MEDICAL CONTESTED CASE HEARING NO. 12129
M6-12-40151-01

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 August 6, 2012, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that an MRI arthrogram of the right shoulder with contrast is not reasonably required health care for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by RH, ombudsman. Respondent/Carrier appeared and was represented by SC, attorney.

BACKGROUND INFORMATION

Claimant drove a truck for Premium Transportation Staffing, Employer. On (Date of Injury), he stopped his truck on the side of the road to tighten a loose load strap. After the truck had come to a halt and Claimant had unfastened his seat belt, but before Claimant left the cab of the truck, the embankment on the side of the road gave way and the truck slipped off the embankment, rolling over. Claimant sustained injuries that include an injury to his right shoulder. He treated for a time with ST, DO, then changed doctors to CM, MD. He first presented to Dr. M's office on February 6, 2012. A chart note of that first visit notes that Claimant reported that he had been seen Dr. T at NOVA and had been referred to GH, MD. Dr. H had done a cortisone injection to Claimant's right shoulder. X-rays were done on February 6, 2012, but Claimant left before seeing Dr. M.

Claimant returned to Dr. M's on February 20, 2012. In the chart note of that visit, Dr. M stated that Claimant's x-ray revealed a 100% acromial overhang, a type II acromion. The "Plan" section of the chart stated that it was explained that nonoperative treatment should be tried, leaving surgery as a last resort and the MRI with arthrogram of the shoulder at issue herein was ordered. However, the chart goes on:

> Follow-up: after MRI

> He has certainly maximized nonoperative treatment. Subacromial decompression is indicated, plus any repairs as might be indicated by MRI arthrogram.

After Dr. M requested preauthorization for the MRI arthrogram of the right shoulder with contrast, two Utilization Review Agents (URAs) and an IRO physician reviewer have opined that the test is not reasonably necessary health care for the compensable injury.

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."

With regard to arthrography and MR arthrography of the shoulder, the ODG provides as follows:

> **Arthrography**

Recommended as indicated below. Magnetic resonance imaging (MRI) and arthrography have fairly similar diagnostic and therapeutic impact and comparable accuracy, although MRI is more sensitive and less specific. Magnetic resonance imaging may be the preferred investigation because of its better demonstration of soft tissue anatomy. (Banchard, 1999) Subtle tears that are full thickness are best imaged by arthrography, whereas larger tears and partial-thickness tears are best defined by MRI. Conventional arthrography can diagnose most rotator cuff tears accurately; however, in many institutions MR arthrography is usually necessary to diagnose labral tears. (Oh, 1999) (Magee, 2004)

MR arthrogram

Recommended as an option to detect labral tears, and for suspected re-tear post-op rotator cuff repair. MRI is not as good for labral tears, and it may be necessary in individuals with persistent symptoms and findings of a labral tear that a MR arthrogram be performed even with negative MRI of the shoulder, since even with a normal MRI, a labral tear may be present in a small percentage of patients. Direct MR arthrography can improve detection of labral pathology. (Murray, 2009) If there is any question concerning the distinction between a full-thickness and partial-thickness tear, MR arthrography is recommended. It is particularly helpful if the abnormal signal intensity extends from the undersurface of the tendon. (Steinbach, 2005) The main advantage of MR arthrography in rotator cuff disease is better depiction of partial tears in the articular surface. (Hodler, 1992) It may be prudent to include an anesthetic in the solution in preparation for shoulder MR arthrography. (Fox, 2012) See also Magnetic resonance imaging (MRI).

