DOCKET NO. 453-03-0985.M2
TWCC DOCKET NO. M2-02-1085-01

JOHN A. SAZY, M.D.,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
V.	§	
	§	**OF**
TEXAS WORKERS COMPENSATION	§	
COMMISSION and TRAVELERS	§	
INDEMNITY COMPANY OF	§	
CONNECTICUT,	§	
Respondents	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

John A. Sazy, M.D. (Petitioner) has appealed the findings of Independent Review, Inc. (IRI) affirming the denial by Travelers Indemnity Company of Connecticut (Carrier) of pre-authorization for three epidural steroid injections and facet injections to be administered to Petitioner's patient _____(Claimant). The Administrative Law Judge (ALJ) holds that pre-authorization should be ordered for the requested epidural steroid injections because the treatment is medically necessary to relieve Claimant's pain and promote Claimant's recovery. Pre-authorization should not be ordered for the facet injections, because Petitioner presented no evidence related to the medical necessity for the facet injections.

I. JURISDICTION, NOTICE, AND VENUE

The Texas Workers Compensation Commission (the Commission) has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers Compensation Act (the Act), TEX. LAB. CODE ANN. ch. 401 *et seq.* The State Office of Administrative Hearings (SOAH) has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. 413.031(d) and TEX. GOVT CODE ANN. Chapter 2003. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOVT CODE ANN., Chapter 2001 and SOAH's rules, 1 TEX. ADMIN. CODE (TAC) Chapter 155.

Notice of the hearing was sent to the parties on November 6, 2002. Notice and jurisdiction are not contested and are addressed in the Findings of Fact and Conclusions of Law set out below.

ALJ Sharon Cloninger convened the hearing December 3, 2002, in the William Clements Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Petitioner appeared *pro se* by telephone. Carrier appeared through Dan Flanagan, its representative for the Austin area. The Commission did not participate in the hearing.

II. BACKGROUND

Claimant incurred a compensable injury to her back on____, while crawling on the floor and pushing a 300-pound frame at_____., her place of employment. Her diagnosis is an extruded disk fragment at the L4-5 segment. She has undergone diagnostic testing including an MRI of the lumbar spine, nerve conduction studies, and lumbar provocative discography. Her treatment has included physical therapy, medical therapy, and epidural steroid injections[1], but she continues to experience low back and leg pain.

Petitioner, a surgeon, became Claimant's treating physician in February 2002. Shortly thereafter, on May 6, 2002, Claimant was sent to Dr. James Swink[2] for an independent medical evaluation (IME). Dr. Swink felt Claimant's continuing problems are related to her compensable injury and recommended surgery. Petitioner disagrees that surgery is necessary at this time, because the non-surgical treatments available for Claimant's condition have not yet been exhausted.

On July 12, 2002, following the IME, Petitioner requested pre-authorization for three epidural steroid injections and facet injections for Claimant. The request was denied by Carrier. Petitioner requested an appeal of Carrier's denial before the Commission's Medical Review Division. The Commission referred the appeal request to an independent review organization (IRO). On September 24, 2002, the IRO recommended non-authorization because it found the injections were not medically necessary.

On October 9, 2002, Petitioner appealed the IRO decision, which culminated in this hearing

[1] Petitioner testified at the hearing that he did not have medical records regarding the injections, which were administered before Claimant became his patient in February 2002. Carrier's counsel stated Carrier does not have those medical records either. The only evidence presented regarding these injections is the claim notes in Carrier's Exhibit 1, indicating three lumbar epidural steroid injections were given to Claimant on May 22, 2000; June 9, 2000; and June 23, 2000, with no information regarding Claimant's response to them.

[2] The record does not reflect whether Dr. Swink is an M.D. or not, or what his area of medical specialty, if any, might be.

before SOAH.

