

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 February 12, 2010, 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 a repeat lumbar MRI without contrast for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was assisted by MC, ombudsman. Carrier appeared and was represented by BP, attorney.

BACKGROUND INFORMATION

The Claimant injured her low back in the course and scope of employment on _____. On February 15, 2007, she underwent a lumbar MRI without contrast. It was normal at all levels except L5-S1, where the impression was a moderate right foraminal disc protrusion displacing the right S1 nerve root posteriorly and combining with facet arthropathy causing some right foraminal stenosis. (Healthcare Provider) records of February 13, 2007, noted normal reflexes, with positive right straight leg raise causing pain to the buttock and back of the right upper leg. Her gait and posture were normal. On February 15, 2007, the date of the MRI, those records referred to complaints of pain when she changed positions and a tingling sensation shooting down the back of her leg to her foot. Two years later, (Healthcare Provider) records reflect complaints of pain radiating down her right leg with numbness into her toe. She had one epidural steroid injection in early September 2009, which provided no relief. Dr. J, an orthopedic surgeon, on September 24, 2009, recommended an "up-to-date MRI" in order to make recommendations for further treatment.

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. The Commissioner of the

Division of Workers' compensation is required to adopt treatment guidelines that are evidence-based, scientifically valid, outcome-focused, and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. Texas Labor Code Section 413.011(e). Medical services consistent with the medical policies and fee guidelines adopted by the commissioner are presumed reasonable in accordance with Texas Labor Code Section 413.017(1).

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. Also, in accordance with Division Rule 133.308 (t), "A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division are considered parties to an appeal. In a Contested Case Hearing (CCH), the party appealing the IRO decision has the burden of overcoming the decision issued by an IRO by a preponderance of evidence-based medical evidence."

The proposed repeat MRI was denied by the Carrier and submitted to an IRO, who upheld the Carrier's denial. The IRO reviewer noted that the ODG supports a repeat MRI only if there has been a progression of neurological deficit. The Claimant did not dispute this reading of the ODG. The reviewer found that the current neurological deficit (S1 hypoesthesia) corresponded with her condition as revealed in the prior MRI. The reviewer then stated that the Claimant met the ODG criteria for a possible discectomy, and that a new MRI was "not needed unless the patient has agreed to having the surgery. Should surgery be agreed upon, then an updated MRI scan is medically reasonable prior to scheduling surgery."

No evidence was introduced that the Claimant is seeking surgery or that surgery has been requested. Thus, the applicable ODG criteria is as stated by the IRO, that is, a repeat MRI is indicated only if there has been a progression of neurological deficit. The Claimant offered no expert evidence which reviewed the clinical record and reached an opinion contrary to the IRO's that the clinical record showed a progressive neurological deficit. Instead, she relied only on her own testimony that she was experiencing a worsening of symptoms. Such non-expert evidence is not probative on the question of a progressive deficit. A review of the records themselves shows they are ambiguous on this question. For example, Dr. G of (Healthcare Provider) wrote on March 3, 2009, that the "symptoms are identical to those reported in 2006." Apparently, there was improvement from the baseline, then return to baseline conditions. No conclusion that there has been a progressive worsening of neurological deficit can be reached without a persuasive expert opinion to this effect.

The Claimant also argued that the report of the IRO failed to expressly indicate that it had the (Healthcare Provider) records available for consideration. The IRO report does not expressly list these records but does state that "[s]ubmitted records were reviewed in their entirety." The actual text of the report creates a clear implication that the IRO reviewer was aware of the contents of these records. In any case, in the absence of expert evidence that the content of these records would have had a substantial impact on the report of the IRO contrary to the report actually rendered, there is no merit in this objection to the IRO report.

It should be noted that the Claimant in this case did not assert the existence of evidence based medicine contrary to the ODG. Rather, she challenged how the IRO evaluated this evidence without an expert opinion to the contrary. The preponderance of the 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 (Self-Insured), Employer.
 - C. The Claimant sustained a compensable low back injury on _____.
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 Claimant underwent an initial MRI on February 15, 2007, for the compensable injury of _____. which showed a neurological deficit at the S1 nerve root.
4. Dr. J, a referral surgeon from the treating doctor, recommended the Claimant undergo a repeat MRI of the lumbar spine for the compensable injury of _____.
5. The requested service is not consistent with the ODG criteria for repeat MRIs.
6. The Claimant failed to provide evidence based medicine contrary to the IRO's determination that a repeat lumbar MRI is not a health care reasonably necessary 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 not health care reasonably necessary 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 **(SELF INSURED)** and the name and address of its registered agent for service of process is:

**DR. RU, SUPERINTENDENT
(STREET ADDRESS)
(CITY), TEXAS (ZIP CODE)**

Signed this 16th day of February, 2010.

Alan C. Ernst
Hearing Officer