

STATE OFFICE OF ADMINISTRATIVE HEARINGS
300 West 15th Street, Suite 502
Austin, Texas 78701
DOCKET NO. 453-02-3962.M5
[TWCC Docket No. M5-02-2036-01]

BEXAR COUNTY MRI	§	BEFORE THE STATE OFFICE
	§	
PETITIONER	§	
V.	§	
	§	OF
TEXAS MUTUAL INSURANCE	§	
COMPANY	§	
	§	
RESPONDENT	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Bexar County MRI (Provider or BCM) sought reimbursement for a lumbar MRI provided to the injured worker, ____ (Claimant). Texas Mutual Insurance Company (Carrier) denied payment stating that the MRI was not medically necessary. Subsequently, the Texas Medical Foundation, certified as an independent review organization (IRO), determined that the MRI of the lumbar spine was not medically necessary and denied reimbursement of \$1,150.00. Provider appealed the IRO's decision arguing that the MRI was medically necessary and that full reimbursement should be ordered. The Administrative Law Judge (ALJ) finds that the lumbar MRI was not medically necessary and denies reimbursement.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On December 5, 2002, ALJ Michael J. O'Malley convened the hearing on the merits at the William P. Clements Building, 300 West 15th Street, Austin, Texas. Carrier appeared through its attorney, Christopher H. Trickey. Provider appeared through its attorney, H. Douglas Pruett. After the evidence was presented, the record of the hearing closed on January 7, 2003, when the last closing argument was filed. There were no contested issues of jurisdiction or notice in this proceeding. Therefore, those matters are set out in the findings of fact and conclusions of law without further discussion here.

II. BACKGROUND, EVIDENCE, AND ANALYSIS

1. Background

Claimant, a 26-year-old male, suffered a compensable injury to his left knee and lower back while at work on _____, when he fell down two flights of stairs. This case deals only with the lower back injury. Claimant began treatment at the Accident & Injury Chiropractic. On his initial visit to Accident & Injury Chiropractic on August 28, 2001, Marcus L. Wilcox, D.C. ordered a lumbar MRI to rule out a possible herniated disc. Dr. Wilcox referred Claimant to Marlon D. Padilla, M.D. for further evaluation. Dr. Padilla examined Claimant on August 29, 2001, and agreed with the need for a lumbar MRI to rule out a lumbar herniated disc. Provider performed the MRI on August 31, 2001.

Carrier denied payment for the MRI as not medically necessary. The sole issue to be decided is whether the lumbar MRI performed before the time period recommended by the Texas Workers' Compensation Commission Spine Treatment Guideline (STG) is medically necessary and thus reimbursable.

2. Parties' Positions and Evidence, and ALJ's Analysis

1. Provider's Position and Evidence

On August 28, 2001, Dr. Wilcox examined Claimant. The results of the exam showed: (1) radiculopathy from the low back into the right leg; (2) severe low back pain of 9 out of 10; (3) lumbar muscle spasms; (4) severely restricted thoraco-lumbar range of motion with severe pain; (5) positive Milgram test; (6) positive straight leg raise (SLR) test; (7) positive Fabere test; and (8) positive Ely test. BCM Ex. 2 at 71. Based on the results of the August 28, 2001 exam, Dr. Wilcox ordered a lumbar MRI to rule out a lumbar herniated disc. On August 29, 2001, Dr. Padilla examined Claimant and found decreased lumbar range of motion with severe pain, muscle spasm, positive SLR testing, and slightly abnormal neurological findings, bilaterally, of the lower extremities. BCM Ex. 2 at 42. Dr. Padilla also recommended a lumbar MRI to eliminate the possibility of a lumbar herniated disc. *Id.* at 43.

At the hearing, Thomas R. Rhudy, although not the treating doctor, testified on behalf of Provider in support of the medical necessity of the lumbar MRI. Dr. Rhudy testified that the nature of the injury was substantial due to a fall down two flights of stairs. He also noted that Claimant showed radicular pain from the lower back down and through the right leg. Because of the degree of pain (9 out of 10) and the radicular pain, Dr. Rhudy testified that it was necessary to perform a lumbar MRI to rule out a herniated disc. Furthermore, according to Dr. Rhudy, the results of the orthopedic exams support the need for the MRI. Because of the positive results on these orthopedic exams, Dr. Rhudy stated that Claimant could have a disc injury. Additionally, Dr. Rhudy testified that the range of motion limitations, muscle spasms, and neurological findings justify the MRI to

rule out a herniated disc. Carrier deposed Dr. Wilcox and offered the deposition in evidence. Dr. Wilcox testified that the MRI was medically necessary for the same reasons as Dr. Rhudy indicated in his testimony at the hearing.

