

**DOCKET NO. 453-03-1180.M2**  
**[MDR TRACKING NO. M2-02-1082-01]**

**JOHN A. SAZY, M.D.,**  
**Petitioner**

**VS.**

**ST. PAUL FIRE & MARINE**  
**INSURANCE COMPANY,**  
**Respondent**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

John A. Sazy, M.D., appealed an Independent Review Organization (IRO) decision denying preauthorization for Claimant to receive an EMG of the lower extremities and a lumbar discogram with CT scan. The IRO concluded that these tests were not medically necessary. This decision agrees with the IRO and concludes that the tests are not medically reasonable and necessary at this time. Therefore, Dr. Sazy's appeal is denied.

**I. JURISDICTION & HEARING**

There were no challenges to notice or jurisdiction, and those matters are set forth in the findings of fact and conclusions of law without further discussion here.

Administrative Law Judge (ALJ) Thomas H. Walston conducted a hearing in this case on July 2, 2003, at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, 300 West 15th Street, Austin, Texas. Dr. Sazy appeared by telephone and attorney Steven Tipton appeared in person on behalf of St. Paul Fire and Marine Insurance Company (Carrier). The record was left open for Dr. Sazy to submit a copy of an article dealing with discograms. He submitted the article by fax the same day, at which time the record closed.

**II. DISCUSSION**

**Background**

Claimant is a 40-year-old male who injured himself at work on \_\_\_\_, when he fell off a loading dock at work had previously injured his low back and had a fusion at L5-S1 in \_\_\_\_\_. In the accident, \_\_\_\_\_ re-injured his low back and also injured his neck. He eventually had a two-level fusion in his neck, a second neck surgery to remove a screw, and a repeat fusion in his low back. \_\_\_\_\_ also had extensive conservative treatment, but he has had difficulty in dealing with his doctors. He refused some types of conservative treatment and terminated some of his doctors, while some other doctors dismissed him as a patient because he refused certain treatments and displayed symptom exaggeration and drug-seeking behavior.

\_\_\_\_\_ continued to complain of low back pain, so a lumbar myelogram was performed on January 25, 2002. This showed the distal end of a screw from the fusion at L5-S1 extending into the intervertebral disc space of L4-5, although it did not show whether the screw actually contacted any neural tissue. The myelogram also showed mild stenosis at L4-5, and a post-myelogram CT scan showed a congenitally small spinal canal and ligamentum flavum hypertrophy. However, this apparently caused no narrowing of either the central canal or the neuro-foraminal canal. In addition, X-rays taken October 18, 2001, showed mild disc height loss at L4-5.

It is not clear how Dr. Sazy became treating physician, but he saw \_\_\_\_\_ only one time, on June 28, 2002. In his report, Dr. Sazy recounted the history and findings discussed above. \_\_\_\_\_ complained of low back pain, leg pain, and coccyx pain. On examination, Dr. Sazy noted a somewhat limited range of motion and a normal gait with use of a cane. Toe-walk, motor, and sensory exams were all normal. Some reflexes were normal, but Dr. Sazy could not elicit either the Achilles or posterior tibialis reflexes. \_\_\_\_\_ also displayed five of five Waddell's signs, which suggested exaggeration of symptoms. After examination, Dr. Sazy's assessment was to rule out discogenic pain and pseudarthrosis,<sup>1</sup> and he requested preauthorization for a discogram with CT scan at L2-3, L3-4, and L4-5, and for an EMG with nerve conduction velocity study of both lower extremities. Carrier denied the request and Dr. Sazy appealed to the IRO. He submitted separate statements to the IRO concerning the requests for the discogram and the EMG. In the submission for the lumbar discogram, Dr. Sazy stated the following:

I am appealing your decision to deny preauthorization for a Lumbar Discogram. \_\_\_\_\_ has exhausted all conservative treatment and is a surgical candidate that will require an L4/5 L5/S1 TLIF. A recommendation for spinal surgery will be filed with the Worker's Compensation Commission. I am certain that the insurance carrier will request a Second Opinion. In my experience most of the Surgeons rendering a second opinion for Spinal Surgery will need to see if the patient has had a Discogram. If these diagnostic tests are not available [t]o them at the time of the Second Opinion, I am certain they will not concur. If this happens, you will be delaying this patient's care and treatment, and will further delay his chance of having Surgery, rehab, and returning to a productive life in the future. The patient has exhausted all conservative treatment.

In the submission for the EMG, Dr. Sazy stated the following:

I am appealing your decision to deny pre-authorization for an EMG. \_\_\_\_\_ has

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<sup>1</sup> Pseudarthrosis is the abnormal union formed by fibrous tissue between parts of a fractured bone, leading to a "false joint."

discogenic pain L3/4, L4/5 and pseudoarthrosis. The reason for an EMG is to allow the doctor to find the abnormalities of the nerves that innervate the muscles. In this case we are looking to see if the patient has radiculopathy of the lumbar area, or a pinched nerve throughout his back. If these diagnostic tests are not available to the doctor, this will only delay the patient's care and treatment. If this happens, it will only prolong this patient from having a normal and productive life.

