

DOCKET NO. 453-03-0983.M2
[MDR TRACKING NO. M2-02-1148-01]

JOHN A. SAZY, M.D.,
Petitioner

V.

LIBERTY MUTUAL
INSURANCE GROUP,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

John A. Sazy, M.D. (Petitioner) is appealing the decision of Envoy Medical Systems, LLC, an independent review organization (IRO) certified by the Texas Department of Insurance, in Texas Workers' Compensation Commission (Commission) Medical Review Division tracking number M2-02-1148-01 denying preauthorization for the requested two level fusion (TLIF) at the L4-L5 and L5-S1 levels. The IRO determined from the medical documentation submitted for review that the requested medical procedure was not medically necessary to treat the Claimant's condition. The Administrative Law Judge (ALJ) finds the request for preauthorization should be granted because the requested treatment is medically necessary.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

On January 14, 2003, ALJ Michael J. Borkland convened the hearing at the William P. Clements Building, 300 West 15th Street, Austin, Texas. Petitioner appeared *pro se* via telephone. Liberty Mutual Insurance Group (Respondent or Carrier) was represented by Shannon Butterworth, attorney. Notice and jurisdiction were not contested and will be addressed in the findings of fact and conclusions of law. Following the presentation of evidence, the hearing was closed on the same day.

II. DISCUSSION

1. Background

The Claimant, who is a 38-year old female, suffered a work related injury while picking up trash bags on _____, and developed right shoulder and low back pain. Treatment for the injury included physical therapy, epidural steroid injections, and anti-inflammatory and analgesic medications. The Claimant, who is five feet five inches tall and weighs approximately 204 pounds, continues to suffer from pain. The Petitioner seeks preauthorization for a TLIF because the Claimant has failed all non-operative treatments.

2. Medical Records

The documentary evidence presented consisted of the documentation reviewed by the IRO (Exh.1), and the IRO decision (Exh. 2). The records reflect that an MRI of the lumbar spine was performed on September 10, 2001. There were no signs of either bony or soft tissue encroachment

on the spinal canal or the neurocanals, and the facets were smooth. It was an unremarkable MRI of the lumbar spine. (Exh. 1, p. 21)

A second MRI was completed on November 21, 2001. The principal abnormality found was at the L5-S1 level, and consisted of a two millimeter disc protrusion with a circumferentially oriented annular fissure reaching the S1 nerve root. Signal loss was noted. At the L4-L5 level, there was a left foraminal one to two millimeter disc protrusion. The second MRI was done by a neuroradiologist. (Exh. 1, p. 22)

A lumbar diskogram was performed on April 18, 2002. The Claimant complained of back pain radiating into the right leg when the contrast solution was injected at the L4-L5 level.¹ (Exh. 1, p. 20)

The Petitioner saw the Claimant in his office on May 14, 2002. She reported that the diskogram reproduced her symptoms, and that she continued to experience pain. The Petitioner noted that the epidural steroid injections did not help. The requested procedure was recommended at this time. (Exh. 1, p. 16)

Frank Nisenfeld, M.D., prepared a peer review analysis dated July 29, 2002, and concluded that the requested procedure was not reasonable and necessary. Dr. Nisenfeld's rationale was that the MRI findings showed degenerative disc disease; there were no significant signs and symptoms of radiculopathy; and surgery would be based on diskography which is not an objective test that has proven to identify surgical patients and to predict surgical outcomes. (Exh. 1, p. 5)

Leela Rangaswamy, M.D., prepared a peer review analysis dated July 17, 2002, and concluded that the requested procedure was not reasonable and necessary. Dr. Rangaswamy's rationale was that the initial MRI study was unremarkable, and the second MRI did not reveal pathological changes to warrant a fusion. Further, she stated that the diskogram report did not quantify the level of pain according to an objective scale, and the findings of the CT Scan at the L4-L5 level is insufficient to warrant a two level fusion.²

3. Testimony of Dr. Sazy

¹ The IRO records were provided by the Carrier. The radiology imaging report of the lumbar diskogram contained on page one of the two page document.

² A report of a CT Scan was not provided in the materials submitted by the Carrier.

Dr. Sazy is the Claimant's current treating physician. He went to undergraduate and medical school at Wayne State University in Detroit, Michigan. He studied general surgery in New York, orthopedic surgery at the Medical College of Pennsylvania in Philadelphia, and completed his orthopedic training at the Chicago Spine Fellowship.

Regarding the opinion of Dr. Rangaswamy, Dr. Sazy testified that Dr. Rangaswamy only did a paper review, and that Dr. Rangaswamy does not practice spinal surgery to his knowledge. Dr. Sazy further stated that Dr. Rangaswamy's rationale for finding the requested treatment not reasonable and necessary is invalid. In Dr. Sazy's opinion, the diskogram revealed two pathologic discs with concordant pain, which means that the discs are part of the reason the Claimant has back and leg symptoms. Dr. Sazy also testified that the November 21, 2001, MRI was interpreted by a neuroradiologist with specialty training, who found the abnormalities as outlined in the report contained in Exhibit 1. There is evidence from the MRI of a torn, disrupted disc that touches a nerve root. Dr. Sazy concluded that the second MRI produced significant findings which correlated perfectly with the findings of the diskogram.