III. DISCUSSION

A. Applicable Law

The only issue in this case is whether, by a preponderance of the evidence, there is medical necessity for the requested treatment. Medical necessity is defined in TEX. LABOR CODE ANN. 408.021(a), which states:

> (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. The employee is specifically entitled to health care that:
>
> (1) cures or relieves the effects naturally resulting from the compensable injury;
>
> (2) promotes recovery; or
>
> (3) enhances the ability of the employee to return to or retain employment.

Pursuant to 28 TAC 134.600(g), Petitioner may proceed to medical dispute resolution (MDR) before the Commission upon denial of pre-authorization by the Carrier. Effective January 1, 2002, MDR may be conducted by an IRO. 28 TAC 133.308. In accordance with the requirement for the Commission to randomly assign cases to IROs, the Commission assigned Petitioner's MRD request to IRI for independent review.

Under 28 TAC 148.21(h), the appealing party has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LABOR CODE ANN. 413.031. Thus, Petitioner must prove the requested epidural steroid injections are reasonably required within the meaning of TEX. LABOR CODE ANN. 408.021(a).

B. Evidence

The evidence consisted of Petitioner's testimony and one document.

1. Petitioners testimony

Petitioner testified that Claimant became his patient in February 2002, at which time she complained of low back pain and severe leg pain. He said Claimant's available films demonstrated an extruded disc fragment at the L4-5 segment. He found Claimant's positive straight leg raise during her physical examination to be consistent with her disc herniation. To determine whether or not the disc itself was a source of pain, Petitioner ordered a discogram with specific focus on possible pain generators for back pain as well as an architectural analysis of Claimant's discs to determine what they were doing relative to the nerve roots. The discogram was not positive for production of pain in Claimant's back, at least not the similar type of pain that she normally experiences.

The negative discogram results gave Petitioner the impression that Claimant's pain could be relieved non-operatively with epidural steroid injections where the disc fragment is in contact with her nerve roots. The disc fragment's contact with nerve roots could be causing Claimant's severe leg pain. The injections could decrease the inflammation created by the disc fragment. He said epidural steroid injections can eradicate pain for as long as six months at a time.

According to Petitioner, the epidural steroid injections could also promote Claimant's recovery. Petitioner stated that in some patients for whom the injections are successful, surgery becomes unnecessary. He said it is not unusual when the injections are done correctly by an experienced individual, such as the doctor Petitioner would refer Claimant to see, that the treatment can keep a patient functional and out of the operating room long enough for the body to "wall off" the disc fragment area. He explained that when a disc fragment is walled off, a thin shell of calcium or bone forms, containing and stabilizing the area. During the process, the patient may have some achiness, but in the long run the need for back surgery can be circumvented and the patient can become functional and productive.

Petitioner said the use of epidural steroid injections to treat leg pain conforms with the standard of medical care in the community. When a patient presents with Claimant's symptoms and surgery is not urgently needed, all non-operative treatment should be exhausted before surgery is used. He called it a breach of the standard of care for a patient not to have epidural steroid injections but rather be left with the choice of living with pain or having surgery.

He added that if Claimant eventually does need back surgery, her response to the epidural steroid injections would provide him with diagnostic information that would give him a clearer idea of what to do surgically.

Petitioner said that without reviewing Claimant's previous medical records, he could not discuss the effectiveness of her prior epidural steroid injections. But he did say that if the injections were not precisely targeted, then Claimant could not have been expected to obtain positive relief. He said there are still doctors in the community who use the "old fashioned" technique of administering epidural steroid injections, in which they select the site by finger palpitations, without an epiduragram to confirm correct delivery of the medicine. Under those circumstances, the reliability and precision of delivering medication to the targeted area is "just about" non-existent, with poor results for the patient. He said that the doctor he would refer Claimant to see would use an epiduragram to confirm precise placement of the needle at the left L4-5 interspace in Claimant's lumbar disc, which is where her pathology is located. To further assure the injections are precisely administered, Petitioner said that if the injections are pre-authorized, he plans to order nerve tests to ascertain exactly which nerves are being irritated by Claimant's disc fragment.

