

**SOAH DOCKET NO. 453-02-3158.M5**  
**MDR Tracking Number: M5-02-1889-01**

<b>NORTH TEXAS OPEN AIR MRI, PETITIONER</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>TEXAS ASSOCIATION OF SCHOOL BOARDS, RESPONDENT</b>	§	<b>ADMINISTRATIVE HEARINGS</b>
	§	

**DECISION AND ORDER**

North Texas Open Air MRI (Petitioner) appealed the decision of the Texas Workers' Compensation Commission's (Commission) designee, an independent review organization (IRO), in MDR Docket No. M5-02-1889-01 which denied reimbursement for an MRI performed on a workers' compensation claimant (Claimant). Petitioner's request for the MRI had been denied by the Texas Association of School Boards (Respondent) as not being medically necessary healthcare. This decision finds Petitioner is not entitled to reimbursement for the MRI.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

There were no contested issues of jurisdiction, notice or venue. Therefore, those issues are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing in this matter convened and closed on July 17, 2002, at the State Office of Administrative Hearings, 300 W. 15<sup>th</sup> Street, Austin, Texas, with Administrative Law Judge (ALJ) Ann Landeros presiding. Petitioner was represented by its attorney, Douglas Pruett. Respondent was represented by its attorney Jane Stone. The Commission was not a participant in the hearing. The record closed that same date.

**II. DISCUSSION**

**A. Background Facts**

On \_\_\_\_\_, Claimant fell on into a ditch, injuring her knee, ankle, and back. Her injuries were compensable under the Texas Workers' Compensation Act (Act). At the time of the compensable injury, Respondent, as a self-insurer, was responsible for Claimant's workers' compensation insurance coverage.

On the day of her injury, Claimant was treated by Dr. Mark Rayshell, D.C., who examined her using various tests. Based on his examination that day, Dr. Rayshell prescribed an MRI for Claimant and referred Claimant to Petitioner for that procedure. The MRI, which was performed by Petitioner on August 28, 2001, revealed only a one mm annular bulge at the L5-S1 level. (Pet. Exh. 1, p. 18).

After Respondent denied the MRI as being medically unnecessary, Petitioner requested the Commission review the denial. That review produced the IRO decision, dated April 3, 2002, which upheld the denial. Petitioner timely appealed the IRO decision.

## **B. Petitioner's Position**

Petitioner presented the expert testimony of Dr. Thomas Rhudy, PhD, D.C., J.D., who testified that the MRI was medically necessary healthcare for Claimant. Dr. Rhudy did not examine Claimant but did review Claimant's medical records to form his opinion. Those records included what he considered to be objective tests by Dr. Rayshell that were described in the medical records as a neurological and initial physical examination. (Pet. Exh. 1, pp. 6, 14). Dr. Rhudy felt the following findings of Dr. Rayshell were significant indicators supporting the need for an MRI:

- the Valsalva's maneuver indicated a space-occupying lesion such as a herniated disc in the lumbar spine;
- the straight leg raise was positive for low back pain;
- the Patrick's Fabere test produced pain in the lumbar spine, indicating a sprain/strain injury in that region;
- the Milgram's test in the lumbar spine suggested a herniate intervertebral disc.

Dr. Rhudy felt the test results indicated that an MRI was necessary to rule out a possible herniated disc.

In addition to the examination results, Dr. Rhudy based his opinion on an extensive medical history that was not introduced into the record in this case and on Claimant's subjective reports of pain as reflected in the medical records that were introduced. Claimant had a prior low back injury according the patient history Dr. Rhudy read. On the date of injury, Claimant reported an unusually high degree of pain (10 out of a scale of 10 high) and a diminished range of motion. While Dr. Rayshell noted Claimant's neurological, motor sensory, and reflex examination results were unremarkable, Dr. Rhudy found the tests listed above and Claimant's antalgic gait significant indications to corroborate the reported of pain level and to indicate a disc problem. All these factors contributed to Dr. Rhudy's opinion that the MRI was a necessary diagnostic for Claimant's back injury in August 2001.

## **C. Carrier's Position**

Carrier argued the MRI was not medically necessary healthcare when prescribed or performed because it was too early in Claimant's treatment and was not indicated by the examination results on the date of injury. Carrier noted correctly that under the Commission's 2000 Spine Treatment Guideline (STG) in force in August 2001, an MRI was not an approved diagnostic

until

six weeks to four months post-injury. 28 TEX. ADMIN. CODE (TAC) § 134.1001(f)(3). Because Claimant's MRI was performed outside the STG recommended time frame, Carrier cited to 28 TAC ' §134.1001(e)(2)(Q) to support its argument that the MRI was appropriate only if Petitioner provided documentation of significant neurological impairment.

