

**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 22, 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 lumbar myelogram and computed tomography scan for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

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

**BACKGROUND INFORMATION**

Claimant was injured during the course and scope of employment on \_\_\_\_\_. In August of 2008, he had a magnetic resonance imaging of the lumbar spine that showed a disc herniation at L5-S1 and a disc bulge at L4-5. In November of 2008, Dr. W diagnosed radiculopathy at S1. In October of 2009, Dr. S read an x-ray to show degenerative changes at L2-3, L3-4, and L4-5. Also in October of 2009, Dr. L requested a lumbar myelogram and computed tomography, saying the testing was needed for further investigation on treating Claimant.

Utilization reviewers and the IRO reviewer denied Dr. L's request, citing the Official Disability Guidelines (ODG).

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 CT and CT Myelography (computed tomography):

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) Primary care physicians are making a significant amount of inappropriate referrals for CT and MRI, according to new research published in the *Journal of the American College of Radiology*. There were high rates of inappropriate examinations for spinal CTs (53%), and for spinal MRIs (35%), including lumbar spine MRI for acute back pain without conservative therapy. (Lehnert, 2010)

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)

Claimant did not present evidence based medical evidence to show that he meets the ODG guidelines. The evidence showed that he had a magnetic resonance imaging which was available, was not contraindicated, and was not inconclusive. The evidence showed that Dr. L had not planned to do surgery on Claimant. Rather, Dr. L noted that the requested testing could help to determine if some type of surgery might be beneficial for Claimant. Dr. L did not state whether or not the testing would solve a specific problem.

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. A lumbar myelogram and computed tomography scan are not health care reasonably required 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 lumbar myelogram and computed tomography scan are not health care reasonably required for the compensable injury of \_\_\_\_\_.

### **DECISION**

Claimant is not entitled to a lumbar myelogram and 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RON WRIGHT, PRESIDENT  
6210 EAST HIGHWAY 290  
AUSTIN, TEXAS 78723**

Signed this 5<sup>th</sup> day of April, 2010.

CAROLYN F. MOORE  
Hearing Officer