2. Documentary evidence

The record is sparse regarding Claimant's treatment between the time of her _____ injury and_____, when she became Petitioner's patient. The documentary evidence indicates she was treated by a Dr. Crowley, who released her to light duty. It also states an IME was done by Dr. Swink, who on March 9, 2000, found Claimant to be at maximum medical improvement (MMI) with a 0% impairment rating.

Dr. Crowley gave Claimant an MMI of 8% on July 17, 2000. On that same date, Claimant was released to work with permanent restrictions, which her employer could not accommodate, so she was laid off. Claimant went back to the doctor for treatment of her continuing pain and was referred to Dr. Kay for pain management. She was then referred to Petitioner in February 2002. She was sent for another IME with Dr. Swink on May 6, 2002. At that time, Dr. Swink felt Claimant's problems were related to her compensable injury, and recommended surgery.

On July 12, 2002, Petitioner requested pre-authorization for three epidural steroid injections and facet injections to treat Claimant's pain. Carrier's denial letter[3] to Petitioner stated Claimant's response to her previous injections is unknown, and her date of injury and previous treatment suggest chronic radiculopathy with low probability of favorable response to the requested injection treatment. (Carrier's Ex. 1 at 1-2). In a second letter, Carrier informed Petitioner that his request for pre-authorization of the injections had been referred to a Specialty Advisor, who denied pre-authorization on the grounds that the request exceeds the commonly recommended guidelines that suggests evaluation of each epidural steroid injection for efficacy prior to proceeding with subsequent injections. The letter goes on to state there is no evidence of objective findings that correlate with the presence of facet disease, and that concomitant injections, if successful, could confuse the actual site of pain generation.

IV. ANALYSIS

Petitioner has met his burden of establishing that the epidural steroid injections are medically necessary and that the treatment should be pre-authorized. It is uncontroverted that Claimant's low back and lower extremity pain resulted from her compensable injury. Under the state-of-the -art epidural steroid injection technique described by Petitioner, it is more likely than not that the injections will relieve Claimant's pain, and possibly promote her recovery without the need for surgery.

The evidence does not distinguish between the requested epidural steroid injections and the requested facet injections, leaving the ALJ unsure if the treatments are one and the same, or different. Because the facet injections are not separately addressed in the evidence, the ALJ finds that if they are different than the epidural steroid injections, there is insufficient evidence to show they are medically necessary, and they should not be pre-authorized.[4]

[3] The letter in Carrier's Ex. 1 is dated November 12, 2002, but all the documents in Ex. 1 are dated November 12, 2002, so the ALJ concludes that this is the date on which the documents were generated for creation of the exhibit rather than the date the letter was sent.

[4] An article in evidence distinguishes between epidural and facet joint injections, leading the ALJ to conclude they are not one and the same procedure. (Carrier's Exhibit 1 at 17).

The ALJ found it persuasive that using epidural steroid injections for patients with Claimant's diagnosis is the standard of medical care in the community and agrees that all non-operative treatments should be exhausted before resorting to surgery. The ALJ finds Petitioner's conclusion credible. The requested injections are likely to relieve Claimant's pain and possibly promote her recovery to the extent that she will not need surgery. The fact that the injections could serve a diagnostic purpose in the event of surgery is irrelevant, at this point, to the issue of medical necessity, because Petitioner is not recommending surgery for Claimant.

The ALJ was not persuaded by the article entitled "Injections for Pain Management" included in the documentary evidence, because the article does not address the use of epidural steroid injections for treatment of leg pain in patients such as Claimant.

Although Claimant had a series of three epidural steroid injections in May and June of 2000, there is no evidence as to how she reacted to the treatment, how precisely the injections were targeted, or that her response to the previous injections is a predictor of how she will respond to the treatment requested by Petitioner. Therefore, the ALJ gives no weight to the evidence that Claimant has had three prior lumbar epidural steroid injections.

