

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 March 9, 2010 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that Claimant is not entitled to a cervical myelogram with post computed tomography scan for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by JT, ombudsman.
Respondent/Carrier was represented by JF, attorney.

BACKGROUND INFORMATION

Dr. L, neurological surgeon, requested that Claimant have a cervical myelogram with a post computed tomography scan. Two utilization reviewers denied the request. The first reviewer noted that medical documentation did not show that surgery was planned and did not show that Claimant had exhausted and failed conservative treatment.

Prior to a second utilization review, Dr. L wrote that the tests were for diagnostic purposes to determine if Claimant needed an injection, surgery, or further conservative care. The second reviewer denied the request because Claimant lacked any clear-cut neurologic findings or distracting injuries to warrant the tests.

An IRO reviewer, a medical doctor who is board certified in orthopedic surgery, upheld the previous adverse determinations. The reviewer relied on the Official Disability Guidelines (ODG) and medical judgment, clinical experience and expertise in accordance with accepted medical standards. Following the denial, Dr. L wrote that the tests were needed to determine whether Claimant should have surgery or conservative care.

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 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 ODG provides the following for myelography:

Not recommended except for surgical planning. Myelography or CT-myelography may be useful for preoperative planning. (Bigos, 1999) (Colorado, 2001).

The ODG provides the following for computed tomography for the neck and upper back:

Not recommended except for indications below. Patients who are alert, have never lost consciousness, are not under the influence of alcohol and/or drugs, have no distracting injuries, have no cervical tenderness, and have no neurologic findings, do not need imaging. Patients who do not fall into this category should have a three-view cervical radiographic series followed by computed tomography (CT). In determining whether or not the patient has ligamentous instability, magnetic resonance imaging (MRI) is the procedure of choice, but MRI should be reserved for patients who have clear-cut neurologic findings and those suspected of ligamentous instability. (Anderson, 2000) (ACR, 2002) See also ACR Appropriateness Criteria™. MRI or CT imaging studies are valuable when potentially serious conditions are suspected like tumor, infection, and fracture, or for clarification of anatomy prior to surgery. MRI is the test of choice for patients who have had prior back surgery. (Bigos, 1999) (Colorado, 2001) For the evaluation of the patient with chronic neck pain, plain radiographs (3-view: anteroposterior, lateral, open mouth) should be the initial study performed. Patients with normal radiographs and neurologic signs or symptoms should undergo magnetic resonance imaging. If there is a

contraindication to the magnetic resonance examination such as a cardiac pacemaker or severe claustrophobia, computed tomography myelography, preferably using spiral technology and multiplanar reconstruction is recommended. (Daffner, 2000) (Bono, 2007) CT scan has better validity and utility in cervical trauma for high-risk or multi-injured patients. (Haldeman, 2008)

Indications for imaging -- CT (computed tomography):

- Suspected cervical spine trauma, alert, cervical tenderness, paresthesias in hands or feet
- Suspected cervical spine trauma, unconscious
- Suspected cervical spine trauma, impaired sensorium (including alcohol and/or drugs)
- Known cervical spine trauma: severe pain, normal plain films, no neurological deficit
- Known cervical spine trauma: equivocal or positive plain films, no neurological deficit

Writings from Dr. L indicate that he is uncertain whether to plan for surgery or for other treatment. His recommendation that the requested tests will help him determine whether surgery should be performed does not fall within the ODG guidelines that a myelogram is to be used for surgical planning. In addition, Claimant did not provide evidence from a doctor showing that he meets the ODG indications for computed tomography. Claimant failed to present evidence based medical evidence to overcome 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, who was the employee of (Employer), sustained a compensable injury.
 - C. The IRO determined that the requested services were not reasonable and necessary health care services for the 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. Claimant's medical records do not document that Claimant's condition falls within the ODG recommendations for myelography or indications for computed tomography.

4. A cervical myelogram with post computed tomography scan is not health care reasonably required for the compensable injury of _____ because it will not be used to plan for surgery.

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 cervical myelogram with post computed tomography scan is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to a cervical myelogram with post computed tomography scan 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 **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201**

Signed this 17th day of March, 2010.

CAROLYN F. MOORE
Hearing Officer