

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 June 17, 2009, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to myelography, lumbosacral RS & I, CT scan lumbar spine C+ MATRL, and injection procedure myelography/CT scan?

PARTIES PRESENT

The Petitioner/Claimant appeared and was assisted by TM, ombudsman. The Carrier appeared and was represented by MK, attorney.

BACKGROUND INFORMATION

The claimant sustained his lumbar injury on _____ when he twisted his back in a slip and fall incident. He had three subsequent surgeries—an L2-3, L4-5, and L5-S1 laminectomy in 2006, a kyphoplasty in 2007, and a decompressive laminectomy at L2-3 in July, 2008. The claimant has had continued complaints of lumbar pain with radicular pain into his right leg.

The claimant has had several lumbar MRIs, including one in August, 2006, and subsequent studies on June 10 and December 5, 2008. He has also had a lumbar myelogram and post myelogram CT scan on June 10, 2008. However, Dr. W, Jr., M. D., a neurosurgical spine surgeon, requested another myelogram—a standing weight bearing myelogram—in February, 2009. Dr. C, M. D., the claimant's current treating doctor, after a recounting of the clear and detailed findings of the December, 2008 MRI, concurred with that request on March 26, 2009. Dr. C stated that he would have to see the results of a myelogram before he could determine the treatment options open to the claimant. There is no indication in the record that either Dr. W or Dr. C were aware of the June, 2008 lumbar CT myelogram, as neither references it or provides an explanation as to the need for a new myelogram.

In reviewing the request for a lumbar CT myelogram—specifically, myelography, lumbosacral RS & I, CT lumbar spine C+ MATRL, and injection procedure myelography/CT—the first utilization review doctor, who is board certified in occupational medicine, stated that he could see no reason for further imaging studies, and that the ODG criteria did not support further imaging studies in this case—an MRI had been performed and was not unavailable, contraindicated, or inconclusive. The reviewer further stated that the ODG recommends MRIs as the test of choice for patients with prior back surgery. The utilization review doctor who reviewed the request on reconsideration, a neurological surgeon, in agreeing with the decision of

the initial reviewer, further observed that there had not been any significant change in the claimant's status between the time of the CT myelogram and the MRI six months later.

An IRO reviewer, a neurosurgeon, upheld the carrier's denial of the requested myelography, lumbosacral RS & I, CT lumbar spine C+ MATRL, and injection procedure myelography/CT. The IRO reviewer noted that a lumbar CT myelogram and lumbar MRI had been performed less than a year before. He also pointed out that the ODG did not support the myelogram since the December, 2008 MRI was not inconclusive and since there was no clear indication that the claimant was a surgical candidate.

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. Health care reasonably required is further defined in Texas Labor Code Section 401.011 (22a) 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 evidence based medicine or, if evidence based medicine is not available, then generally accepted standards of medical practice recognized in the medical community. Health care under the Texas Workers' Compensation system must be consistent with evidence based medicine if that evidence is available. Evidence based medicine is further defined in Texas Labor Code Section 401.011 (18a) to be 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 accordance with the above statutory guidance, the Division of Workers' Compensation has adopted treatment guidelines by Division Rule 137.100. This rule directs health care providers to provide treatment in accordance with the current edition of the Official Disability Guidelines (ODG), and such treatment is presumed to be health care reasonably required as defined in the Texas Labor Code. Thus, the focus of any health care dispute starts with the health care set out in the ODG.

On the date of this medical contested case hearing, the ODG provides the following with regard to CT & CT Myelography (computed tomography):

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) A new meta-analysis of randomized trials finds no benefit to routine lumbar imaging (radiography, MRI, or CT) for low back pain without indications of serious

underlying conditions, and recommends that clinicians should refrain from routine, immediate lumbar imaging in these patients. (Chou-*Lancet*, 2009)

Indications for imaging -- Computed tomography:

- Thoracic spine trauma: equivocal or positive plain films, no neurological deficit
- Thoracic spine trauma: with neurological deficit
- 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 above, a CT myelogram had already been performed within a year of this request, a recent MRI was available which apparently was very clear and detailed, and the claimant is not a surgical candidate.

Based on a careful review of the evidence presented in the hearing, the claimant failed to meet his burden of overcoming the IRO decision by a preponderance of the evidence-based medicine. The IRO decision in this case is based on the ODG and the evidence revealed that the claimant failed to meet all of the necessary criteria for a new myelogram prescribed in the ODG. The preponderance of the evidence-based medicine is not contrary to the decision of the IRO and, consequently, the claimant is not entitled to the proposed myelography, lumbosacral RS & I, CT scan lumbar spine C+ MATRL, and injection procedure myelography/CT scan.

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 Workers' Compensation Division of the Texas Department of Insurance.
 - B. On _____, the Claimant was the employee of (Employer).
 - C. On _____, the claimant sustained a compensable injury.
 - D. Comppartners was appointed to act as IRO by the Texas Department of Insurance.
 - E. The IRO determined that the claimant is not entitled to myelography, lumbosacral RS & I, CT scan lumbar spine C+ MATRL, and injection procedure myelography/CT scan

2. The Carrier delivered to the Claimant a single document stating the true corporate name of the Carrier, and the name and street address of the Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. The claimant had a lumbar myelogram and post myelogram CT scan on June 10, 2008.
4. The claimant had a lumbar MRI on December 5, 2008 which, at the time of the request for the requested procedures was not unavailable, contraindicated, or inconclusive.
5. The claimant was not a surgical candidate at the time of the requested procedures, and there was no evidence that the claimant is currently a surgical candidate.
6. Myelography, lumbosacral RS & I, CT scan lumbar spine C+ MATRL, and injection procedure myelography/CT scan is not health care reasonably required for the compensable injury of _____.

CONCLUSIONS OF LAW

1. The Workers' Compensation Division of the Texas Department of Insurance 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 myelography, lumbosacral RS & I, CT scan lumbar spine C+ MATRL, and injection procedure myelography/CT scan is not health care reasonably required for the compensable injury of _____.

DECISION

The claimant is not entitled to myelography, lumbosacral RS & I, CT scan lumbar spine C+ MATRL, and injection procedure myelography/CT scan.

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 **HARTFORD FIRE INSURANCE COMPANY**, and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TX 78701**

Signed this 30th day of June, 2009.

William M. Routon, II
Hearing Officer