The IRO upheld the Carrier's denial of preauthorization on the basis that the tests were not medically necessary. The IRO decision stated the following rationale:

The myelogram and post-myelogram CT follow-through demonstrated no abnormalities, no nerve root impingement and no significant spinal stenosis. There is no evidence of pathology on either of these studies. The claimant's physical complaints are not well documented, other than perhaps what appears to be coccyx pain. The CT scan states that there is no evidence of significant disk bulge, disk protrusion, or disk pathology at L3-4, and only a mild diffuse disk bulge at L4-5. The EMG and nerve conduction study is not justifiable based on the documentation provided. There is, therefore, no clear indication for surgery and, therefore, no medical necessity or indication for lumbar discography to test disks that do not appear to have evidence of pathology on the objective testing performed.

This appeal followed.

## **B. Medical Necessity of the Procedures**

### **1. Dr. Sazy**

Dr. Sazy testified that \_\_\_\_\_ continues to complain of back pain despite his prior treatment and that the requested tests are necessary to determine the cause of the pain and the future course of treatment. Because of ongoing pain, Dr. Sazy suspects failed surgery in the low back, but he needs the discogram to confirm his belief. A discogram involves injecting the disc itself with contrast material to visualize whether the disc has tears or other damage. Also, when the disc is injected, the patient is asked to state whether the injection causes pain and whether the pain is similar to the patient's usual pain. If so, the test is strong evidence that the damaged disc is the source of pain and that surgery may be required. A discogram is also used to check the disc above a damaged disc to determine whether a fusion would be appropriate. Dr. Sazy explained that a myelogram only has contrast material outside of a disc to show if the disc is pressing against nerve roots, but the discogram actually injects the contrast material into the disc and can reveal tears and other damage.

Dr. Sazy believes that \_\_\_\_\_ has discogenic pain at L4-5 as a result of either the wrong type of surgery or poor surgery.<sup>2</sup> But he needs the discogram to confirm the source of pain. He also stated that a discogram can assist in deciding what type of surgery a patient might need. In this case, might need a fusion at L4-5, and possibly at L3-4, or a redo of L5-S1. Or, might only need an IDET, which involves inserting a hot wire into a disc to destroy nerve endings and to firm up the disc. An IDET is not considered major surgery. On the other hand, if the discogram is negative, it suggests that \_\_\_\_\_'s pain is not coming from a disc and no surgery will be required. But Dr. Sazy thinks this is unlikely.

Dr. Sazy did not testify concerning the requested EMG.

On cross-examination, Dr. Sazy agreed that correlating pain to a particular disc during the discogram procedure requires the patient to make a subjective complaint of pain, and he agreed that has a history of exaggerating symptoms, which calls into question his credibility. But Dr. Sazy believes will be honest because his responses could result in serious surgery. Also, if approved, Dr. Sazy will use a competent discographer without a financial interest in the treatment of \_\_\_\_\_.

Carrier's attorney also challenged Dr. Sazy's request for a discogram with respect to pseudoarthrosis, and Dr. Sazy agreed that a discogram is not used for diagnosing that condition. However, in reviewing the documents, the ALJ notes that Dr. Sazy did not request a discogram in connection with pseudoarthrosis. Rather, the reference to pseudoarthrosis was contained in the separate request for an EMG/nerve conduction study.

In summary, Dr. Sazy testified that has obvious pathology with a screw protruding into the L4-5 disc space and with a congenitally narrowed spinal canal. Further, the ligamentous hypertrophy is likely the result of compensating for a disc problem, and a disc and the ligamentous flavum are probably pushing on one or more nerves. However, to confirm this or rule it out, a discogram needs to be performed on \_\_\_\_\_.

## 2. Carrier

The Carrier did not call a witness but relied on the records and cross examination of Dr. Sazy. Carrier noted that Dr. Sazy's letters appealing Carrier's denial affirmatively stated that needed a fusion rather than that surgery was merely a possibility, as he stated at hearing. Carrier also emphasized that discography requires an honest, reliable patient, but has exaggerated his symptoms in the past, and even Dr. Sazy noted five positive Waddell findings. Further, most of Dr. Sazy's other findings on examination were normal, and two other doctors dismissed due to his unreliability and drug-seeking behavior. In addition, Carrier relied on the rationale of the IRO that the requested tests are not medically necessary because all other tests performed on failed to show any nerve root impingement or other disc pathology that can be corrected by surgery.

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<sup>2</sup> \_\_\_\_\_'s prior surgeries were not performed by Dr. Sazy.

### 3. Analysis

An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment. TEX. LABOR CODE ANN. §408.021. "Health care" includes "all reasonable and necessary medical . . . services." TEX. LABOR CODE § 401.011(19). However, certain procedures, such as those involved in this case, require preauthorization from the carrier in order for the provider to obtain reimbursement.

