

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 January 7, 2011, to decide the following disputed issue:

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

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by Ms. NG, an ombudsman.
Respondent/Carrier was represented by Mr. RJ, an attorney.

BACKGROUND INFORMATION

The Claimant sustained a compensable injury to her low back on _____. Together with treatment, an MRI of the lumbar spine was conducted on June 5, 2006. It reported a disc protrusion at L4-5. She was referred to Dr. Z, M.D, an orthopedic surgeon. He ordered an MRI, which was performed on December 3, 2007. It showed the same defect at L4-5 and a posterior central disc bulge at L5-S1. A third MRI was performed on June 8, 2008. This third MRI reported a disc protrusion at L3-4. Dr. Z maintains that this is an error in the MRI reading; however, it has not been corrected. Due to the length of time since the last MRI (June 2008) and the confusion with the level of defect reported in the third MRI, Dr. Z requires a current MRI before surgery. A designated doctor (Dr. K, M.D.) was appointed to address extent of injury. He examined the Claimant on November 5, 2009, and reported the Claimant's extent of injury included "a lumbar disc injury". He did not specify the level or levels of the lumbar disc injury.

The IRO upheld the previous adverse determinations that found no medical necessity for another (fourth) MRI. The IRO, relying on the American Medical Association *Guides to the Evaluation of Permanent Impairment, Fourth Edition* (the *Guides*) and the *Official Disability Guidelines* (ODG) wrote that there is no documentation of objective evidence of radiculopathy and, with a non-focal neurological examination, consideration for surgical treatment would not be given, regardless of imaging results. He stated that in the absence of a significantly changed or worsened neurological examination, a new MRI imaging is not medically necessary.

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 in making decisions about the care of individual patients. 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.

In reaching its conclusion, the IRO relied upon evidence based medicine and cited the *Guides* and the *ODG*. The *ODG* states, in pertinent part, the following:

Recommended for indications below. MRI's are test of choice for patients with prior back surgery. Repeat MRI's are indicated only if there has been progression of neurologic deficit. (Bigos, 1999) (Mullin, 2000) (ACR, 2000) (AAN, 1994) (Aetna, 2004) (Airaksinen, 2006) (Chou, 2007)

The Claimant relied on the medical reports of Dr. Z and the approval for lumbar surgery by the Utilization Review Decision dated May 10, 2008. The Claimant provided no expert evidence contradicting the *Guides* or the *ODG* with evidence based medicine. Dr. Z's reports explained why he recommended the Claimant should have another MRI, but failed to provide evidence based medicine in support of his position. The Claimant's evidence failed to show that the Claimant met the criteria of the ODG for an additional MRI. The evidence did not show that the Claimant has had a progression of neurologic deficit. The Claimant failed to present evidence based medicine to overcome the decision of the IRO. The preponderance of the evidence was 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, who was the employee of (Employee), 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 Claimant has had three prior MRIs for the compensable injury of _____.
 4. The Claimant did not meet the *ODG* criteria for an additional MRI because she failed to establish that she has a progression of neurologic deficit.
 5. A requested lumbar magnetic resonance imaging is not health care reasonably required for the compensable injury of _____.
 6. The Claimant failed to present expert evidence based on evidence based medicine in support of the necessity for an additional lumbar MRI.

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 the lumbar MRI is not health care reasonably required for the compensable injury of _____.

DECISION

The Claimant is not entitled to a lumbar MRI 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 **(SELF-INSURED)**, and the name and address of its registered agent for service of process is:

(SELF-INSURED)
(STREET ADDRESS)
(CITY), TX (ZIP CODE)

Signed this 24th day of January, 2011

ROY H. LEONARD
Hearing Officer