatment in accordance with the current edition of the ODG, and treatment provided pursuant to those guidelines is presumed to be health care reasonably required as mandated by the above-referenced sections of the Texas Labor Code. The initial inquiry in any dispute regarding medical necessity is whether the proposed care is consistent with the ODG.

From the evidence presented, it is clear that Dr. S has recommended a cervical discectomy and fusion for Claimant and pursuant to the ODG, "CT-myelography may be useful for preoperative

planning.” Furthermore, “Myelography is not recommended except for surgical planning.” Dr. S’s testimony was persuasive and established that the IRO determination was based upon erroneous assumptions by the reviewer as to documentation as to functional or progressive neurological deficits documentation by Dr. S. Petitioner/Subclaimant has provided evidence based medicine contrary to the determination of the IRO. Outpatient cervical myelogram/CT is reasonably required health care for the compensable injury of _____.

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), and sustained a compensable injury.
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 has recommended cervical discectomy and fusion for treatment of Claimant’s compensable injury of _____.
4. Dr. S has recommended outpatient cervical myelogram/CT prior to performing cervical discectomy and fusion.
5. Pursuant to the ODG, myelography or CT-myelography may be useful for preoperative planning, and is not recommended **except** (emphasis added) for surgical planning.
6. Outpatient cervical myelogram/CT is health care reasonably required for the compensable injury of _____.

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. The preponderance of the evidence is contrary to the decision of the IRO that outpatient cervical myelogram/CT is not reasonably required health care for the compensable injury of _____.

DECISION

Claimant is entitled to outpatient cervical myelogram/CT for the compensable injury of _____.

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 **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is:

**EXECUTIVE DIRECTOR
(ADDRESS)
(CITY), TEXAS (ZIP CODE)**

Signed this 6th day of August 2008

Cheryl Dean
Hearing Officer