Provider argues that the lumbar MRI was medically necessary. Although the MRI was negative for a herniated disc, Provider contends that the medical necessity of a diagnostic test, such as an MRI, must be made prospectively based on the presenting symptoms. In this case, Petitioner argues that the presenting symptoms showed an extremely high pain level, restricted range of motion, positive orthopedic test results, and radicular pain indicating the need for the MRI. Petitioner also contends that early diagnosis of the injury would speed Claimant's treatment and recovery.

2. Carrier's Position and Evidence

Carrier relies on the STG to support its position that the early MRI was not medically necessary. Carrier points out that Dr. Wilcox ordered the MRI on Claimant's first visit to the clinic, which was ten days post injury. According to Carrier, the STG does not recommend MRIs earlier than six weeks from the date of injury. 28 TEX. ADMIN. CODE § 134.1001(f)(2)(F) and (f)(3)(B). Carrier further points out that documentation of "significant neurological deficit" would have to be shown to support early intervention (0-6 weeks) of an MRI. 28 TEX. ADMIN. CODE § 134.1001(e)(2)(Q).

Dr. Clark Watts testified on behalf of Carrier. Dr. Watts is a medical doctor who specializes in neurosurgery. After reviewing the medical documents and depositions of Dr. Wilcox and Dr. Rhudy, he concluded that Claimant did not have significant neurological deficit. Dr. Watts testified that Claimant did not have signs of sensory impairment, progressive numbness, or increased physiological impairment, which would be signs of neurological impairment. He claimed that the neurological exams performed on Claimant did not reveal a significant neurological deficit. He testified that the x-rays, performed shortly after the fall, were the appropriate test for acute trauma to bony structures. Based on the results of the x-rays (showing no significant injury), Carrier does not believe it was medically necessary to perform an early MRI. Dr. Watts testified that tingling in the right leg does not constitute a radiculopathy, a significant neurological deficit, or a sensory impairment, especially since there were no objective neurological exams that identify the cause of the tingling.¹ Dr. Watts also indicated that the orthopedic exams were non-specific and did not warrant an early MRI. Finally, Dr. Watts concluded that the severe pain, diminished range of motion, and muscle spasms showed that the sensory system was intact.

3. ALJ's Analysis

¹ Even if a radiculopathy existed, Dr. Watts does not believe that a radiculopathy alone would justify an early MRI.

The ALJ finds that Petitioner has not met its burden of proof that an early MRI was medically necessary; therefore, it should not be reimbursed. The ALJ finds that Provider failed to establish a significant neurological deficit that warranted an MRI earlier than six weeks after injury.

The issue is whether it was medically necessary for Claimant to undergo a lumbar MRI within ten days after his injury. The timing of the MRI becomes critical because the STG recommends an MRI six weeks to four months after the date of injury. 28 TEX. ADMIN. CODE § 134.1001(f)(3)(B). Claimant's injury occurred on _____, and Provider performed the MRI on August 31, 2001. Under 28 TEX. ADMIN. CODE § 134.1001(e)(2)(Q), however, an MRI could be performed less than six weeks after the injury if there is a showing of significant neurological deficit. Significant neurological deficit is defined as "signs of sensory impairment, progressive numbness, or increased physiological impairment such as severe weakness, bowel or bladder dysfunction directly related to the spinal injury." 28 TEX. ADMIN. CODE § 134.1001(j)(53). If the proposed treatment falls outside the guideline recommendations, it is necessary that a documented explanation be provided to clearly delineate the need for the treatment. 28 TEX. ADMIN. CODE § 134.1001(d)(1)(B).

In this case, Provider did not establish that Claimant had a significant neurological deficit to warrant an early MRI. Provider recommended an MRI on the first visit (seven days after the injury). Dr. Wilcox and Dr. Rhudy attempted to justify the MRI based on the nature of the injury from a fall down the stairs, the pain radiating down the leg, positive orthopedic exams, muscle spasms, and neurological findings.

First, the fall down the stairs does not establish the medical necessity of an early MRI. X-rays, performed after the fall, would have detected fractures and other bone trauma. Although an x-ray typically examines bone structure and an MRI examines soft tissue, the x-rays in this case indicated that the vertebrae were intact and normally aligned, and that the disc spaces were well maintained. BCM Ex. 2 at 47. The results of the x-rays did not indicate the need for an early MRI.

