MEDICAL CONTESTED CASE HEARING NO. 10207
M6-10-26915-01

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 July 26, 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 and lumbar myelogram and computed tomography for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by YG, ombudsman.
Respondent/Carrier appeared and was represented by CF, attorney.

BACKGROUND INFORMATION

Claimant testified that his right side from his neck to his ankle hurt after he slipped and collided into a brick wall, landing upside down on _____. His medical treatment has included medications. He has also had physical therapy and has undergone a magnetic resonance imaging and a nerve conduction test.

An Independent Review Organization reviewed Dr. L's request to perform a cervical and lumbar myelogram and computed tomography on Claimant. The reviewer, a doctor of osteopathy in neurological surgery, relied on the **Official Disability Guidelines** (ODG) and the reviewer's own medical judgment, clinical experience and expertise in accordance with accepted medical standards in upholding previous adverse determinations concerning the request. The reviewer wrote that because Claimant's magnetic resonance imaging findings were clear and unequivocal in showing stenosis secondary to spondylolisthesis and because documentation showed that Claimant has neurological deficit, there was no need to have the requested procedures. In addition, the reviewer wrote that Claimant's doctor had not explained how information from the tests would alter Claimant's need for 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 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."

For computed tomography, the ODG provides:

> 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
- Known cervical spine trauma: equivocal or positive plain films with neurological deficit

For CT & CT myelograph (computed tomography) the ODG provides:

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)

For Myelography, (lumbar and thoracic) the ODG provides the following:

Recommended as an option. Myelography OK if MRI unavailable. (Bigos, 1999)

For Myelography neck and upper back, the ODG provides the following:

> Definition -- *Diagnosis:* This is a difficult diagnosis to make. The clinician generally looks for signs and symptoms of long-tract findings (motor weakness, hyperreflexia, spasticity, ataxia, pathological reflexes, and myelopathic hand findings). In the early stages of cervical spondylotic myelopathy the first signs may be awkwardness of gait and balance. Upper extremity signs may include clumsiness or diffuse numbness of the hands. An area of signal changes in the spinal cord on MRI in an area of stenosis is highly suggestive of developing myelopathy. *Treatment:* There is no standard treatment algorithm due to the variable presentation and the lack of randomized trials evaluating treatment options. Surgical treatment (decompression) is recommended for patients with severe and/or progressive disease, but there is no established guideline for patients with non-progressive disease. *Goal of surgery:* The goal of surgical treatment is to decompress the spine and then to stabilize the vertebral segments if there is evidence of segmental instability. (Rao, 2006) See also Decompression, myelopathy.

Claimant's evidence included two letters from Dr. L that were written in June and July of 2010 which was shortly after the IRO's letter of May 13, 2010. Neither of Dr. L's letters addressed the concerns of the IRO or explained how Claimant met the criteria of the ODG for the requested procedures. The letters indicated that Claimant needs surgery and that the requested procedures are needed for surgical planning so that he would know what levels of the spine should be operated on. Claimant did not present sufficient evidence based medical evidence to overcome the decision of the IRO.

Even though all of 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 Independent Review Organization 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 cervical and lumbar myelogram and computed tomography are not health care services reasonably required for the compensable injury of _____.

4. Claimant's medical documentation does not show that he meets the ODG criteria for the cervical and lumbar myelogram and computed tomography.

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 Independent Review Organization that a cervical and lumbar myelogram and computed tomography is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to a cervical and lumbar myelogram and computed tomography 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 **HARTFORD ACCIDENT AND INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

C T CORPORATION SYSTEM
350 NORTH ST PAUL STREET
DALLAS, TEXAS 75201

Signed this 3rd day of August, 2010.

CAROLYN F. MOORE
Hearing Officer