

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 3, 2009, to decide the following disputed issues:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to a lumbar myelogram with a post-myelogram CT for the compensable injury of _____, and,
2. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to a repeat EMG/NCV of the right lower extremity, for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared, and was represented by Attorney AR; Respondent/Carrier appeared, and was represented by Attorney BQ.

BACKGROUND INFORMATION

Claimant worked for Employer's appliance and furniture rental business; on _____, he injured his low back while he and a colleague were delivering a sofa to one of Employer's customers.

The Independent Review Organization denied the requested treatment as being not reasonable or necessary under the circumstances presented by this case. While the record of the contested Case Hearing contains a considerable amount of medical evidence that arguably supports Claimant's position in this case, this documentation does not constitute evidence-based medicine, as that term is described below.

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(22-a) 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. 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."

With regard to a lumbar myelogram with a post-myelogram CT, the ODG states that myelography is

"[r]ecommended as an option," and that it is "acceptable if [an] MRI [study] is unavailable." (Bigos, 1999).

However, the ODG does not recommend a CT scan, stating as follows:

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)

Insofar as an EMG/NCV is concerned, the ODG sets forth the following information regarding EMGs and NCVs, respectively :

EMG:

Recommended as an option (needle, not surface). EMGs (electromyography) may be useful to obtain unequivocal evidence of radiculopathy, after 1-month conservative therapy, but EMG's are not necessary if radiculopathy is already clinically obvious. (Bigos, 1999) (Ortiz-Corredor, 2003) (Haig, 2005) No correlation was found between intraoperative EMG findings and immediate postoperative pain, but intraoperative spinal cord monitoring is becoming more common and there may be benefit in surgery with major corrective anatomic intervention like fracture or scoliosis or fusion where there is significant stenosis. (Dimopoulos, 2004) EMG's may be required by the AMA Guides for an impairment rating of radiculopathy. (AMA, 2001) (Note: Needle EMG and H-reflex tests are recommended, but Surface EMG and F-wave tests are not very specific and therefore are not recommended. See Surface electromyography.)

NCV:

Not recommended. There is minimal justification for performing nerve conduction studies when a patient is presumed to have symptoms on the basis of radiculopathy. (Utah, 2006) See also the Carpal Tunnel Syndrome Chapter for more details on NCS. Studies have not shown portable nerve conduction devices to be effective. EMGs (electromyography) are recommended as an option (needle, not surface) to obtain unequivocal evidence of radiculopathy, after 1-month conservative therapy, but EMG's are not necessary if radiculopathy is already clinically obvious.

In short, the ODG considers lumbar myelography and CT scanning to be acceptable only when MRI imaging is unavailable, inconclusive, or contraindicated. In view of the fact that Claimant has previously undergone two separate MRI studies, it is clear that this type of diagnostic testing is neither unavailable nor contraindicated. Moreover, the records do not show that these previous studies were inconclusive. Under these circumstances, Claimant has not demonstrated that he meets the ODG standard for myelography or a CT scan.

Similarly, the ODG accepts EMG/NCV testing as appropriate only when it is necessary to obtain clear evidence of radiculopathy. The evidence contained in the record of the Contested Case Hearing does not indicate that this is the rationale underlying the recommendation for the proposed EMG/NCV test, and it is therefore reasonable to conclude that Claimant has not satisfied the ODG criteria for this diagnostic test.

As Claimant has presented no evidence-based medical opinion to justify a departure from the ODG, and the IRO opinion based thereon, he has failed to meet the requisite burden of proof. A decision in Carrier's favor therefore is appropriate with respect to both issues presented for resolution herein.

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. On _____, Claimant was employed by the (Employer).
2. On _____, Employer subscribed to a policy of workers' compensation insurance issued by the Liberty Mutual Insurance Corporation.
3. On _____, Claimant sustained an injury arising out of the course and scope of his employment with Employer.
4. 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.
5. Claimant's pain-management doctor, Dr. K, M.D., recommended that Claimant undergo a lumbar myelogram, with a post-myelogram CT to further diagnose the nature of Claimant's compensable injury of _____.
6. Claimant's pain-management doctor, Dr. K, M.D., recommended that Claimant undergo a repeat EMG/NCV of the right lower extremity to further diagnose the nature of Claimant's compensable injury of _____.
7. The Independent Review Organization (IRO) determined that a lumbar myelogram, with a post-myelogram CT, was not reasonable and necessary health care for Claimant's compensable injury of _____.
8. The Independent Review Organization (IRO) determined that a repeat EMG/NCV of the right lower extremity was not reasonable and necessary health care for Claimant's compensable injury of _____.
9. A lumbar myelogram, with a post-myelogram CT, is not health care reasonably required for Claimant's compensable injury of _____.
10. A repeat EMG/NCV of the right lower extremity 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 IRO's decision that a lumbar myelogram, with a post-myelogram CT, is not health care reasonably required for the compensable injury of _____.

4. The preponderance of the evidence is not contrary to the IRO's decision that a repeat EMG/NCV of the right lower extremity is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to lumbar myelogram, with a post-myelogram CT, and a repeat EMG/NCV of the right lower extremity for his 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 **TRAVELERS INDEMNITY COMPANY**, and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY D/B/A
CSC - LAWYERS INCORPORATING SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701**

Signed this 16th day of September, 2009.

Ellen Vannah
Hearing Officer