

MEDICAL CONTESTED CASE HEARING NO. 13038

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 7, 2013 to decide the following disputed issue:

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 dye for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by IG, ombudsman. Respondent/Carrier appeared and was represented by RL, 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-4

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

BACKGROUND INFORMATION

Claimant sustained a compensable injury to his lumbar spine on (Date of Injury). Claimant underwent an L5-S1 discectomy and decompressive laminotomy with lumbar fusion in 1993. Claimant has undergone multiple revisions subsequent to the surgery. Claimant continues to have complaints of low back pain with radiating pain and numbness in both lower extremities. Claimant's treating doctor has recommended a lumbar MRI without dye. The request for a

lumbar MRI without dye was denied by the Carrier and submitted to an IRO who upheld the Carrier's denial.

The IRO reviewer, identified as board certified in anesthesiology/pain management, determined that, given the lack of any progressive or severe neurologic deficits in the lower extremities that would reasonably indicate changes in Claimant's pathology, the lumbar MRI without dye is not medically necessary. The IRO reviewer noted that Claimant's physical examination appeared stable without evidence of any new or severe neurologic deficits of the lower extremities and that Claimant has undergone multiple surgical procedures of the lumbar spine. The IRO reviewer stated that it was unclear if hardware is present that would cause significant artifacts in an MRI study thus degrading the quality of the study.

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

Claimant presented no medical evidence contrary to the determination of the IRO but only his testimony that an MRI of the lumbar spine was necessary to identify the cause of his sciatic leg pain. Based on the evidence presented, Claimant failed to prove that he meets the criteria recommended in the ODG for a lumbar MRI without contrast and he failed to offer an evidence-based medical opinion sufficient to contradict the determination of the IRO. The preponderance of the evidence presented is not contrary to the decision of the IRO that the lumbar MRI without dye 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 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 had workers' compensation insurance coverage with Facility Insurance Corporation, Carrier.
 - D. Claimant sustained a compensable injury on (Date of Injury).
 - E. The IRO reviewer determined that a lumbar MRI without dye 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 he failed to present evidence-based medical evidence sufficient to overcome the determination of the IRO.
 4. A lumbar MRI without dye 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 dye is not health care reasonably required for the compensable injury of (Date of Injury)

DECISION

Claimant is not entitled to a lumbar MRI without dye 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 **FACILITY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is:

**KATHRYN ANN PLEVICH
2801 VIA FORTUNA, SUITE 400
AUSTIN, TX 78746-7567**

Signed this 7th day of January, 2013.

Carol A. Fougerat
Hearing Officer