

MEDICAL CONTESTED CASE HEARING NO. 12127  
**M6-12-40467-01**  
**M6-12-40468-01**

**DECISION AND ORDER**

These cases are consolidated and 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 26, 2012 to decide the following disputed issues:

**In Docket No.:**

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to a repeat EMG/NCV of the lower extremities for the compensable injury of (Date of Injury)?

**In Docket No.:**

Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to an MRI of the spinal canal (lumbar spine) with and without contrast for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by NG, ombudsman. Respondent/Carrier appeared and was represented by BP, 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 through C-7

Carrier's Exhibits: CR-A through CR-F

## **BACKGROUND INFORMATION**

Claimant sustained a compensable injury to his lumbar spine on (Date of Injury). After failing a course of conservative care, Claimant underwent a discectomy and posterior lumbar interbody fusion on April 11, 2001. Claimant continued to complain of low back pain radiating into the lower extremities. A lumbar MRI was performed on January 4, 2011 which revealed post-surgical changes of interbody fusion with interbody fusion device and pedicle screws at L3 and L4, a posterior central disc bulge at L2, a mild disc protrusion at L4-5 and disc protrusion at L2-3 with thecal sac impingement. Claimant testified that he has undergone four MRI's and three or four EMG/NCV's since the date of injury. Claimant's treating physician has recommended another lumbar MRI and an EMG/NCV of the lower extremities. The request was denied by the Carrier and submitted to two separate IRO's who upheld the Carrier's denial.

### **Regarding Docket No.:**

The IRO reviewer, identified as an orthopedic spine surgeon and practicing neurosurgeon, determined that, based on the clinical information provided, the request for a repeat EMG/NCV of the lower extremities is not supported as medically necessary. The IRO reviewer noted that the records indicate that the previous EMG/NCV reported no acute radiculopathy or active denervation as of August 14, 2006 and that the most recent examination revealed decreased sensation in the L5-S1 distribution bilaterally but that there were no motor or reflex changes. The IRO reviewer concluded by stating that, given the current clinical data, medical necessity is not established for the proposed electrodiagnostic testing.

### **Regarding Docket No.:**

The IRO reviewer, identified as a physician board certified in neurosurgery, determined that Claimant does not have objective findings but has basically been stable neurologically for many years. The IRO reviewer noted that there was nothing new in the medical records which would suggest any change in Claimant's condition to warrant a repeat MRI study and that the MRI's had already been repeated numerous times over the last several years.

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 [is] considered [a party] 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."

### **ODG Recommendations for Repeat MRI's and Electrodiagnostic Studies:**

Recommended for indications below. MRI's are test of choice for patients with prior back surgery. 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).

#### **Indications for imaging -- Magnetic resonance imaging:**

- Lumbar spine trauma: trauma, neurological deficit
- Lumbar spine trauma: seat belt (chance) fracture (If focal, radicular findings or other neurologic deficit)
- Uncomplicated low back pain, suspicion of cancer, infection, other "red flags"
- Uncomplicated low back pain, with radiculopathy, after at least 1 month conservative therapy, sooner if severe or progressive neurologic deficit.
- Uncomplicated low back pain, prior lumbar surgery
- Uncomplicated low back pain, cauda equina syndrome
- Myelopathy (neurological deficit related to the spinal cord), traumatic

- Myelopathy, painful
- Myelopathy, sudden onset
- Myelopathy, stepwise progressive
- Myelopathy, slowly progressive
- Myelopathy, infectious disease patient
- Myelopathy, oncology patient

**Minimum Standards for electrodiagnostic studies:** The American Association of Neuromuscular & Electrodiagnostic Medicine (AANEM) recommends the following minimum standards:

- (1) EDX testing should be medically indicated (i.e., to rule out radiculopathy, lumbar plexopathy, peripheral neuropathy).
- (2) Testing should be performed using EDX equipment that provides assessment of all parameters of the recorded signals. Studies performed with devices designed only for “screening purposes” rather than diagnosis are not acceptable.
- (3) The number of tests performed should be the minimum needed to establish an accurate diagnosis.
- (4) NCSs (Nerve conduction studies) should be either (a) performed directly by a physician or (b) performed by a trained individual under the direct supervision of a physician. Direct supervision means that the physician is in close physical proximity to the EDX laboratory while testing is underway, is immediately available to provide the trained individual with assistance and direction, and is responsible for selecting the appropriate NCSs to be performed.
- (5) EMGs (Electromyography - needle not surface) must be performed by a physician specially trained in electrodiagnostic medicine, as these tests are simultaneously performed and interpreted.
- (6) It is appropriate for only 1 attending physician to perform or supervise all of the components of the electrodiagnostic testing (e.g., history taking, physical evaluation, supervision and/or performance of the electrodiagnostic test, and interpretation) for a given patient and for all the testing to occur on the same date of service. If both tests are done, the reporting of NCS and EMG study results should be integrated into a unifying diagnostic impression.

