

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 September 9, 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 a lumbar discogram at L3/4 and L5/S1 for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by LW, ombudsman. Respondent/Carrier appeared and was represented by NI, attorney.

BACKGROUND INFORMATION

It is undisputed that Claimant sustained a compensable injury on _____. The injury included the lumbar spine. Dr. C, D.O., Claimant's treating doctor, referred Claimant to Dr. R, M.D., for a neurosurgical consultation. Claimant underwent a lumbar decompression and fusion at L4/5 on August 14, 2007, and Dr. R performed the surgery. Claimant continued under the care of Dr. C, and received conservative medical care in the form of physical therapy, a chronic pain management program, and psychological counseling. In addition, Dr. C referred Claimant to Dr. W, M.D., for medication, spinal cord stimulator, and lumbar nerve blocks, and Dr. E, D.O., for bilateral lumbar facet injections at L3/4, L4/5, and L5/S1.

According to Claimant, the medical treatment that she was receiving from Drs. C, W, and E did not provide any relief for her low back pain, and Dr. C again referred Claimant to Dr. R. Dr. R examined Claimant on April 22, 2009, for complaints of low back pain, and opined that Claimant had radiculopathy into the right lower extremity. According to Dr. R, he could not determine the source of Claimant's low back pain complaints, recommended that Claimant undergo a lumbar discogram at L3/4 and L5/S1, and forwarded his preauthorization request to Carrier for the lumbar discogram.

Carrier's utilization review determined that the lumbar discogram did not meet the criteria of the Official Disability Guidelines (ODG) concerning a lumbar discography, and was not medically necessary for Claimant's compensable injury of _____. Carrier's utilization review denied Dr. R's request. Dr. R requested an IRO review. On June 9, 2009, the IRO reviewer, a board certified orthopedic surgeon, rendered a decision, determined that the lumbar discogram was not medically necessary, and cited the current edition of the Official Disability Guidelines (ODG) concerning a lumbar discography. The IRO reviewer further determined that Claimant's medical records did not document any evidence of an ongoing radiculopathy, and there was no evidence of any instability on the range of motion studies performed on Claimant's low back.

Texas Labor Code §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 (EBM) or, if EBM 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 EBM if that evidence is available. EBM 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 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, the party appealing the IRO decision has the burden of overcoming the decision issued by an IRO by a preponderance of EBM evidence."

With regard to the low back, under Discography, the ODG identifies numerous medical articles and studies by various authors conducted from 1997 through 2009, and provides that discography is not recommended. The ODG cites patient selection criteria for Discography if the provider and the payor agree to perform anyway. The ODG criteria for a Discography provides as follows:

- o Back pain of at least 3 months duration
- o Failure of recommended conservative treatment including active physical therapy
- o An MRI demonstrating one or more degenerated discs as well as one or more normal appearing discs to allow for an internal control injection (injection of a normal disc to validate the procedure by a lack of a pain response to that injection)
- o Satisfactory results from detailed psychosocial assessment (discography in subjects with emotional and chronic pain problems has been linked to reports of significant back pain for prolonged periods after injection, and therefore should be avoided)
- o Intended as a screen for surgery, i.e., the surgeon feels that lumbar spine fusion is appropriate but is looking for this to determine if it is not indicated (although discography is not highly predictive) (Carragee, 2006) NOTE: In a situation where the selection criteria and other surgical indications for fusion are conditionally met, discography can be considered in preparation for the surgical procedure. However, all of the qualifying conditions must be met prior to proceeding to discography as discography should be viewed as a non-diagnostic but confirmatory study for selecting operative levels for the proposed surgical procedure. Discography should not be ordered for a patient who does not meet surgical criteria.
- o Briefed on potential risks and benefits from discography and surgery

- o Single level testing (with control) (Colorado, 2001)
- o Due to high rates of positive discogram after surgery for lumbar disc herniation, this should be potential reason for non-certification”

Claimant appealed the IRO decision. In accordance with Division Rule 133.308(t), Claimant, the appealing party of the IRO decision, had the burden of overcoming the IRO decision by a preponderance of EBM evidence. In support of her position, Claimant testified that she wanted to undergo the lumbar discogram, submitted medical records from her health care providers, and offered three articles from the internet concerning lumbar discography. The ODG clearly states that lumbar discography is not a recommended procedure, and may only be justified if the decision has been made for the patient to undergo lumbar spinal fusion surgery. At the time Dr. R requested the lumbar discography, he had not made a recommendation that Claimant undergo lumbar spinal fusion surgery. In addition, Dr. R had determined that he would utilize the lumbar discogram to perform multiple level testing as opposed to single level testing with control. After a careful review and consideration of Claimant’s testimony and the documentary evidence offered by Claimant, Claimant did not offer EBM evidence to overcome the IRO determination that the lumbar discogram at L3/4 and L5/S1 was not health care reasonably required for the compensable injury of _____. The preponderance of the evidence is not contrary to the decision of the IRO that a lumbar discography at L3/L4 and L5/S1 is not health care reasonably required for the compensable injury of _____.

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).
 - C. Claimant sustained a compensable lumbar spine injury on _____.
 - D. The IRO determined that the lumbar discogram at L3/4 and L5/S1 was not medically necessary treatment for Claimant's compensable injury of _____.
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. Dr. R, M.D., recommended that Claimant undergo a lumbar discogram at L3/4 and L5/S1 for the compensable injury of _____.
4. The IRO utilized the current edition of the ODG, and determined that the lumbar discography at L3/4 and L5/S1 was not medically necessary treatment for Claimant's compensable injury of _____.

5. Claimant did not provide evidence-based medical evidence to overcome the determination of the IRO.
6. The requested lumbar discography at L3/4 and L5-S1 is not health care reasonably required for Claimant's 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 the Claimant is not entitled to a lumbar discogram at L3/4 and L5/S1 for the compensable injury of _____.

DECISION

Claimant is not entitled to a lumbar discogram at L3/4 and L5/S1 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 of _____, in accordance with Texas Labor Code Ann. §408.021.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE INSURANCE COMPANY**, and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701**

Signed this 21st day of September, 2009.

Wes Peyton
Hearing Officer