Carrier presented the testimony of its expert witness, board certified orthopedic surgeon Dr. Nick Tsourmas. Dr. Tsourmas testified that, based on his review of the medical records provided by Petitioner, the MRI was not medically necessary healthcare for Claimant in August 2001. Dr. Tsourmas discounted the results of the Claimant's subjective pain reports, the Valsalvus, straight leg raise, and Fabere tests as being poor indicators of neurological deficit, especially when done on the date of injury.

Dr. Tsourmas noted that on the date of injury the Claimant was in the acute throes of musculo-skeletal trauma, so her subjective report of intense pain was only to be expected. Therefore, the intensity of her pain was not a significant diagnostic factor. The Claimant's verbal and pictorial description of her pain on August 23, 2001, were exactly what one would expect when describing an injury that had just occurred. Likewise, Claimant's antalgic gait and diminished range of motion were to be expected immediately after the accident. These factors resulted from musculo-skeletal soreness, which is at its worst in the first two days after a traumatic injury.

Dr. Tsourmas noted the results of Claimant's neurological examination on August 23, 2001, were normal in all aspects--motor, sensory, and reflexes. He discounted the use of the Valsalvus test as an indicator of spine pathology, its intended use being to test radicular (nerve root) pain. Even if it could be used for spine pathology, the recorded results of Claimant's test were inconclusive. The Milgrim's test also had no value as a diagnostic on the date of injury.

Dr. Tsourmas found the MRI confirmed his opinion that there were no reliable indicators on August 23 or 28, 2001, to support performing the MRI. The MRI results showed an essentially normal spine. The one mm annular bulge noted was so minimal as to be within the margin of error for the test.

#### **D. Legal Standards**

Petitioner has the burden of proof in this proceeding. 28 TAC §§148.21(h) and (i). Pursuant to the Act, an employee who has sustained a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LAB. CODE ANN. § 408.021(a). Health care includes all reasonable and necessary medical services including a medical appliance or supply. TEX. LAB. CODE ANN. §401.011(19)(A). A

medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. § 401.011(31).

### Spine Treatment Guideline

The Commission's Spine Treatment Guideline (STG), 28 TAC § 134.1001, effective February 2000, sets certain requirements for treatment of spinal maladies. The STG requires a documented treatment plan (including proposed methods, expected outcomes, and probable duration) and documentation substantiating any need to deviate from the STG. 28 TAC § 134.1001(e)(3)(B)(iii). The treating doctor must demonstrate the appropriateness of all services and the relatedness of all services to the compensable injury. 28 TAC §§ 134.1001(c)(2)(A)(ii) and (iii). Treatment must be based on the injured worker's need and the doctor's professional judgment. 28 TAC § 134.1001(e)(1).

The STG recognizes three levels of care based on the length of treatment, type of injury, and response to treatment. The STG recognizes that some injured workers may require additional evaluations or modification of a treatment plan. 28 TAC § 134.1001(h)(1)(C). An injured worker may, depending upon clinical indicators, move between the STG's levels of care or utilize more than one level of care simultaneously. 28 TAC §§ 134.1001(e)(2)(G) and (g)(1). In general, the most economical form of treatment is preferred. 28 TAC § 134.1001(g)(5).

The STG, 28 TAC § 134.1001(b)(1), states that it is a guideline to clarify those services that are reasonably and medically necessary for operative and nonoperative care of the spine. The STG states, however, that the guideline shall not be used as the sole reason for denial when a treatment or service is not listed in the guideline. 28 TAC § 134.1001(b)(1). For treatments other than those approved in the STG, additional documentation justifying the use of the procedure is required. 28 TAC § 134.1001(d)(3)(B)(vi).

### **E. Analysis**

Petitioner failed to meet its burden of proof to document Claimant had significant neurological impairment prior to undergoing the MRI procedure as required by the Commission's rule at 28 TAC §134.1001(e)(2)(Q). The examination upon which Dr. Rayshell based his recommendation occurred at a time when Claimant was still in the acute phase of musculo-skeletal pain from the injury. She had no neurological impairment of motor, sensory, or reflex nerves, which would have been present if she suffered spinal pathology. The straight leg raise, Valsalvus, and Milgrim's test results were of dubious value when performed on the same day as the injury.