Second, radicular leg pain is not found within the definition of significant neurological deficit. In fact, Dr. Watts testified that this type of pain would indicate that the sensory system was functioning properly. Further, the radicular pain in the right leg could not be classified as a sensory impairment without objective neurological exam findings that correlate the tingling.

Third, the positive orthopedic exam, the muscle spasms, and diminished range of motion did not show a significant neurological deficit that would justify an early MRI. The orthopedic exams were non-specific and could not be correlated to any significant neurological deficit. In addition, there were no objective test findings to indicate that the muscle spasms and diminished range of motion were related to a significant neurological deficit.² BCM Ex. 2 at 71.

Finally, the neurological findings did not show a significant neurological deficit. Dr. Wilcox's neurological exam showed Claimant to have an intact sensory system within the normal limits. Dr. Padilla's neurological exam, performed the day after Dr. Wilcox's exam, depicted a normal sensory system with the exception of 4/5 motor strength in the bilateral lower extremities. Because Dr. Padilla's exam did not indicate which muscles showed such findings, it did not reveal much about sensory impairment. Dr. Padilla did not indicate that Claimant had radicular pain in his right leg or that he had diminished sensation. BCM Ex. 2 at 42-43.

For the reasons stated above, Provider did not prove that the lumbar MRI was medically necessary earlier than six weeks after the injury; therefore, reimbursement is denied.

III. FINDINGS OF FACT

1. On _____, Claimant ____ suffered a compensable injury in the course and scope of his employment.
2. Texas Mutual Insurance Company (Carrier) insured Claimant on the date of the injury.
3. As a result of the injury from falling down the stairs, Claimant suffered a lower back injury.
4. On August 28, 2001, Marcus L. Wilcox, D.C. treated Claimant at the Accident & Injury

² As indicated by Dr. Watts, the muscle spasms and diminished range of motion would indicate that the sensory system was intact.

Chiropractic.

5. On August 29, 2001, Marlon D. Padilla examined Claimant.
6. After Claimant's first visit, Dr. Wilcox ordered an MRI to be performed.
7. Bexar County MRI (Provider) performed the lumbar MRI on August 31, 2001, which was ten days after the injury.
8. Carrier denied Provider reimbursement in the amount of \$1,150.00, and Provider requested an independent review to determine if Carrier's denial was appropriate.
9. In a decision issued May 15, 2002, Texas Medical Foundation, the certified independent review organization (IRO), determined that the lumbar MRI was not medically necessary and denied reimbursement.
10. On July 25, 2002, Provider appealed the IRO's decision and requested a hearing before the State Office of Administrative Hearings (SOAH).
11. On August 20, 2002, the Texas Workers' Compensation Commission (Commission) issued the notice of hearing.
12. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
13. On December 5, 2002, Administrative Law Judge Michael J. O'Malley convened the hearing on the merits. Representatives of the Provider and Carrier participated. The hearing adjourned the same day, and the record closed on January 7, 2002.
14. The mechanism of the injury, Claimant's pain, including the radicular leg pain, the results of the orthopedic exam, the diminished range of motion, the muscle spasms, and the results of the neurological exams did not show a significant neurological deficit to warrant an MRI prior to six weeks after the injury.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 413.031.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073 and 413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Pursuant to 28 TEX. ADMIN. CODE § 148.21(h), Provider had the burden of proving by a preponderance of the evidence that the MRI, performed earlier than six weeks after the injury, was medically necessary.
5. Provider failed to prove that the MRI performed earlier than six weeks after the injury was medically necessary because it failed to show that Claimant had a significant neurological deficit requiring an early MRI. 28 TEX. ADMIN. CODE §§ 134.1001(f)(3)(B), 134.1001(e)(2)(Q), and 134.1001(j)(53).
6. Because the early MRI fell outside the guideline recommendations, the Provider was required to provide a documented explanation to clearly delineate the need for the treatment, which the Provider did not do in this case. 28 TEX. ADMIN. CODE § 134.1001(d)(1)(B).
7. Based on the foregoing findings of fact and conclusions of law, Provider is not entitled to reimbursement of \$1,150.00 for the early lumbar MRI performed on Claimant on August 31, 2001.

ORDER

IT IS HEREBY ORDERED that Bexar County MRI is not entitled to reimbursement for \$1,150.00 from Texas Mutual Insurance Company, for the MRI rendered to Claimant on August 31, 2001.

SIGNED this 13th day of January 2003.

MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARING