

**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 benefit contested case hearing was held on October 7, 2008, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to a lumbar myelogram with CT for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Claimant appeared and was assisted by ombudsman, JT. Carrier appeared and was represented by attorney, TW.

**BACKGROUND INFORMATION**

It is undisputed that Claimant sustained an injury to his low back during the course and scope of his employment on \_\_\_\_\_. Claimant underwent an L5-S1 fusion on June 6, 2007. He testified that he continues to have pain in his low back, which radiates down his leg and causes his foot to drop occasionally.

Claimant currently treats with a pain management doctor, Dr. H, and a neurosurgeon, Dr. LG. Dr. LG, the neurosurgeon who performed Claimant's fusion surgery in June of 2007, followed Claimant's postoperative progress and noted diminished low back mobility as well as low back, hip and leg pain. He also noted a progressive fusion with stable position.

A postsurgical MRI revealed the hardware, 4 to 5 MM anterolisthesis of L5 on S1, and extradural fluid collections in the surgical region; but, revealed no stenosis or nerve root encroachment at the surgical area or any other level.

Follow-up x-rays showed stable post-operative changes and no hardware complications as late as January 3, 2008.

On March 13, 2008, Dr. LG noted that Claimant was undergoing chronic pain management and complained of some aching in his hips and legs. The doctor noted Claimant's assertion that he was not making any significant improvement and recommended a lumbar myelogram and CT to determine whether Claimant had recurrent problems at the operative level or adjacent level post-traumatic disc pathology.

The first utilization review doctor, Dr. McK, a DO in occupational medicine, cited the *Official*

*Disability Guidelines* reference to myelography and CT myelography, and stated that there were no neurologic signs or changes in neurologic signs; that the x-rays did not show a suggestion of pseudoarthrosis; and, there was a previous MRI that showed a good fusion. Based on the clinical information submitted, and using the *ODG*, the reviewer denied the requested service.

The utilization review doctor who reviewed the request on reconsideration, Dr. G, a neurosurgeon, also denied the requested treatment. He stated that postoperatively Claimant reported resolution of his leg pain, but noted reports of progressively worsening low back pain. He opined that Dr. LG's notes did not provide a detailed physical examination to suggest that Claimant had recurrent neurological deficit and, in the absence of that information, the requested imaging study would not be medically necessary. Dr. G cited the same sections of the *ODG* relied on by Dr. McK, and denied the requested service.

An IRO reviewer and board certified anesthesiologist specializing in pain management reviewed the records and upheld the adverse determinations of the utilization review doctors. The IRO denied the CT myelogram stating that the only mention in the records he reviewed of positive neurological findings was on March 27, 2008, while prior complaints had been limited to back pain and cramping in the legs. The reviewer noted positive straight leg raising, which had not been documented prior to the request for the CT myelogram. The IRO also stated that there was no reason that Claimant could not have an MRI as he had already had a post-op MRI in August of 2007 that showed no new pathology, citing the *ODG* provision for CT myelography only where an MRI is unavailable.

## DISCUSSION

**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 *Official Disability Guidelines (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**.

### *ODG*

The initial inquiry, therefore, in any dispute regarding medical necessity, is whether the proposed care is consistent with the *ODG*. As the utilization review and IRO doctors in the instant case have stated, the *ODG* allows for myelography if an MRI is unavailable; and, restricts the use of CT myelography to those situations where an MRI is unavailable, contraindicated or inconclusive.

The *ODG* Treatment Guidelines for the low back discuss CT myelography and myelography as follows:

**Myelography:** Recommended as an option. Myelography OK if MRI unavailable. (Bigos, 1999)

**CT & CT Myelography:** Not recommended except for indications below for CT. CT Myelography OK if MRI unavailable, contraindicated (e.g. metallic foreign body), or inconclusive. (Slebus, 1988) (Bigos, 1999) (ACR, 2000) (Airaksinen, 2006) (Chou, 2007) Magnetic resonance imaging has largely replaced computed tomography scanning in the noninvasive evaluation of patients with painful myelopathy because of superior soft tissue resolution and multiplanar capability. Invasive evaluation by means of myelography and computed tomography myelography may be supplemental when visualization of neural structures is required for surgical planning or other specific problem solving. (Seidenwurm, 2000) The new ACP/APS guideline as compared to the old AHCPR guideline is more forceful about the need to avoid specialized diagnostic imaging such as computed tomography (CT) without a clear rationale for doing so. (Shekelle, 2008)

Indications for imaging – computed tomography:

- Lumbar spine trauma: trauma, neurological deficit
- Lumbar spine trauma: seat belt (chance) fracture
- Myelopathy (neurological deficit related to the spinal cord), traumatic
- Myelopathy, infectious disease patient
- Evaluate pars defect not identified on plain x-rays
- Evaluate successful fusion if plain x-rays do not confirm fusion (Laasonen, 1989)

As noted previously herein, “health care reasonably required” means health care that is clinically appropriate and considered effective for the injured employee’s injury and provided in accordance with best practices consistent with evidence-based medicine or if that evidence is not available, generally accepted standards of medical practice recognized in the medical community. Treatment provided pursuant to the *ODG* is presumed to be health care reasonably required.

Both of the utilization review doctors and the IRO doctor denied the requested lumbar myelogram with CT citing the relevant provisions of the *ODG*, specifically the fact that there was no showing that an MRI was unavailable, contraindicated or inconclusive and the lack of clinical evidence of neurological deficit. It is incumbent on the Claimant, therefore, to provide evidence-based medicine sufficient to overcome the presumption afforded the *ODG* and the opinions of the doctors correctly applying the *ODG*.

### ***Other Evidence Based Medicine***

When weighing medical evidence, the hearing officer must first determine whether the doctor giving the expert opinion is qualified to offer it, but also, the hearing officer must determine whether the opinion is relevant to the issues in the case and whether the opinion is based upon a reliable foundation. An expert’s bald assurance of validity is not enough. See *Black v. Food Lion, Inc.*, 171

F.3<sup>rd</sup> 308 (5<sup>th</sup> Cir. 1999); *E.I. Du Pont De Nemours and Company, Inc. v. Robinson*, 923 S.W.2d 549 (Tex. 1995). When determining reliability, the hearing officer must consider the evidence in terms of (1) general acceptance of the theory and technique by the relevant scientific community; (2) the expert's qualifications; (3) the existence of literature supporting or rejecting the theory; (4) the technique's potential rate of error; (5) the availability of other experts to test and evaluate the technique; (6) the clarity with which the theory or technique can be explained to the trial court; and (7) the experience and skill of the person who applied the technique on the occasion in question. *Kelly v. State*, 792 S.W.2d 579 (Tex. App.-Fort Worth 1990).

Claimant failed to present an evidence-based medical opinion from a competent source to overcome the IRO's decision. The treatment proposed by Dr. LG is a departure from the *ODG* in that he recommends CT myelography but fails to show how an MRI is unavailable, contraindicated or inconclusive. (Especially in light of the fact that a lumbar MRI was performed in August of 2007). Further, the reports of Dr. LG do not sufficiently document neurological deficit, and plain x-rays show a solid fusion. Dr. LG was asked very specifically, by the ombudsman, to offer an evidence-based medicine opinion regarding the requested service. His records, without sufficient reference to the *ODG* or other evidence-based medicine justifying departure from the *ODG*, do not meet the requisite evidentiary standard required to overcome the presumption afforded the IRO. The preponderance of the evidence is not contrary to the IRO decision and the requested lumbar myelogram with CT does not meet the criteria set out in the *ODG*.

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), when he sustained a compensable injury.
  - C. The IRO determined that the requested services were not reasonable and necessary health care services for the compensable injury of \_\_\_\_\_.
2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and name and street address of Carrier's registered agent which was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. Claimant's treating neurosurgeon recommended a lumbar myelogram with CT.
4. The *ODG* recommends CT myelography where an MRI is unavailable, contraindicated or inconclusive; where there is evidence of neurological deficit; and, where plain x-rays do not confirm a solid fusion.

5. The IRO decision upheld the Carrier's denial of the requested lumbar myelogram with CT because the Claimant's medical records did not show that an MRI was unavailable, contraindicated or inconclusive; did not show neurological deficit; and, plain x-rays did confirm a solid fusion.
6. The requested service is not consistent with the *ODG* criteria for lumbar myelography with CT.
7. The requested lumbar myelogram with CT is not 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 was proper in the (City) Field Office.
3. The preponderance of the evidence is not contrary to the decision of IRO that a lumbar myelogram with CT is not health care reasonably required for the compensable injury of \_\_\_\_\_.

### **DECISION**

Claimant is not entitled to a lumbar myelogram with CT for the compensable injury of \_\_\_\_\_.

### **ORDER**

Carrier is not liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with Section 408.021.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201**

Signed this 7<sup>th</sup> day of October, 2008.

Erika Copeland  
Hearing Officer