

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and the Rules of the Texas Department of Insurance, Division of Workers' Compensation. For the reasons discussed herein, the Hearing Officer determines that: (1) the preponderance of the evidence is not contrary to the decision of the IRO that Claimant is not entitled to a CT myelogram of lumbar spine for the compensable injury of (Date of Injury).

ISSUES

A contested case hearing was held on February 25, 2014, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to a CT myelogram of lumbar spine for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by PB, ombudsman. Respondent/Carrier appeared via telephone and was represented by RJ, attorney.

BACKGROUND INFORMATION

Evidence presented in the hearing revealed that Claimant sustained a compensable injury on (Date of Injury), when she jumped off a framing machine and landed squarely on her heels jarring her lower back. The incident required Claimant undergo surgery affecting L4-L5 and L5-S1. On February 2, 2009, Dr. A performed a nerve stimulator placement at L5-S1, which was subsequently removed on February 17, 2010. Since that time Claimant has had an increase in her pain which was treated with medications. A lumbar CT scan was performed on December 13, 2012, which revealed degenerative changes. Claimant in an effort to seek surgical consultation requested to see Dr. W for the consult. However, Dr. W requires a CT myelogram prior to the consultation.

The utilization review dated October 25, 2013, resulted in a denial for a CT myelogram of 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. 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(s), "A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division is 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."

The pertinent provisions of the ODG applicable to this case are as follows, to wit:

CT & CT Myelography (computed tomography)

Not recommended except for indications below for CT. CT Myelography OK if MRI unavailable, contraindicated (e.g. metallic foreign body), or inconclusive. (Slebus, 1988) (Bigos, 1999) (ACR, 2000) (Airaksinen, 2006) (Chou, 2007) Magnetic resonance imaging has largely replaced computed tomography scanning in the noninvasive evaluation of patients with painful myelopathy because of superior soft tissue resolution and multiplanar capability. Invasive evaluation by means of myelography and computed tomography myelography may be supplemental when visualization of neural structures is required for surgical planning or other specific problem solving. (Seidenwurm, 2000) The new ACP/APS guideline as compared to the old AHCPR guideline is more forceful about the need to avoid specialized diagnostic imaging such as computed tomography (CT) without a clear rationale for doing so. (Shekelle, 2008) A new meta-analysis of randomized trials finds no benefit to routine lumbar imaging (radiography,

MRI, or CT) for low back pain without indications of serious underlying conditions, and recommends that clinicians should refrain from routine, immediate lumbar imaging in these patients. (Chou-*Lancet*, 2009) 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 spinal CTs (53%), and for spinal MRIs (35%), including lumbar spine MRI for acute back pain without conservative therapy. (Lehnert, 2010)

Indications for imaging -- Computed tomography:

- Thoracic spine trauma: equivocal or positive plain films, no neurological deficit
- Thoracic spine trauma: with neurological deficit
- Lumbar spine trauma: trauma, neurological deficit
- Lumbar spine trauma: seat belt (chance) fracture
- Myelopathy (neurological deficit related to the spinal cord), traumatic
- Myelopathy, infectious disease patient
- Evaluate pars defect not identified on plain x-rays
- Evaluate successful fusion if plain x-rays do not confirm fusion (Laasonen, 1989)

The URA reviewer, Board Certified in orthopedic surgery and fellowship trained in spinal surgery reviewed the case and upheld the denial of the CT myelogram of lumbar spine. The basis of the denial was that Claimant has been evaluated with a CT scan on December 13, 2012, that shows only mild foraminal stenosis. The Claimant's physical examination, performed by the treating physician did not demonstrate any abnormalities consistent with radiculopathy. The reviewer noted that he was aware Claimant had a spinal cord stimulator which would preclude the use of an MRI. However, there was no requirement at that time for advanced imaging. The physician's requirement of a CT myelogram was not sufficient objective evidence to support obtaining another myelogram. In addition, the Claimant was not a surgical candidate. The reviewer noted the CT myelogram would not yield any additional or useful information in planning Claimant's care.

Medical documentation and testimony were insufficient to establish that the medical treatment requested was medically necessary. Therefore, the Petitioner has failed to meet her burden to over turn the decision of the IRO that Claimant is not entitled to a CT myelogram of lumbar spine.

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. Claimant sustained a compensable injury on (Date of Injury).
2. Carrier delivered to Claimant and Provider 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. The IRO determined that a CT myelogram of lumbar spine was not health care reasonably required for treatment of the compensable injury of (Date of Injury).
4. A CT myelogram of lumbar spine 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 CT myelogram of lumbar spine is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to a CT myelogram of lumbar spine 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 **SAFECO INSURANCE COMPANY OF AMERICA** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICES COMPANY
211 E. 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701**

Signed this 7th day of March, 2014.

Jacqueline Harrison
Hearing Officer