

MEDICAL CONTESTED CASE HEARING NO. 13034

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.

ISSUE

A contested case hearing was held on December 10, 2012 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to an inpatient lumbar MRI, with and without contrast for the compensable injury of (Date of Injury)?

Upon agreement of the parties, the following issue was added:

2. Was Claimant's appeal of the IRO Decision dated September 5, 2012, timely submitted pursuant to Division Rule 133.308(s)(1)(A)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by JR, ombudsman.
Respondent/Carrier appeared and was represented by JL, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant/Petitioner: None

For Carrier/Respondent: Dr. BN.

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits HO-1 and HO-2.

Claimant/Petitioner's Exhibits: C-1 through C-3.

Carrier/Respondent's Exhibits: CR-A through CR-G.

BACKGROUND INFORMATION

Claimant sustained a compensable lumbar spine injury on (Date of Injury) and has since undergone four spinal operations, but continues to experience chronic mechanical low back pain. Dr. L obtained a lumbar myelogram and CT scan on September 27, 2012 and proposed a fifth surgery, this time at L3-4. That surgery was denied by preauthorization reviewers and the denials of the medical necessity of the proposed surgery were upheld by an IRO Decision on Review dated February 7, 2012. That decision was appealed to a contested case hearing. The Decision and Order dated May 23, 2012 found that the preponderance of the evidence was not contrary to the IRO decision.

Following that decision, Dr. L requested preauthorization of a lumbar MRI, with and without contrast. In a utilization review dated June 26, 2012, the proposed MRI was denied as not medically necessary because there appears to be metal present, and there is not sufficient documentation or rationale for the repeat lumbar MRI. Upon reconsideration, another utilization reviewer upheld the previous denials on the basis that there was no clinical information that is complete enough to evaluate the need for the requested MRI.

Claimant timely appealed to an IRO. In a Notice of Independent Review Decision the IRO reviewer upheld the previous denials for the proposed MRI. That decision, dated September 5, 2012, stated that there is no evidence of a progression of the patient's medical condition since the MRI of December 27, 2011. The reviewer stated that Claimant's symptoms have remained stable, with no documented neurologic signs or symptoms, and that Dr. L's interpretation of the prior MRI is in excess of the review by the radiologist. The IRO decision stated that there is no evidence of a life or limb threatening condition or neurologic demise, therefore, there is no reason to repeat the MRI.

The IRO Decision certified that it was sent to all parties via U.S. Postal Service on September 5, 2012. Claimant filed an appeal with the Division's Chief of Proceedings on September 27, 2012, the date it was date-stamped by the Division. Claimant did not produce evidence of the postmark date on the envelope containing the IRO decision and it is found to be sent on September 5, 2012. In accordance with Rule 102.3(a)(1), Claimant's appeal of the IRO decision was due on September 25, 2012, but it was not received by the Division until December 27, 2012. It was therefore untimely.

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 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."

The ODG treatment protocol is as follows:

Recommended for indications below. MRI's are test of choice for patients with prior back surgery, but for uncomplicated low back pain, with radiculopathy, not recommended until after at least one month conservative therapy, sooner if severe or progressive neurologic deficit. 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). (Bigos, 1999) (Mullin, 2000) (ACR, 2000) (AAN, 1994) (Aetna, 2004) (Airaksinen, 2006) (Chou, 2007).

Claimant presented only his medical records from Dr. L that post-date Claimant's fourth lumbar surgery. Those are basically the same records that were presented to justify the fifth proposed surgery. Dr. L did not address the Official Disability Guidelines or the IRO's decision and did not provide an opinion based on evidence-based medicine to support his request for the repeat lumbar MRI.

Carrier presented the testimony of Dr. W N, a board-certified orthopedic surgeon, who concurred with the opinions of the utilization reviewers and with the IRO decision. He noted that Claimant had a December 27, 2011 lumbar CT myelogram, which would be better than a repeat MRI in diagnosing Claimant's current condition, so the MRI would not be medically necessary. He stated that the proposed test did not meet the ODG Guidelines due to insufficient documentation of changes or progression of clinical findings suggestive of significant pathology.

Claimant failed to present evidence-based medicine to overcome the decision of the IRO.

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 Desert Springs Medical, Employer.
 - C. On (Date of Injury), Claimant sustained a compensable lumbar spine 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. An inpatient lumbar MRI, with and 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 is proper in the (City) Field Office.
3. The preponderance of the evidence is not contrary to the decision of the IRO that an inpatient lumbar MRI, with and without contrast, is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to an inpatient lumbar MRI, with and 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 **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for CREDIT GENERAL INDEMNITY COMPANY, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLEY, EXECUTIVE DIRECTOR
TPCIGA
9120 BURNET ROAD
AUSTIN, TEXAS 78758**

Signed this 12th day of December, 2012.

David Wagner
Hearing Officer