

STATE OFFICE OF ADMINISTRATIVE HEARINGS
300 West 15th Street, Suite 502
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INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA,
Petitioner

V.

DANNY R. BARTEL, M.D.,
Respondents

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. Introduction

Insurance Company of The State of Pennsylvania (Carrier) has appealed a decision of an independent review organization (IRO) in a Texas Workers' Compensation Commission (TWCC) pre-authorization dispute. The IRO determined that a magnetic resonance imaging (MRI)¹ prescribed by Danny R. Bartel, M.D. (Provider) was medically necessary and should be preauthorized to diagnose and treat a compensable injury that _____ (Claimant) suffered while employed by the Carrier's insured. The only disputed issue is whether the MRI is reasonably medically necessary.

As set out below, the Administrative Law Judge (ALJ) finds that the MRI is not reasonably medically necessary and denies the requested pre-authorization.

II. Discussion

The Claimant sustained a compensable work-related injury to her neck and back on _____, when propane cylinders fell on her head while she was at work. Since then, she has had spinal fusion and plating surgery and three other procedures performed on her neck to address her pain. At the time of the MRI request, she showed:

- Bilateral lower extremity weakness;
- A limited range of motion in her lumbar spine with tenderness;

¹A noninvasive procedure that uses powerful magnets and radio waves to construct pictures of the vertebral bodies that make up the spine, the spinal cord, and the spaces between the vertebrae through which the nerves travel. U.S. National Library of Medicine, MEDLINEplus Medical Encyclopedia, <<http://www.nlm.nih.gov/medlineplus/ency/article/000436.htm>> (Sep. 9, 2002).

- Positive bilateral straight leg raises;
- Bladder incontinence;
- Numbness in her feet; and
- Progressively weakened legs.

The Carrier denied the requested lumbar MRI on December 31, 2001, and then again, when the Provider resubmitted the request, on January 28, 2002. In denying pre-authorization for the requested MRI, the Carrier contended that it was not reasonably medically necessary in that a total column myelogram on March 3, 2001, a previous lumbar spine MRI on May 15, 2001, and a computed tomography (CT) scan of the lumbar spine on August 2, 2001, all showed no significant problems with the Claimant's lumbar spine. Moreover, the Carrier argues that the Claimant suffers from a degenerative disc disease that is unrelated to the compensable injury.

According to the radiologist who reviewed it, the prior MRI was completely devoid of any significant abnormalities. The radiologist who read the myelogram found that it only showed minimal grade 1 spondylolisthesis and minimal anterior extradural defect, both of which he found to be of questionable significance since there was adequate clearance for the spinal canal and nerve roots. The radiologist who reviewed the CT scan found that the spinal canal and intervertebral foramina were not compromised and the spinal cord was not compressed. He went on to say that there was no convincing evidence of significant disc bulge, or spinal stenosis, and that the observed contour changes, shown throughout the cervical spine, were usually secondary to chronic degenerative changes. These recent test results lead the Carrier to contend that the Claimant's spine has been fully examined, she suffers from chronic degenerative changes, has no current compensable-injury related problem, and there is no basis for a repeat MRI.

When the Provider prescribed the disputed repeat MRI on May 2, 2002, he indicated in a file memo that the Claimant had cervical spondylosis, which is a disorder that results from abnormal growth of the bones of the neck and degeneration and mineral deposits in the cushions between the vertebrae,² and chronic pain syndrome. However, the Provider did not testify at the hearing to explain why that diagnosis, which was not new, called for another MRI. Nor does the documentary evidence show why he or any other doctor specifically thought another MRI was necessary.

The Provider's physician assistant, Lawrence Russell, who has extensive experience assisting neurologists, testified that the spondylolisthesis, shown in the myelogram, has a tendency to worsen over time. He also noted that the CT scan showed ligamentum flavum hypertrophy, which indicates that there is not enough room for the spinal column at one vertebrae, and facet arthrosis which, can cause pain. Mr. Russell testified that these diagnoses are progressive, at some point there might be a further deterioration, and the Provider seeks the MRI to determine if there has been further deterioration. He also testified that the degenerative changes would not have occurred but for the injury.

²U.S. National Library of Medicine, MEDLINEplus Medical Encyclopedia, <<http://www.nlm.nih.gov/medlineplus/ency/article/000436.htm>> (April 15, 2002).

Mr. Russell's conclusion that the ligamentum flavum hypertrophy shown in the CT scan indicates there was insufficient room for the Claimant's spinal cord directly contradicts the conclusion of the radiologist who reviewed that CT scan. While the only evidence of the radiologist's qualifications is that he is an M.D., the ALJ concludes that alone is sufficient to conclude that the radiologist is more expert than Mr. Russell, a physician's assistant. The ALJ finds that the recent CT scan showed there was adequate room for the Claimant's spinal cord.

Moreover, that same radiologist concluded that the contour changes, shown in the CT scan throughout the cervical spine, were usually secondary to chronic degenerative changes. In short, they confirm that the Claimant suffers from chronic degenerative spinal disease. No other evidence supports Mr. Russell's claim that the degenerative changes in the Claimant's spine would not be occurring but for the injury. While the Claimant certainly continues to have pain and other problems, the Provider does not point to and the Judge's review of the evidence does not indicate that the Claimant's symptoms have worsened in the last year. Hence, the ALJ sees no indication that a repeat MRI is reasonably necessary so soon after an MRI and two other related tests showed no significant abnormalities related to the compensable injury.

