

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 August 11, 2010 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to a repeat MRI of the lumbar spine for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by JR, ombudsman.
Respondent/Carrier appeared, by telephone, and was represented by BV, attorney.

BACKGROUND INFORMATION

The Claimant sustained a compensable injury to his cervical spine, upper extremities and a lumbar sprain/strain on _____. The Claimant has undergone surgery to his cervical spine, shoulder and a carpal tunnel release as a result of this compensable injury. The Claimant was also diagnosed with a lumbar sprain/strain and he has treated sporadically since the date of injury for lumbar spine pain and related symptoms. Claimant underwent an MRI of the lumbar spine on June 8, 2005 which revealed a protruded disc at L4-5 and L5-S1 with associated degenerative disc disease and no nerve root impingement. The MRI also revealed mild lateral recess stenosis at L4-5 and L5-S1 bilaterally and, at the T11-T12 level, there was a mild protruded disc with degenerative changes. Claimant testified that he has continued to experience low back pain and left leg weakness as a result of his _____ injury. The Claimant's treating doctor, Dr. H, has recommended a repeat lumbar MRI to determine possible pathological alternatives. The request for a repeat lumbar MRI was denied by the Carrier/Respondent (Carrier) and submitted to an IRO who upheld the Carrier's denial.

The IRO reviewer, an orthopedic surgeon, determined that the requested services did not meet the Official Disability Guidelines (ODG). The IRO reviewer stated that the medical records did not reveal evidence of any progressive neurological symptoms and that the Claimant's back pain is most likely the result of his ankylosing spondylitis. The IRO reviewer noted that the medical records did not determine the presence of any radicular signs or symptoms and that the Claimant's motor examination was normal. The IRO reviewer cited the ODG criteria which suggest that repeat MRI's are indicated when there is a suspicion of cancer or infection, when there is radiculopathy, when there is prior lumbar surgery or when there is presence of cauda equina syndrome. The IRO reviewer determined that the Claimant does not meet the criteria for a repeat MRI since there was no evidence of myelopathy or any evidence of trauma.

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 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."

Pursuant to the ODG recommendations, MRI's are the test of choice for patients with prior back surgery; however, repeat MRI's are indicated only if there has been progression of neurologic deficit. MRI's have also become the mainstay in the evaluation of myelopathy.

Indications for imaging -- Magnetic resonance imaging:

- Thoracic spine trauma: with neurological deficit
- Lumbar spine trauma: trauma, neurological deficit
- Lumbar spine trauma: seat belt (chance) fracture (If focal, radicular findings or other neurologic deficit)
- Uncomplicated low back pain, suspicion of cancer, infection, other "red flags"
- Uncomplicated low back pain, with radiculopathy, after at least 1 month conservative therapy, sooner if severe or progressive neurologic deficit. (For unequivocal evidence of radiculopathy, see AMA Guides, 5th Edition, page 382-383.) (Andersson, 2000)
- Uncomplicated low back pain, prior lumbar surgery
- Uncomplicated low back pain, cauda equina syndrome
- Myelopathy (neurological deficit related to the spinal cord), traumatic
- Myelopathy, painful
- Myelopathy, sudden onset

- Myelopathy, stepwise progressive
- Myelopathy, slowly progressive
- Myelopathy, infectious disease patient
- Myelopathy, oncology patient

The Claimant testified that he suffers from lumbar pain and left leg weakness and that he has treated with pain medications and exercise. Dr. H wrote, in a request for reconsideration dated February 19, 2010, that he has not referred the Claimant for any conservative treatment for the lumbar spine pending the repeat MRI to determine more clearly any possible pathological alternatives. Dr. H stated that the Claimant has evidence of degeneration in the lumbar spine, particularly the lower three lumbar discs, and that the Claimant has evidence of radiculopathy at L3, L4 and L5, left side greater than the right. Dr. H's opinion that the Claimant has evidence of radiculopathy is not supported by the clinical findings noted in his medical records or the Claimant's other medical records that were reviewed by the pre-authorization doctors and the IRO reviewer. Although Dr. H has repeatedly requested a lumbar MRI, he failed to adequately address the concerns raised by the IRO or the recommendations in the ODG for repeat MRI's, specifically the lack of any neurological deficits as a result of this injury. Based on the evidence presented, Claimant failed to provide evidence based medicine sufficient to contradict the determination of the IRO and the preponderance of the evidence is not contrary to 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 was the employee of (Employer) when he sustained a compensable injury.
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. The treating doctor requested the Claimant undergo a repeat MRI of the lumbar spine for the compensable injury of _____.
4. The Claimant failed to offer sufficient medical evidence to prove that he meets the criteria suggested in the ODG for a repeat MRI of the lumbar spine and preponderance of the evidence based medical evidence is not contrary to the IRO decision.
5. The repeat MRI of the lumbar spine is 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 repeat MRI of the lumbar spine is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to a repeat MRI of the lumbar spine 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 **HIGHLANDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**MR. CHARLIE MILLER, CLAIMS DIRECTOR
HIGHLANDS INSURANCE COMPANY, IN RECEIVERSHIP
10200 RICHMOND AVENUE, SUITE 175
HOUSTON, TX 77042-4123**

Signed this 11th day of August, 2010.

Carol A. Fougerat
Hearing Officer