There is sufficient evidence to prove the requested epidural steroid injections will afford Claimant relief and promote her recovery. Thus, Petitioner is entitled to pre-authorization of the epidural steroid injections under TEX. LABOR CODE ANN. 408.021(a). However, there is insufficient evidence to prove the facet injections are medically necessary, and they should not be pre-authorized.

V. FINDINGS OF FACT

1. _____ (Claimant) suffered a compensable injury to her back on____, while crawling on the floor pushing a 300-pound frame in performance of her duties as an employee of _____.

2. Travelers Indemnity Insurance Company of Connecticut (Carrier) was _____ insurance provider at the time of Claimant's injury.

3. Petitioner has been treated by John A. Sazy, M.D. (Petitioner) since February 2002.

4. Since Claimant's compensable injury occurred, she has developed low back and lower extremity pain directly related to her injury.

5. Extruded disc fragment at L4-5 is irritating nerve roots and causing Claimant's severe leg pain.

6. Precisely targeted and properly performed epidural steroid injections could relieve Claimant's leg pain.

7. The requested epidural steroid injections could improve Claimant's condition to the point that she might not need back surgery.

8. Administering epidural steroid injections for a patient with Claimant's diagnosis falls within the standard of care in the community.

9. There is no evidence that the requested facet injections will relieve Claimant's leg pain, promote her recovery, or allow her to retain or return to employment.

10. On July 12, 2002, Petitioner requested pre-authorization from Carrier for Petitioner to undergo a series of three epidural steroid injections and facet injections.

11. In an undated letter[5], Carrier denied Petitioner's request for pre-authorization on the grounds that Claimant's response to previous epidural steroid injections was unknown, and her date of injury and previous treatment suggest chronic radiculopathy with low probability of favorable response to the requested injection treatment.

12. Petitioner filed a timely request with the Texas Workers' Compensation Commission (TWCC) for medical dispute resolution.

13. Petitioner's request was randomly assigned to Independent Review, Inc. (IRI), an independent review organization, by the Commission's Medical Review Division.

14. IROissued a decision September 24, 2002, recommending denial of Petitioner's request for pre-authorization.

15. Petitioner filed a timely request for hearing October 9, 2002.

16. Notice of the hearing was sent to the parties on November 6, 2002.

17. 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 to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

18. Administrative Law Judge Sharon Cloninger convened the hearing December 3, 2002, in the William Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Petitioner

[5] The letter is dated November 12, 2002, as are all documents in Travelers Exhibit 1. The ALJ believes this is the date on which the document was printed as an exhibit, rather than the date it was sent to Petitioner.

appeared *pro se* by telephone. Carrier was represented by Dan Flanagan, its Austin-area representative. The Commission did not participate in the hearing.

VI. CONCLUSIONS OF LAW

1. The Texas Workers Compensation Commission (the Commission) has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers Compensation Act (the Act), TEX. LAB. CODE ANN. ch. 401 *et seq.* (Vernon 1996).

2. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §413.031(d) and TEX. GOVT CODE ANN. Chapter. 2003 (Vernon 2000).

3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOVT CODE ANN., Chapter 2001 (Vernon 2000) and SOAH's rules, 1 TEX. ADMIN. CODE (TAC) Chapter 155.

4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN.2001.052.

5. Petitioner met his burden of proving that the epidural steroid injections are medically necessary and are reasonably required within the meaning of TEX. LAB. CODE ANN. 408.021(a).

6. Petitioner did not meet the burden of proving the facet injections are medically necessary and reasonably required within the meaning of TEX. LAB. CODE ANN. 408.021(a).

7. Based on the foregoing Findings of Fact and Conclusions of Law, the requested epidural steroid injections should be pre-authorized, and the requested facet injections should not be pre-authorized.

ORDER

IT IS, THEREFORE, ORDERED that Travelers Indemnity Company of Connecticut should pre-authorize the three epidural steroid injections requested by John A. Sazy, M.D., for Claimant's treatment, and should not pre-authorize the requested facet injections.

SIGNED this 23rd day of December, 2002.

SHARON CLONINGER
ADMINISTRATIVE LAW JUDGE