

MEDICAL CONTESTED CASE HEARING NO. 13110

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 July 8, 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 myelogram for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by ES, ombudsman. Respondent/Carrier appeared and was represented by JC, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Dr. E

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-11

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

BACKGROUND INFORMATION

Claimant sustained a compensable injury to her cervical and lumbar spine on (Date of Injury) as a result of a motor vehicle accident. Claimant has undergone two surgeries to her cervical spine and an L4-S1 fusion. Claimant continues to have complaints of low back pain with radiating pain and numbness in both lower extremities. Claimant's treating doctor, Dr. E, has recommended a lumbar myelogram. The request for a lumbar myelogram was denied by the Carrier and submitted to an IRO who upheld the Carrier's denial.

The IRO reviewer, identified as board certified in neurosurgery, noted that the utilization review determined on December 21, 2012 that the request for a lumbar spine MRI was non-certified and

that there was no subsequent progress note or other clinical documentation from the requesting provider documenting a request for a CT myelogram of the lumbar spine including the rationale for such imaging study. The IRO reviewer opined that, based on the clinical data provided, medical necessity is not established for a lumbar CT myelogram in accordance with the Official Disability Guidelines (ODG) criteria.

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 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."

ODG Recommendations for lumbar myelogram:

Not recommended except for selected indications below, when MR imaging cannot be performed, or in addition to MRI. Myelography and CT Myelography OK if MRI unavailable, contraindicated (e.g. metallic foreign body), or inconclusive. (Slebus, 1988) (Bigos, 1999) (ACR, 2000) (Airaksinen, 2006) (Chou, 2007) 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) Myelography and CT Myelography have largely been superseded by the development of high resolution CT and magnetic resonance imaging (MRI), but there remain the selected indications below for these procedures, when MR imaging cannot be performed, or in addition to MRI. (Mukherji, 2009)

ODG Criteria for Myelography and CT Myelography:

1. Demonstration of the site of a cerebrospinal fluid leak (post lumbar puncture headache, post spinal surgery headache, rhinorrhea, or otorrhea).
2. Surgical planning, especially in regard to the nerve roots; a myelogram can show whether surgical treatment is promising in a given case and, if it is, can help in planning surgery.
3. Radiation therapy planning, for tumors involving the bony spine, meninges, nerve roots or spinal cord.
4. Diagnostic evaluation of spinal or basal cisternal disease, and infection involving the bony spine, intervertebral discs, meninges and surrounding soft tissues, or inflammation of the arachnoid membrane that covers the spinal cord.
5. Poor correlation of physical findings with MRI studies.
6. Use of MRI precluded because of:
 - a. Claustrophobia
 - b. Technical issues, e.g., patient size
 - c. Safety reasons, e.g., pacemaker
 - d. Surgical hardware

Dr. E testified that he had initially recommended a lumbar MRI but that request was denied by an IRO who recommended a CT myelogram due to the hardware in Claimant's lumbar spine. Dr. E testified that the lumbar CT myelogram was necessary in order to document the status of Claimant's lumbar spine at the L3-4 level as well as the placement of the hardware. Dr. E testified that Claimant has instability with collapse at L3-4 and that the screws in her hardware are too long which can cause a number of problems. Dr. E did not address the concerns raised by the IRO (particularly the lack of clinical documentation), the recommendations in the ODG or any other evidence based medicine to support his request for the proposed diagnostic study. Although a lumbar myelogram may be the proper diagnostic tool considering Claimant's lumbar spine condition, the request must be supported as medically necessary for the compensable condition. Dr. E failed to submit clinical documentation to support the rationale for a lumbar CT myelogram.

Based on the evidence presented, Claimant failed to prove that she meets the criteria recommended in the ODG for a lumbar myelogram and she 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 myelogram is not medically necessary for treatment of the compensable injury of (Date of Injury), at this time.

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 Continental Casualty Company, Carrier.
 - D. Claimant sustained a compensable injury on (Date of Injury).
 - E. The IRO reviewer determined that a lumbar myelogram 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 failed to prove that she meets the requirements of the ODG for a lumbar myelogram and she failed to present evidence-based medical evidence sufficient to overcome the determination of the IRO.
4. A lumbar myelogram 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 myelogram is not health care reasonably required for the compensable injury of (Date of Injury)

DECISION

Claimant is not entitled to a lumbar myelogram 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 **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is:

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TX 75201**

Signed this 8th day of July, 2013.

Carol A. Fougerat
Hearing Officer