One of the studies cited by the ODG with respect to arthrography provides the following information:

Oh CH, Schweitzer ME, Spettell CM, Internal derangements of the shoulder: decision tree and cost-effectiveness analysis of conventional arthrography, conventional MRI, and MR arthrography. Skeletal Radiol 1999 Dec;28(12):670-8

PURPOSE: In a patient with internal derangement of the shoulder, the diagnostic method of choice is controversial. Conventional arthrography can diagnose most rotator cuff tears accurately; however, in many institutions MR arthrography is usually necessary to diagnose labral tears. We utilized decision tree methodology to compare the cost-effectiveness of conventional arthrography and conventional MRI with a hypothetical algorithm in which a patient underwent arthrography, performed with admixed gadolinium, which if negative, was followed by MRI. RESULTS: In the base-case analysis, the average effectiveness of double-contrast

arthrography alone, MRI alone and arthrography selectively followed by MRI were 0.6610, 0.6715, and 0.7204, respectively. The average costs for each of these strategies were $1090, $2033, and $2339, respectively. CONCLUSION: Arthrography performed with admixed diluted gadolinium, which if negative is immediately followed by MRI, was somewhat more expensive than conventional MRI. However, because of much greater effectiveness, cost-effectiveness was significantly higher for our proposed algorithm. Conventional arthrography without gadolinium, although less expensive, had severely limited effectiveness.

The sensitivity of single-contrast arthrography for detecting full-thickness RCTs was 99% and specificity was 94%. The sensitivity of single-contrast arthrography for detecting partial-thickness RCTs was 0.4. The sensitivity of double-contrast arthrography for detecting partial-thickness RCTs was 0.42.

Author's conclusions

Arthrography performed with admixed diluted gadolinium, which if negative is immediately followed by MRI, had the highest cost-effectiveness. Conventional arthrography was less expensive, but had severely limited effectiveness.

Claimant offered a letter/report from Dr. M dated June 4, 2012. That letter/report provides no additional insight into Dr. M's rationale for ordering the MRI arthrogram with contrast, stating only that it should be done to "evaluate any other tears within his injured right shoulder." Claimant contends that Dr. M's opinion that he should have the MR arthrogram with contrast overcomes the opinions of the IRO physician reviewer and the URA doctors.

In determining the weight to be given to expert testimony, a trier of fact must first determine if the expert is qualified to offer it. The trier of fact must then determine whether the opinion is relevant to the issues at bar and whether it is based upon a solid foundation. An expert's bald assurance of validity is not enough. *See* Black vs. Food Lion, Inc., 171 F.3rd 308 (5th Cir. 1999); E.I. Du Pont De Nemours and Company, Inc. v. Robinson, 923 S.W.2d 549 (Tex. 1995). Evidence is considered in terms of (1) general acceptance of the theory and technique by the relevant scientific community; (2) the expert's qualifications; (3) the existence of literature supporting or rejecting the theory; (4) the technique's potential rate of error; (5) the availability of other experts to test and evaluate the technique; and (6) the experience and skill of the person who applied the technique on the occasion in question. Kelly v. State, 792 S.W.2d 579 (Tex.App.-Fort Worth 1990). A medical doctor is not automatically qualified as an expert on every medical question and an unsupported opinion has little, if any, weight. Black v. Food Lion, Inc., 171 F.3rd 308 (5th Cir. 1999).

Dr. M requested pre-authorization of the MRI arthrogram and opined that it is necessary. Three other qualified medical professionals have opined that it is not. The ODG indicates, in general,

that an MRI arthrogram may be necessary in individuals with persistent symptoms and findings of a labral tear even with negative MRI of the shoulder, since even with a normal MRI it can improve detection of labral pathology, or if there is any question concerning the distinction between a full-thickness and partial-thickness rotator cuff tear. The ODG also states that an MR arthrogram is particularly helpful if the abnormal signal intensity extends from the undersurface of the tendon. In the instant case, there is no evidence of a labral tear. Nor is there evidence of abnormal signal intensity from the undersurface of the tendon in the shoulder. There was no expert medical evidence offered that would tend to show that an MR arthrogram is indicated in light of Claimant's prior imaging studies or that Claimant's clinical presentation is consistent with a labral tear.