- (7) If both tests are done, dissociation of NCS and EMG results into separate reports is inappropriate unless specifically explained by the physician. Performance and/or interpretation of NCSs separately from that of the needle EMG component of the test should clearly be the exception (e.g. when testing an acute nerve injury) rather than an established practice pattern for a given practitioner. (AANEM, 2009) Note: For low back NCS are not recommended and EMGs are recommended in some cases, so generally they would not both be covered in a report for a low back condition.

Claimant testified that his treating doctor has requested the additional diagnostic studies to determine if Claimant's lumbar spine condition has worsened since January 2011. The last medical report in evidence from Claimant's treating doctor, Dr. Z, is dated February 28, 2012. The IRO reviewer compared the January 3, 2011 exam with the February 28, 2012 exam and noted that the findings were exactly the same and that the interval records also documented similar presentations. The ODG suggests that there be a significant change in presentation and progressive deficits for repeat diagnostic studies. Claimant's medical documentation fails to demonstrate objective findings of a change in condition to warrant repeat diagnostic testing as requested. Based on the evidence presented, Claimant failed to provide an evidence-based medical opinion sufficient to contradict the determinations of the IRO's and the preponderance of the evidence is not contrary to the decisions of the IRO's that the requested procedures of an EMG/NCV of the lower extremities and repeat lumbar MRI are not medically necessary for treatment of the compensable injury of (Date of Injury).

Even though all the evidence presented may not have been discussed in detail, 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 was 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 had workers' compensation insurance coverage as a self-insurer.
  - D. Claimant sustained a compensable injury to his lumbar spine on (Date of Injury).

E. The IRO reviewers determined that an MRI of the spinal canal (lumbar spine) with and without contrast and a repeat EMG/NCV of the lower extremities were not medically necessary.

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.

**In Docket No.:**

3. Claimant does not meet the requirements of the ODG for a repeat EMG/NCV of the lower extremities and Claimant failed to present evidence-based medicine sufficient to overcome the determination of the IRO.

4. A repeat EMG/NCV of the lower extremities is not health care reasonably required for the compensable injury of (Date of Injury).

**In Docket No.:**

5. Claimant does not meet the requirements of the ODG for an MRI of the spinal canal (lumbar spine) with and without contrast and Claimant failed to present evidence-based medicine sufficient to overcome the determination of the IRO.

6. An MRI of the spinal canal (lumbar spine) with and without contrast is not health care reasonably required for the Claimant's 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 was proper in the (City) Field Office.

**In Docket No.:**

The preponderance of the evidence is not contrary to the decision of the IRO that a repeat EMG/NCV of the lower extremities is not health care reasonably required for the compensable injury of (Date of Injury).

**In Docket No.:**

The preponderance of the evidence is not contrary to the decision of the IRO that an MRI of the spinal canal (lumbar spine) with and without contrast is not health care reasonable required for the compensable injury of (Date of Injury)

## **DECISION**

**In Docket No.:** Claimant is not entitled to a repeat EMG/NCV of the lower extremities for the compensable injury of (Date of Injury).

**In Docket No.:** Claimant is not entitled to an MRI of the spinal canal (lumbar spine) with and without contrast for the compensable injury of (Date of Injury).

## **ORDER**

**In Docket No.:** 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.

**In Docket No.:** 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 **(CITY) I.S.D. (SELF-INSURED)** and the name and address of its registered agent for service of process is:

**DR. SYLVESTER PEREZ, INTERIM SUPERINTENDENT  
(CITY) I.S.D.  
141 LAVACA STREET  
(CITY), TX 78210**

Signed this 26<sup>th</sup> day of July, 2012.

Carol A. Fougerat  
Hearing Officer