

MEDICAL CONTESTED CASE HEARING NO. 13005
M6-12-40763-01

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 September 18, 2012 with the record closing on September 20, 2012 to decide the following disputed issues:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to a lumbar MRI without contrast for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Provider appeared and represented himself. Claimant did not appear and is represented by AC, attorney. Respondent/Carrier appeared and was represented by BP, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: None

For Provider: None

For Carrier: None

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits: HO-1 through HO-3

Claimant's Exhibits: None

Provider's Exhibits: 1-8

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

BACKGROUND INFORMATION

Claimant was duly notified of the time and date of this medical contested case hearing held on September 18, 2012. Claimant is represented by AC, attorney. Claimant failed to appear at the hearing and Mr. C was contacted by the Hearing Officer regarding the issue in dispute. Mr. C responded indicating that the appeal was filed by the Provider and that Claimant was relying on the evidence provided by Dr. B (Provider). Claimant's attorney submitted a document stating that Claimant had no additional evidence or argument to add and this was admitted into evidence as HO EX #3.

Claimant sustained a compensable injury to her cervical, thoracic and lumbar spine on (Date of Injury). Claimant underwent physical therapy and MRI's of the cervical and thoracic spine were performed. Claimant began treating with BB, D.C. in February 2012. Dr. B diagnosed a lumbar sprain/strain and recommended a lumbar MRI. The request for a lumbar MRI without contrast was denied by the Carrier and submitted to an IRO who upheld the Carrier's denial.

The IRO reviewer, identified as a medical doctor board certified in physical medicine and rehabilitation, determined that the physical examination findings did not support a diagnosis of lumbar radiculopathy or neurological deficit and do not fall within the criteria for an MRI as specified in the Official Disability Guidelines (ODG) as treatment for the lumbar spine.

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 Lumbar MRI:

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

It is the Provider's (Dr. B) position that Claimant is entitled to a lumbar MRI without contrast. Dr. B's medical records indicate that Claimant denied any lower extremity symptoms; however, clinical findings document 4/5 weakness in the L EHL. Dr. B requested the lumbar MRI due to

the length of time that Claimant had experienced lumbar spine symptoms and the fact that she had some decreased sensation to pinwheel and vibration in the lower extremity. The IRO reviewer had the opportunity to review Dr. B's medical records and the IRO reviewer determined that Claimant did not meet the ODG criteria for a lumbar MRI. Claimant was also examined by a designated doctor on two occasions. In both reports, the designated doctor found no significant clinical findings of documentable neurological impairment or motor or sensory loss in the lumbar spine.

Dr. B also noted that a request for an MRI does not have to be pre-authorized; however, in this case, the request was sent for pre-authorization, the URA determined that the MRI was not medically necessary and the determination was appealed to an IRO who upheld the denial. This medical contested hearing was held to determine if the preponderance of the evidence is contrary to the determination of the IRO. Based on the evidence presented, Claimant does not meet the criteria recommended in the ODG for a lumbar MRI without contrast nor is there an evidence-based medical opinion presented sufficient to contradict the determination of the IRO. The preponderance of the evidence is not contrary to the decision of the IRO that the lumbar MRI without contrast is 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 on (Date of Injury).
 - E. The IRO reviewer determined that a lumbar MRI without contrast was 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.

3. Claimant does not meet the requirements of the ODG for a lumbar MRI without contrast and Claimant failed to present evidence-based medical evidence sufficient to overcome the determination of the IRO.
4. A lumbar MRI without contrast 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 was proper in the (City) Field Office.
3. The preponderance of the evidence is not contrary to the decision of the IRO that a lumbar MRI without contrast is not health care reasonably required for the compensable injury of (Date of Injury)

DECISION

Claimant is not entitled to a lumbar MRI without 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 **(EMPLOYER) (SELF-INSURED)** and the name and address of its registered agent for service of process is:

**DR. SP, INTERIM SUPERINTENDENT
(EMPLOYER)
(ADDRESS)
(CITY), TX**

Signed this 20th day of September, 2012.

Carol A. Fougerat
Hearing Officer