Because the MRI was prescribed and performed within the first six weeks of injury, Petitioner had to document sufficient justification for deviating from the STG's recommended diagnostics. Additionally, an MRI that early after the injury was justifiable only if Petitioner documented significant neurological impairment. Subjective reports of pain, reduced range of

motion, and inconclusive test results were not sufficient to establish *significant* neurological impairment for Claimant. Petitioner failed to provide adequate documentation and the normal results of the MRI support the conclusion that the test was unnecessary.

Petitioner's request for reimbursement for the MRI administered to Claimant should be denied.

#### IV. FINDINGS OF FACT

1. On \_\_\_\_\_, Claimant sustained an injury compensable under the Texas Workers' Compensation Act (Act).
2. At the time of her compensable injury, Claimant's employer had workers' compensation insurance coverage with the Texas Association of School Boards' Risk Management Fund (Carrier).
3. On August 23, 2001, Dr. Mark Rayshell, D.C., treated Claimant for her injuries and prescribed an MRI for her, which she underwent on August 28, 2001.
4. On August 23, 2001, Claimant was in the most acute phase of musculo-skeletal pain from her fall.
5. On August 23, 2001, Claimant's neurological examination revealed normal motor, sensory, and reflex reactions.
6. An MRI is used to diagnose neurological damage and disc herniations.
7. The examination on August 23, 2001, did not reveal Claimant suffered from any significant neurological impairment.
8. Claimant's subjective complaints of pain, diminished range of motion, positive Valsalva's and Milgrim's test did not indicate significant neurological impairment because her injury was too recent.
9. The MRI showed Claimant had a normal spine.
10. After Carrier denied reimbursement to Petitioner for the MRI, Petitioner sought medical dispute resolution with the Texas Workers' Compensation Commission.
11. After the Commission's Medical Dispute Resolution division upheld Carrier's denial of reimbursement, Petitioner timely appealed that decision.

12. Pursuant to the Commission's notice of hearing, which stated the date, time, and location of the hearing and cited to the legal statutes and rules involved along with a short, plain statement of the factual matters involved, Petitioner and Carrier appeared or were represented at the hearing in this matter.

#### **IV. CONCLUSIONS OF LAW**

13. The Texas Workers' Compensation Commission (Commission) has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (Act), TEX. LABOR CODE ANN. § 413.031.
14. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to ' §413.031(d) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
15. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TEX.ADMIN.CODE (TAC) ' 133.305(g).
16. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
17. Petitioner had the burden of proof in this proceeding. 28 TAC §§ 148.21(h) and (i).
18. Pursuant to the Act, an employee who has sustained a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LAB. CODE ANN. § 408.021(a).
19. Health care includes all reasonable and necessary medical services, including a medical appliance or supply. TEX. LAB. CODE ANN. §401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. § 401.011(31).
20. The Commission's Spine Treatment Guideline (STG), effective February 2000, required a documented treatment plan (including proposed methods, expected outcomes, and probable duration) and documentation substantiating any need to deviate from the STG. 28 TEX. ADMIN. CODE (TAC) § 134.1001 (e)(3)(B)(iii).
21. Under the STG, the treating doctor had to demonstrate the appropriateness of all services and

the relatedness of all services to the compensable injury. 28 TAC §§ 134.1001(c)(2)(A)(ii) and (iii).

22. Under the STG, an MRI was not an approved diagnostic until six weeks to four months after the injury. 28 TAC § 134.1001(f)(3).
23. If performed with the first six weeks of the injury, an MRI is appropriate only if based on documentation of significant neurological impairment. 28 TAC § 134.1001(e)(2)(Q).
24. Petitioner failed to document Claimant had significant neurological impairment prior to undergoing the MRI.
25. The MRI administered Claimant in August 2001 was not shown to be medically necessary healthcare.
26. Petitioner is not entitled to reimbursement for the MRI administered Claimant in August 2001.

### **ORDER**

It is ORDERED that Petitioner North Texas Open Air MRI is not entitled to reimbursement for the MRI administered to Claimant in August 2001 because that procedure was not medically necessary healthcare.

**SIGNED this 16<sup>th</sup> day of September, 2002.**

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**ANN LANDEROS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**