

MEDICAL CONTESTED CASE HEARING NO 12020  
M6-11-35871-01

**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 October 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 a CT myelogram of the LS spine from T12 to S1, outpatient for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was represented by JC, attorney. Respondent/Carrier appeared and was represented by CL, attorney.

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury on (Date of Injury). He has undergone all invasive and non-invasive conservative care available. His MRI shows a 6mm disc herniation at L5/S1 and his EMG indicates an L5 radiculopathy. Dr. S, Claimant's surgeon, requested a CT/CT myelogram for purposes of surgical planning. The IRO doctor denied the request stating, "[T]he records do not indicate that the claimant is currently a candidate for surgical intervention."

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. 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. (Division Rule 133.308 (t).)

Under the Official Disability Guidelines in reference to a CT Myelogram of the lumbar spine, the following recommendation is made:

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)

Dr. S testified how Claimant has undergone all available conservative treatment and how the MRI and EMG correlate to Claimant's complaints and examination findings. Dr. S testified he needs the requested study for surgical planning. Needing the CT myelogram for surgical planning is a supported reason under the Official Disability Guidelines. The Official Disability Guidelines says, "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)."

There was an issue over whether Dr. S supplied the IRO doctor with all of the records because the IRO doctor stated Claimant was not currently a candidate for surgical intervention because there was a lack of indication in the medical records. The URA doctors had Dr. S's clinical records indicating he was considering surgery. Rule 133.308(l) indicates the Carrier shall provide the IRO doctor with the records the URA had for its review. This would indicate the IRO doctor received the records indicating Claimant was a surgical candidate and somehow overlooked or missed the areas in Dr. S's records where surgery was being considered.

Dr. S testified how evidence-based medicine literature relied upon in the Official Disability Guidelines supports his request for the CT myelogram of Claimant and how it appears the IRO doctor missed in the records the support for the requested diagnostic test. In the instant case, Claimant established by a preponderance of evidence-based medical evidence the requested diagnostic test is health care reasonably required for the compensable injury of (Date of 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 (Date of Injury), Claimant was the employee of (Employer), Employer.
  - C. On (Date of Injury), Employer provided workers' compensation insurance with Farmington Casualty Company, Carrier.
  - D. On (Date of Injury), Claimant sustained a compensable injury.
  - E. The Independent Review Organization determined Claimant should not have a CT myelogram of the LS spine from T12 to S1, outpatient.
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 CT myelogram of the LS spine from T12 to S1, outpatient is 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 contrary to the decision of the IRO that a CT myelogram of the LS spine from T12 to S1, outpatient is not health care reasonably required for the compensable injury of (Date of Injury).

### **DECISION**

Claimant is entitled to a CT myelogram of the LS spine from T12 to S1, outpatient for the compensable injury of (Date of Injury).

### **ORDER**

Carrier is 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 **FARMINGTON CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
D/B/A CSC-LAWYERS INCORPORATING SERVICE COMPANY  
211 EAST 7TH STREET, STE. 620  
AUSTIN, TX 78701-3218.**

Signed this 11th day of October, 2011.

**KEN WROBEL**  
Hearing Officer