

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 July 2, 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 a lumbar myelogram with post myelogram CT scan is not medically necessary health care for the compensable injury of _____?

PARTIES PRESENT

The petitioner/claimant appeared and was represented by KK, attorney. The respondent/carrier appeared and was represented by BJ, attorney.

BACKGROUND INFORMATION

The claimant sustained a compensable low back injury on _____ after attempting to lift a heavy table. He has undergone a myriad of various tests since the date of the injury including a lumbar MRI in June, 2004, a myelogram with CT scan in August, 2004, an EMG in December, 2004, a discogram with CT scan in January, 2005, a repeat lumbar MRI in November, 2005, a repeat lumbar myelogram with CT scan in November, 2006, and a repeat EMG on March 10, 2009. There was no evidence that the reports from the prior MRIs, or a new MRI, were unavailable, contraindicated, or inconclusive—the findings of the MRIs were not significantly different than those of the myelograms.

The claimant's treating doctor, CM, M. D., pointed out that the last diagnostic test performed on the claimant's lumbar spine was in 2006. He asserted that he needed a more recent diagnostic test on the claimant's lumbar spine, specifically a myelogram, to completely diagnose what he believes is cauda equina syndrome, prior to surgery. The need for a more recent diagnostic test was not disputed in the medical records, and there was little disagreement in those records that the claimant's condition had gradually changed and deteriorated since the compensable injury—although most of the several doctors who have examined the claimant attribute the change to the natural spinal degenerative process and the claimant's diabetes. The carrier's first utilization review doctor denied Dr. M's request for a myelogram stating that the ODG requirements for a lumbar myelogram had not been met in this case.

The utilization review doctor who reviewed the request on reconsideration, an orthopedic surgeon, also denied the myelogram post CT on the basis that it was not medically indicated, an MRI was not contraindicated, other conservative care should be performed first, and that there

was no indication of a recent onset of a cauda equina neurological problem, as the claimant's neurological problems had been reported as abnormal since 2007.

An IRO reviewer, a board-certified orthopedic surgeon, upheld the denial by the utilization review doctors of a lumbar myelogram with post myelogram CT scan. Two bases were given for the IRO reviewer's decision: lack of medical necessity—the claimant had not had an onset of any objective neurological findings since the last imaging performed—and a CT myelogram was not supported by the ODG—an MRI was available and there were no contraindications in the claimant to an MRI.

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 lumbar CT myelograms:

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)

Dr. M, a board-certified neurologist, testified that a CT myelogram was needed here because it would provide a more complete picture of the condition of the claimant's lumbar spine in preparation for surgery. He further maintained that a CT myelogram was better than an MRI for visualizing "boney issues" in the spine, and that a myelogram gives a better picture of disc problems since the claimant is standing for a myelogram rather than prone, as with an MRI. Dr. M asserted that good surgeons always want a myelogram before performing spinal surgery.

In determining the weight to be given to expert testimony, a trier of fact must first determine if the expert is qualified to offer it. As a neurologist, the claimant's treating doctor is qualified to offer an opinion on his treatment. The trier of fact must then determine whether the opinion is relevant to the issues at bar and whether it is based upon a solid foundation. An expert's bald assurance of validity is not enough. See Black vs. Food Lion, Inc., 171 F.3rd 308 (5th Cir. 1999); E.I. Du Pont De Nemours and Company, Inc. v. Robinson, 923 S.W.2d 549 (Tex. 1995).

A medical doctor is not automatically qualified as an expert on every medical question and an unsupported opinion has little, if any, weight. Black v. Food Lion, Inc., 171 F.3rd 308 (5th Cir. 1999). Health care providers are directed to provide treatment in accordance with the current edition of the ODG, and such treatment is presumed to be reasonably required. (28 Tex. Admin. Code § 137.100 (Rule 137.100)). The treatment proposed by Dr. M is not consistent with the directives contained in the current edition of the ODG. Dr. M failed to support his opinion with evidence-based medicine. Although qualified to render an opinion on the best course of treatment for his patient, Dr. M has failed to show that the proposed course of care is medically necessary in light of evidence-based medicine and the preponderance of the evidence is not contrary to the IRO decision.

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 surgery 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 a lumbar myelogram with post myelogram 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. The claimant sustained a compensable injury on _____, while employed by (Employer).
 - C. The Texas Department of Insurance appointed (IRO) as the Independent Review Organization.
 - D. The IRO determined that a lumbar myelogram with post myelogram CT scan is not medically necessary health care for the compensable injury of _____.
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. An MRI is not contraindicated for the claimant.
4. There is no evidence of an onset of any objective neurological findings since the claimant's prior CT myelogram.
5. A lumbar myelogram with post myelogram 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 a lumbar myelogram with post myelogram CT scan is not health care reasonably required for the compensable injury of _____.

DECISION

The claimant is not entitled to a lumbar myelogram with post myelogram CT scan.

ORDER

The carrier is not liable for the benefits at issue in this hearing. The claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

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:

**RUSSEL RAY OLIVER
6210 EAST HIGHWAY 290
AUSTIN, TX 78723**

Signed this 9th day of July, 2009.

William M. Routon, II
Hearing Officer