

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 July 30, 2010 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to a lumbar myelogram with CT for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by SH, ombudsman.
Respondent/Carrier appeared and was represented by TW, attorney.

BACKGROUND INFORMATION

On _____, Claimant was picking up a heavy truck ramp and had an immediate onset of right groin pain. He had two surgeries for inguinal hernia and right orchiectomy repairs and subsequently developed a staph infection while in the hospital. He was noted to have developed lumbosacral pain with numbness, dyesthesia, and a feeling of weakness post-injury, with symptoms aggravated by walking, standing and other activities. Claimant's low back was treated conservatively with medications, activity modification and epidural steroid injection, but he failed to improve. On August 5, 2009, Claimant underwent right L3-4 and L4-5 laminectomies with decompression of the right L3, L4 and L5 nerve roots. When he continued to complain of severe low back pain extending into his right hip and right anteroilateral thigh and calf, as well as pain in the inguinal area, a lumbar MRI was ordered. The November 6, 2009 MRI reported a 5mm broad-based annular bulge at L4-5 with right-sided disc space narrowing, severe right foraminal narrowing and mild left foraminal narrowing at L4-5, a minimal annular disc bulge and disc desiccation at L5-S1, and a mild annular bulge at L3-4 with mild bilateral medial facet joint overgrowth causing borderline central stenosis. Claimant then received right L4-5 epidural steroid injections on December 11, 2009, with no real help, and no benefit from iliohypogastric and ilioinguinal injections. A February 5, 2010 lumbar MRI reported post-operative changes at L4-5, as well as degenerative disc disease at L3-4. A February 18, 2010 progress note by Dr. L, the lumbar surgeon, noted that Claimant still had lumbar pain and some radicular pain into his right thigh and leg. Quadriceps strength was quite good and he did not have right foot drop, but did have a right antalgic gait. In addition to his lumbar problem, Claimant still had pain in the right inguinal area and a lumbar MRI showed some fibrosis in the right L4-5 area. Dr. L then recommended the requested lumbar myelogram with CT at the L4-5 level to determine if more surgery was necessary, and if not, a spinal cord stimulator would then be considered.

A February 23, 2010 utilization preauthorization review determined that the requested test was not medically necessary because the medical records did not document any new changes on neurological examination and no documented spinal instability. A reconsideration review reported on March 15, 2010 upheld the previous denial because the requesting surgeon did not outline any neurologic deficits upon clinical examination and that the provider was unavailable for telephonic review of the case.

A Notice of Decision by the IRO reviewer dated April 19, 2010 determined that the previous adverse determinations should be upheld as not medically necessary. That decision noted that the clinical data submitted for review reported no objective findings of motor or sensory deficits. The IRO reviewer stated that the ODG guidelines reflect that a myelogram with CT was indicated if an MRI was unavailable, contraindicated or was inconclusive. The reviewer noted that a MRI was available that had appropriately identified the relevant pathology, with no indication that the findings were inconclusive, therefore, the medical necessity was not established and the previous denials were upheld by the IRO. Claimant appealed that determination, requesting a contested case hearing.

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."

The ODG recommends the following regarding the requested procedure:

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

Claimant's evidence included two letters from Dr. L. Neither of those letters addressed the concerns of the IRO reviewer or explained how Claimant met the criteria of the ODG for the requested procedure. The letters only indicated that Claimant needs further surgery and that the requested procedure would help plan the surgery. Claimant did not present evidence based medical evidence sufficient to overcome the decision of the IRO that the requested procedure was not medically necessary treatment for the _____ compensable injury.

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).
 - C. On _____, Claimant sustained a compensable lumbar 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. A lumbar MRI was available which properly identified the relevant pathology and there was no indication that the findings on the MRI were inconclusive.
 4. The Claimant failed to prove that he meets the requirements in the ODG for the requested lumbar myelogram with CT.
 5. A lumbar myelogram with CT 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 lumbar myelogram with CT is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to a lumbar myelogram with CT 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 **BITUMINOUS CASUALTY CORP.** and the name and address of its registered agent for service of process is

**GLENN CAMERON
222 WEST COLINAS BLVD., SUITE 1720
IRVING, TEXAS 75015**

Signed this 26th day of August, 2010.

David Wagner
Hearing Officer