In an appeal, the IRO's decision has presumptive weight. The IRO concluded that the Claimant needed an MRI to examine soft tissues, which are not seen well on a myelogram. The IRO noted that the Claimant had recently had a CT scan and a myelogram but not that she had also recently had an MRI. Why would an MRI be needed to see soft tissue, when an MRI had recently been performed near the same time as the myelogram? The ALJ concludes that the IRO overlooked the fact that the Claimant had already had an MRI, which was completely devoid of any significant abnormalities.

Given that IRO oversight and the relatively recent negative MRI and related tests, the ALJ concludes that a repeat MRI is not medically necessary and should not be pre-authorized.

III. Findings of Fact

1. The Claimant sustained a compensable work-related injury to her back on _____, while her employer was _____ and the Carrier was its workers' compensation insurer.
2. On May 2, 2002, the Provider prescribed a magnetic resonance imaging (MRI) of the Claimant's lumbar spine because that she had cervical spondylosis and chronic pain syndrome.
3. An MRI is a noninvasive procedure that uses powerful magnets and radio waves to construct pictures of the vertebral bodies that make up the spine, the spinal cord, and the spaces between the vertebrae through which the nerves travel.
4. The Provider sought preauthorization from the Carrier for the MRI.
5. The Carrier denied the requested MRI on December 31, 2001, and then again, when the Provider resubmitted the request, on January 28, 2002.
6. In denying the requested preauthorization, the Carrier contended the MRI was not medically necessary.
7. The Provider filed a request for medical dispute resolution with the Texas Workers'

Compensation Commission (TWCC).

8. An independent review organization (IRO) reviewed the dispute and found, on July 3, 2002, that the MRI was medically necessary and should be preauthorized.
9. The Carrier paid the required fee and appealed the IRO's decision to the State Office of Administrative Hearings (SOAH).
10. Notice of a September 4, 2002, hearing in this case was mailed to the Carrier and the Provider on August 6, 2002.
11. On September 4, 2002, William G. Newchurch, an Administrative Law Judge (ALJ) with SOAH held a hearing on the Carrier's appeal at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The Carrier (through its attorney, Dan C. Kelly) and the Provider (through his physician assistant, Lawrence Russell) attended that hearing. The hearing concluded, and the record closed on that same day.
12. Since her compensable injury, the Claimant has had spinal fusion and plating surgery and three procedures on her neck to address her pain.
13. At the time of current MRI request, she showed:
 1. Bilateral lower extremity weakness;
 2. A limited range of motion in her lumbar spine with tenderness;
 3. Positive bilateral straight leg raises;
 4. Bladder incontinence;
 5. Numbness in her feet; and
 6. Progressively weakened legs.
14. A total column myelogram is a diagnostic procedure where a radiopaque contrast dye is injected into the spinal canal. X-rays are then performed which reveal the anatomy of the spinal canal.
15. A computed tomography (CT) scan is a special radiographic technique that uses a computer to assimilate multiple X-ray images into a 2 dimensional cross-sectional image.
16. The Claimant recently had three diagnostic tests performed on her lumbar spine: a total column myelogram on March 3, 2001, a previous MRI on May 15, 2001, and a CT scan on August 2, 2001.
17. The prior MRI was completely devoid of any significant abnormalities.
18. The myelogram showed minimal grade one spondylolisthesis and minimal anterior extradural defect, both of which were of questionable significance since there was adequate clearance for the spinal canal and nerve roots.
19. The CT scan showed that the spinal canal and intervertebral foramina were not compromised and the spinal cord was not compressed. It showed no convincing evidence of significant

disc bulge or spinal stenosis.

20. The CT scan showed contour changes throughout the cervical spine that are usually secondary to chronic degenerative changes.
21. The Claimant suffers from a chronic degenerative disc disease that is unrelated to the compensable injury.
22. The Claimant's symptoms have not worsened in the last year.
23. The IRO concluded that an MRI was needed to examine soft tissues, which are not seen well on a myelogram.
24. The IRO noted that the Claimant had previously had a CT scan and a myelogram but not that she had also had an MRI.
25. The IRO overlooked the fact that the Claimant had already had an MRI, which was completely devoid of any significant abnormalities.

IV. Conclusions of Law

26. 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 Tex. Labor Code Ann. §§ 402.073(b) and 413.031(d) (West 2002) and Tex. Gov't Code Ann. ch. 2003 (West 2001).
27. Adequate and timely notice of the hearing was provided in accordance with Tex Gov't. Code Ann. §§ 2001.051 and 2001.052.
28. Under Tex. Labor Code § 408.021 (a), 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.
29. As the party appealing the IRO's decision, the Carrier has the burden of proof in this matter. 28 Tex. Admin. Code §148.21(h).
30. In all appeals from reviews of prospective or retrospective necessity disputes, the IRO decision has presumptive weight. 28 TAC § 133.308(v).
31. Based on the above Findings of Fact and Conclusions of Law, the requested repeat MRI is not medically necessary and should not be pre-authorized.

ORDER

The Provider's request for pre-authorization of the repeat MRI is denied.

Signed September 20, 2002.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE