

MEDICAL CONTESTED CASE HEARING NO. 09093

M6-09-16467-01

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 January 21, 2009 with the record closing on January 22, 2009 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to a repeat lumbar MRI for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by MH, ombudsman. Respondent/Carrier appeared and was represented by EC, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on _____ when he was involved in a motor vehicle accident. Claimant underwent an open MRI of the lumbar spine on July 11, 2008 which was of moderate to poor quality but did not reveal any abnormalities. The Claimant's treating doctor, Dr. GV, recommended a repeat MRI (closed) to focus on the thoracolumbar junction. The proposed procedure was denied by the Carrier and submitted to an IRO who upheld the Carrier's denial.

The IRO reviewer concluded that there would be no indication, based on the submitted clinical records, for a repeat imaging study and that current evidence-based guidelines allow for repeat imaging when there is clear evidence of a progressive neurologic deficit requiring evaluation. The IRO reviewer also noted that the Claimant's July 11, 2008 MRI showed no acute injury, no evidence of a focal disc herniation, foraminal encroachment or canal stenosis and that the Claimant appeared to be improving with physical therapy. The IRO reviewer determined that a repeat lumbar MRI was not medically necessary.

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, therefore, in any dispute regarding medical necessity, is whether the proposed care is consistent with the *ODG*.

The *ODG* suggest that repeat MRI's are indicated only if there has been progression of neurologic deficit. The Claimant testified that his condition was improving with the physical therapy and that he returned to light duty work. The medical records document improvement in the Claimant's condition and the medical documentation reflects that the Claimant does not suffer from any neurological deficits. The Claimant's current treating doctor, Dr. GV, testified that the first MRI, an open MRI, was essentially worthless due to the quality of the diagnostic study. Dr. GV testified that the Claimant's x-rays showed a collapse of the T-12 and abnormality that was not identified on the first MRI. The second MRI (a closed MRI) was actually performed on November 13, 2008 and revealed a limbus fracture at T11-T12 which Dr. GV stated could be old or new but the MRI did verify a fracture. The Claimant had already been diagnosed with a compression fracture prior to the second MRI being performed. When specifically asked what evidence-based medicine he relied on in making a recommendation for a repeat MRI, Dr. GV responded, "x-rays with abnormality and [the Claimant] still had symptoms." Dr. GV did not address the concerns raised by the IRO or the recommendations in the *ODG* for repeat MRI's, specifically the lack of any neurological deficits as a result of this injury. Based on the evidence presented, the Claimant failed to provide evidence based medicine sufficient to contradict the determination of the IRO and the preponderance of the credible evidence is not contrary to the decision of the IRO.

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 the (Employer), when he 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. The treating doctor requested the Claimant undergo a repeat MRI of the lumbar spine for the compensable injury of _____.
4. The *ODG* suggest that repeat MRI's are indicated only if there has been progression of neurologic deficit.

5. The medical evidence fails to document or identify progression of neurological deficit as recommended in the *ODG* for repeat MRI's.
6. The requested service is not consistent with the *ODG* criteria for repeat MRI's.
7. The Claimant failed to provide evidence based medicine contrary to the IRO's determination that a repeat lumbar MRI is not a reasonable and necessary health care service 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 not contrary to the decision of the IRO that a repeat lumbar MRI is a not health care service reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to a repeat MRI of the lumbar spine 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 §408.021.

The true corporate name of the insurance carrier is **(EMPLOYER) (SELF-INSURED)** and the name and address of its registered agent for service of process is:

**MAYOR
(EMPLOYER)
(ADDRESS)
(CITY), TEXAS (ZIP CODE)**

Signed this 22nd day of January, 2009.

Carol A. Fougerat
Hearing Officer