With regard to the use of MRIs for shoulder injuries, the ODG provides as follows:

> **Magnetic resonance imaging (MRI)**
>
> Recommended as indicated below. Magnetic resonance imaging (MRI) and arthrography have fairly similar diagnostic and therapeutic impact and comparable accuracy, although MRI is more sensitive and less specific. Magnetic resonance imaging may be the preferred investigation because of its better demonstration of soft tissue anatomy. (Banchard, 1999) Subtle tears that are full thickness are best imaged by MR arthrography, whereas larger tears and partial-thickness tears are best defined by MRI, or possibly arthrography, performed with admixed gadolinium, which if negative, is followed by MRI. (Oh, 1999) The results of a recent review suggest that clinical examination by specialists can rule out the presence of a rotator cuff tear, and that either MRI or ultrasound could equally be used for detection of full-thickness rotator cuff tears. (Dinnes, 2003) Shoulder arthrography is still the imaging "gold standard" as it applies to full-thickness rotator cuff tears, with over 99% accuracy, but this technique is difficult to learn, so it is not always recommended. Magnetic resonance of the shoulder and specifically of the rotator cuff is most commonly used, where many manifestations of a normal and an abnormal cuff can be demonstrated. The question we need to ask is: Do we need all this information? If only full-thickness cuff tears require an operative procedure and all other abnormalities of the soft tissues require arthroscopy, then would shoulder arthrography suffice? (Newberg, 2000) Ultrasonography and magnetic resonance imaging have comparable high accuracy for identifying biceps pathologies and rotator cuff tears, and clinical tests have modest accuracy in both disorders. The choice of which imaging test to perform should be based on the patient's clinical information, cost, and imaging experience of the radiology department. (Ardic, 2006) MRI is the most useful technique for evaluation of shoulder pain due to subacromial impingement and rotator cuff disease and can be used to diagnose bursal inflammatory change,

structural causes of impingement and secondary tendinopathy, and partial- and full-thickness rotator cuff tears. However, The overall prevalence of tears of the rotator cuff on MRI is 34% among symptom-free patients of all age groups, being 15% for full-thickness tears and 20% for partial-thickness tears. The results of this study support the use of MRI of the shoulder before injection both to confirm the diagnosis and to triage affected patients to those likely to benefit (those without a cuff tear) and those not likely to benefit (those with a cuff tear). (Hambly, 2007) The preferred imaging modality for patients with suspected rotator cuff disorders is MRI. However, ultrasonography may emerge as a cost-effective alternative to MRI. (Burbank, 2008) 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 shoulder MRIs (37%), shoulder MRI in patients with no histories of trauma and documented osteoarthritis on plain-film radiography. (Lehnert, 2010) See also MR arthrogram.

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

- Acute shoulder trauma, suspect rotator cuff tear/impingement; over age 40; normal plain radiographs

- Subacute shoulder pain, suspect instability/labral tear

- Repeat MRI is not routinely recommended, and should be reserved for a significant change in symptoms and/or findings suggestive of significant pathology. (Mays, 2008) (Emphasis added.)

The URA doctors and the IRO physician reviewer have opined that a repeat MRI, in this case an MR arthrogram, is not supported by the ODG. Dr. M has failed to provide an opinion that addresses the recommendations of the ODG or the concerns of the reviewing doctors. Under the circumstances presented, the denial of the requested procedure has not been overcome by a preponderance of the evidence-based medical evidence.

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 Travelers Indemnity Company, Carrier.

D. P-IRO Inc. was appointed by the Texas Department of Insurance to review Carrier's denial of the requested MR arthrogram with contrast of the right shoulder.

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. Dr. CM examined Claimant on February 20, 2012, opined that Claimant needed a right shoulder decompression to treat right shoulder acromial impingement and requested approval for an MR arthrogram to detect any additional pathology in the right shoulder that might be amenable to surgical treatment.

4. Carrier's URA doctors and the IRO physician reviewer have determined that there is no need for a repeat MRI study because that has been no significant change in Claimant's condition and that the MR arthrogram is unnecessary and is not recommended health care under the relevant provisions of the ODG.

5. The preponderance of the evidence-based medicine is consistent with the opinions of the URA doctors and the IRO physician reviewer that the requested MR arthrogram is unnecessary in this case.

6. An MR arthrogram of the right shoulder with contrast is not reasonably required medical treatment 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 IRO that an MR arthrogram of the right shoulder with contrast is not reasonably required medical care for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to an MR arthrogram of the right shoulder with contrast 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 **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

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

Signed this 8th day of August, 2012.

KENNETH A. HUCHTON
Hearing Officer