Regarding the opinion expressed by Dr. Nisenfeld, Dr. Sazy testified that Dr. Nisenfeld did not examine the patient and to Dr. Sazy's knowledge did not review the actual films. Dr. Sazy stated that Dr. Nisenfeld's statement that the MRI did not show radiculopathy is not a valid rationale for not approving the requested treatment because radiculopathy is not shown by an MRI study. Radiculopathy is shown by myelogram and physical examination. Dr. Sazy testified that while diskography is subjectively interpreted like many things in medicine, the National Association of Spinal Surgeon's official position is that diskography is a valid test for select patients considered for surgery. Dr. Sazy also pointed out that the TWCC guidelines approve diskography.

On cross-examination, Dr. Sazy testified that he has probably discussed weight loss with the Claimant. He then discussed various complications that can be encountered in surgery and stated that he discusses them with his patients prior to surgery. He concluded by stating that the Claimant has no medical condition that should limit surgery.

III. CONCLUSION

The burden is on the Petitioner to show that medical necessity for the requested procedure has been adequately established. The Petitioner is the Claimant's treating physician and has personally examined her. While there is no reason to believe that both Drs. Rangaswamy and Nisenfeld are not excellent physicians, evidence was not presented that they are specialists in back surgery. Additionally, neither one of them has examined the Claimant and it doubtful that they had access to the films for evaluation. On the other hand, Dr. Sazy is a specialist, and he has examined the Claimant and reviewed the films. Dr. Sazy's testimony regarding the opinions of Drs. Rangaswamy and Nisenfeld was particularly credible and persuasive. Finally, the Claimant has failed all non-surgical treatment. While back surgery may be risky, it is the Claimant's decision to make following consultation with her treating physician. Risk is not an element of medical necessity. The evidence supports preauthorization of the requested procedure.

IV. FINDINGS OF FACT

1. On _____, the Claimant sustained an on-the-job injury to her lower back while picking up trash bags.
2. At the time of the Claimant's injury, Liberty Mutual Insurance Group (Respondent or Carrier) provided workers' compensation insurance to the Claimant's employer.
3. The Claimant was treated with physical therapy, epidural steroid injections, and various medications.
4. The non-surgical treatments referred to in Finding of Fact No. 3 did not improve the Claimant's condition.
5. An MRI completed on November 21, 2001, found an abnormality at the L5-S1 level consisting of a two millimeter disc protrusion with a circumferentially oriented annular fissure reaching the S1 nerve root. Signal loss was noted. At the L4-L5 level, there was a left foraminal one to two millimeter disc protrusion.
6. A diskogram completed on April 18, 2002, revealed two pathologic discs with concordant pain.
7. Diskography is a valid test.
8. The Claimant has no medical condition which should limit surgery.
9. The Claimant continues to experience low back pain.
10. John A. Sazy, M.D. (Petitioner), Claimant's current treating physicians, recommends a two level fusion at the L4-L5 and L5-S1 levels.
11. The Carrier denied the Petitioner's request for preauthorization of the requested two level fusion.
12. The Petitioner requested dispute resolution services from the Texas Workers' Compensation Commission's Medical Review Division.
13. On September 24, 2002, Envoy Medical Systems, LLC, an independent review organization certified by the Texas Department of Insurance, issued its decision denying preauthorization because the surgery would be based strictly on discographic evaluation; there is some question of cardiac difficulties due to the patient's weight; and weight loss would be an appropriate approach to the patient's problem.
14. Petitioner filed a request for hearing to contest the denial of preauthorization of the requested services.
15. The Commission sent notice of the hearing to the parties on November 6, 2002. The hearing notice informed the parties of the matter to be determined, the right to appear and be represented by counsel, the time and place of the hearing, and the statutes and rules involved.

16. The hearing on the merits convened on January 14, 2003, before Michael J. Borkland, Administrative Law Judge. Petitioner appeared *pro se*. Respondent appeared through Shannon Butterworth, attorney.

V. 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. 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. LAB. CODE ANN. §§ 402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. Petitioner timely filed notice of appeal, as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
4. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE ANN. ch. 2001 and 28 TAC § 148.4(b).
5. Petitioner had the burden of proving the case by a preponderance of the evidence, pursuant to 28 TAC §148.21(h) and (i), and 1 TAC § 155.41.
6. 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 pursuant to TEX. LAB. CODE ANN. § 408.021
7. As provided by TEX. LAB. CODE ANN. § 413.014 and 28 TAC § 134.600(h)(1), preauthorization is required for all non-emergency hospitalizations.
8. Based on Findings of Fact Nos. 3 - 10, the requested medical procedure is medically necessary.
9. Based on Findings of Fact Nos. 3 - 10, and Conclusions of Law Nos. 5, 6 and 8, Claimant is entitled to preauthorization for the medically necessary treatment.

ORDER

IT IS, THEREFORE, ORDERED that Respondent, Liberty Mutual Insurance Group, pay the reasonable and necessary cost of providing the Claimant the requested two level fusion at the L4-L5 and L5-S1 levels.

SIGNED this 6th day of February, 2003.

MICHAEL J. BORKLAND
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS