

MEDICAL CONTESTED CASE HEARING NO 12070
M6-12-36599-01

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 January 27, 2012 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to a repeat cervical MRI as treatment for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Claimant appeared pro se. Carrier appeared and was represented by RT, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant.

For Carrier: None

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits HO-1 and HO-2.

Claimant's Exhibits C-1.

Carrier's Exhibits CR-A through CR-F

BACKGROUND INFORMATION

Claimant is a 37-year-old former mental health worker who was attacked on his job on (Date of Injury). He sustained a cervical injury for which he had an anterior cervical discectomy and fusion with internal fixation and plating in March 1999, followed by revision surgery in October, 1999. He had a spinal cord stimulator implant which was later removed. He has been unable to return to work and has continued to require treatment. On June 5, 2008 a cervical MRI was done for investigation of continued complaints of neck pain with radiation down the bilateral upper extremities. This study showed no abnormalities in the hardware, and an absence of

encroachment. Claimant came under the care of Dr. M, M.D., an orthopedic surgeon, on July 16, 2011. Claimant had previously seen Dr. M in consultation in 2001 with recommendation of hardware removal and redo fusion. Claimant presented on July 16, 2011 with complaints of severe neck pain radiating to both arms, and numbness and tingling of the hands. Dr. M ordered x-rays of the neck which showed the post operative changes. He has requested a repeat MRI. This was denied by Carrier's utilization reviewer, Dr. M (2), M.D., M.P.H., a board certified specialist in occupational medicine, who noted that, based upon the ODG, the MRI was contraindicated because of metal hardware with mesh plate and cage in the cervical spine which would make the MRI an ineffective imaging tool. The determination was reviewed Dr. C, M.D., a board certified surgeon, who upheld the denial, pointing out that under the ODG, a repeat MRI is not routinely recommended without evidence of a significant change in symptoms, severe neck pain with radiculopathy with progressive neurological symptoms, which Dr. C noted were not present in this case. The IRO reviewed the repeat MRI request on September 9, 2011, with review by a board certified orthopedic surgeon, who noted that the 2011 x-rays documented a solid fusion. Absence of a clear radicular pattern was noted with current complaints consistent with previous symptoms, and without interval change shown on x-ray. Medical necessity for the requested repeat MRI was not found under the ODG guidelines, and the denial was upheld.

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."

With regard to cervical MRI studies, the ODG states 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). 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. 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.

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

At the hearing, Claimant testified and presented evidence, but did not present expert evidence showing that he does meet the requirements of the ODG guidelines for an MRI, nor did he present other evidence based medicine indicating that a repeat MRI is medically necessary. Claimant failed to meet his burden of proof on the issue.

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 (Self-Insured).
 - C. On (Date of Injury), Employer provided workers' compensation insurance through (Self-Insured).
 - D. Claimant sustained a compensable injury on (Date of Injury).
 - E. The IRO determined on September 12, 2011 that Claimant is not entitled to a repeat cervical MRI.
 - F. Medical Care in this case is not covered by a workers' compensation healthcare network.
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. In this case a clear pattern of radiculopathy was not shown nor clear cut neurological findings.
4. There was no change shown on x-ray examination and Claimant's symptoms were consistent with previous symptoms.

5. A repeat MRI 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 a repeat cervical MRI is not healthcare reasonably required for the compensable injury of (Date of Injury).

DECISION

The Claimant is not entitled to a repeat cervical MRI for the compensable injury of (Date of Injury).

ORDER

Carrier is not liable for the benefits at issue in this hearing, and it is so ordered. 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
EXECUTIVE DIRECTOR
MAILING ADDRESS:
(P. O. BOX)
(CITY), TEXAS (ZIP CODE)**

**PHYSICAL ADDRESS:
(STREET ADDRESS)
(CITY), TEXAS (ZIP CODE)**

Signed this 3rd day of February, 2012.

Warren E. Hancock, Jr.
Hearing Officer