

MEDICAL CONTESTED CASE HEARING NO. 11147
M6-11-33421-01

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.

ISSUES

A contested case hearing was held on June 10, 2011 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to magnetic resonance ((Name)) imaging, spinal canal and contents, cervical; without contrast material for the compensable injury (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was represented by AT, attorney.
Respondent/Carrier appeared and was represented by RJ, attorney.

BACKGROUND INFORMATION

The claimant sustained a compensable injury to the cervical and lumbar spine on (Date of Injury). The claimant's medical provider, Dr. BG, requested that the claimant undergo magnetic resonance (Name) imaging (MRI), spinal canal and contents, cervical; without contrast material after the claimant's continued complaints of neck pain. The request was denied by a utilization review agent on January 26, 2011 due to a lack of progressive neurologic deficit. The request was submitted for reconsideration and again denied on February 7, 2011 due to no documented history of cervical myelopathy or findings on examination of a cervical myelopathy. The request was submitted for review with the Independent Review Organization (IRO) and the previous denials were upheld. Among other things, the IRO cited the Official Disability Guidelines (ODG) recommendations and criteria for the requested procedure. The IRO stated that current evidence-based guidelines recommend that there be objective evidence of neurologic deficits and there was no documentation of such deficits.

DISCUSSION

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 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 (sic) 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."

Regarding Magnetic Resonance Imaging of the Cervical Spine, the ODG provides as follows:

Not recommended except for indications list 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. Repeat MRI is not routinely recommended, and should be reserved for a significant change in symptoms and/or findings suggestive of significant pathology (eg, tumor, infection, fracture, neurocompression, recurrent disc herniation). (Anderson, 2000) (ACR, 2002) See also ACR Appropriateness Criteria™. MRI imaging studies are valuable when physiologic evidence indicates tissue insult or nerve impairment or 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) (Bey, 1998) (Volle, 2001) (Singh, 2001) (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)

Indications for imaging -- MRI (magnetic resonance imaging):

- Chronic neck pain (= after 3 months conservative treatment), radiographs normal, neurologic signs or symptoms present
- Neck pain with radiculopathy if severe or progressive neurologic deficit
- Chronic neck pain, radiographs show spondylosis, neurologic signs or symptoms present
- Chronic neck pain, radiographs show old trauma, neurologic signs or symptoms present
- Chronic neck pain, radiographs show bone or disc margin destruction
- Suspected cervical spine trauma, neck pain, clinical findings suggest ligamentous injury (sprain), radiographs and/or CT "normal"
- Known cervical spine trauma: equivocal or positive plain films with neurological deficit
- Upper back/thoracic spine trauma with neurological deficit

The IRO noted that although the claimant had tenderness upon palpation according to the documentation submitted, there was no motor weakness, reflex changes or sensory deficits that would be consistent with cervical myelopathy or myelopathy that would warrant the requested MRI study. Dr. G did not provide testimony and the claimant relied upon his exhibits and argued that he brought forth evidence-based medical evidence in support of his request. The exhibits presented by the claimant included medical reports from visits with various medical providers. These documents do not provide documentation of progressive neurologic deficit in the cervical spine and do not show other criteria in the ODG, such as ligamentous instability, suspected tumor, infection, fracture or clarification of anatomy prior to surgery, were met. Competent expert witness testimony contrary to the IRO decision was not presented. Thus, the claimant did not provide evidence-based medical evidence to overcome the IRO's decision that he is not entitled to the requested procedure for the compensable injury of June 19, 2006.

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 (Date of Injury), Claimant was the employee of (Employer) and sustained a compensable injury.
 - C. The IRO determined that the Claimant is not entitled to magnetic resonance ((Name)) imaging, spinal canal and contents, cervical; without contrast material.

2. Carrier delivered to Claimant and Provider 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. Claimant did not present evidence-based medical evidence to overcome the IRO's decision that he is not entitled to magnetic resonance ((Name)) imaging, spinal canal and contents, cervical; without contrast material for the compensable injury of (Date of Injury).
4. Magnetic resonance ((Name)) imaging, spinal canal and contents, cervical; without contrast material is not health care reasonably required for the compensable injury of (Date of Injury).

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 magnetic resonance (Name) imaging, spinal canal and contents, cervical; without contrast material is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to magnetic resonance ((Name)) imaging, spinal canal and contents, cervical; without contrast material for the compensable injury of (Date of Injury).

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 **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701**

Signed this 14th day of June, 2011.

Virginia Rodríguez-Gómez
Hearing Officer