The ALJ concludes that Dr. Sazy's requests for an EMG and a discogram with CT scan should not be preauthorized at this time. Concerning the discogram, the ALJ first notes that Dr. Sazy has taken inconsistent positions. In his written submission to IRO, Dr. Sazy stated that was a definite surgical candidate for a spinal fusion, but he believed the Carrier would require a second opinion and that the doctor rendering the second opinion would need a discogram to make a reasoned decision. At hearing, however, Dr. Sazy testified that he is trying to determine whether actually has discogenic pain that would require surgery, and that he needs a discogram to determine the source of reported pain and whether surgery is required.

In either case, however, the prior diagnostic tests performed on failed to show any type of nerve or nerve root impingement by a disc that would cause discogenic pain. As noted by the IRO, myelogram and post-myelogram CT scan showed no significant abnormalities, no nerve root impingement, and no significant spinal stenosis. The CT scan report also states that there is no evidence of significant disc bulge, disc protrusion, or disc pathology at L3-4, and only a mild diffuse disc bulge at L4-5 that does not impinge the nerve roots. Further, has a history of symptom exaggeration, and even Dr. Sazy noted five of five Waddell signs, which makes subjective complaints suspect. The ALJ has some concern about the screw from the fusion at L5-S1 that is protruding into the L4-5 disc space. But this has already been shown on the myelogram and X-rays, and Dr. Sazy did not explain why this condition requires further evaluation by a discogram. Therefore, under the facts presented in this case, the ALJ concludes that a discogram with CT scan is not medically reasonable or necessary at this time to further test discs that do not have evidence of pathology on the extensive objective testing already performed.

The ALJ also concludes that an EMG is not necessary at this time. As noted previously, Dr. Sazy offered no testimony directed specifically at the EMG, although his written submission to the IRO stated that an EMG was needed to determine whether "has radiculopathy of the lumbar area, or a pinched nerve throughout his back." However, all of the objective tests to date—including a myelogram with CT scan—failed to show any nerve compression or nerve root impingement that would justify an EMG. Therefore, the ALJ also denies Dr. Sazy's appeal with respect to the requested EMG.

### III. FINDINGS OF FACT

1. Claimant suffered a compensable injury on \_\_\_\_\_, when he fell off a loading platform at his work place.
2. \_\_\_\_\_ received extensive treatment and evaluation from other doctors before he presented to John A. Sazy, M.D., on June 28, 2002.
3. In late June 2002, Dr. Sazy requested that certain procedures be preauthorized, including the procedures at issue in this case, an EMG of the lower extremities and a lumbar discogram with CT scan.
4. St. Paul Fire & Marine Insurance Company, the Carrier, denied Dr. Sazy's requests.
5. Dr. Sazy requested medical dispute resolution.
6. The Independent Review Organization denied Dr. Sazy's appeal.
7. Dr. Sazy requested a hearing before the State Office of Administrative Hearings, seeking preauthorization of the EMG and discogram with CT scan.
8. A myelogram of Claimant's lumbar spine taken January 25, 2002, showed the distal end of a screw from a fusion at L5-S1 extending into the intervertebral disc space of L4-5 and mild stenosis at L4-5.
9. A post-myelogram CT scan showed a congenitally small spinal canal and ligamentum flavum hypertrophy.
10. The post-myelogram CT scan also showed no evidence of significant disc bulge, disc protrusion, or disc pathology at L3-4, and only a mild diffuse disc bulge at L4-5 that did not impinge the nerve roots.
11. X-rays taken October 18, 2001, showed mild disc height loss at L4-5.
12. None of the objective diagnostic tests performed on have shown evidence of nerve compression or nerve root impingement by the discs in lumbar spine.
13. At physical examination by Dr. Sazy on June 18, 2002, displayed somewhat limited range of motion and a normal gait with use of a cane. The toe-walk, motor, and sensory exams were all normal. Some reflexes were normal, but Dr. Sazy could not elicit either the Achilles or posterior tibialis reflexes also displayed five of five Waddell's signs, which suggested exaggeration of symptoms.

14. \_\_\_\_\_ has a history of symptom exaggeration and drug-seeking behavior.
15. \_\_\_\_\_ has refused some conservative treatments recommended by other doctors .
16. An EMG and discogram with CT scan are not reasonably required at this time for treatment.
17. A hearing was conducted July 2, 2003, and the record closed the same day.
18. Dr. Sazy and the Carrier attended the hearing.
19. All parties received not less than 10 days notice of the time, place, and nature of the hearing; 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.
20. All parties were allowed to respond and present evidence and argument on each issue involved in the case.

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

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing, including the authority to issue a decision and order. TEX. LABOR CODE ANN. § 413.031(k).
2. All parties received proper and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. Dr. Sazy has the burden of proof by a preponderance of the evidence.
4. An EMG of Claimant's lower extremities and a lumbar discogram with CT scan are not medically necessary for the proper treatment of at this time. TEX. LABOR CODE ANN. §§ 401.011(19) and 408.021.
5. Dr. Sazy's appeal is denied, and Carrier is not required to pay for an EMG and discogram with CT scan for at this time.

**ORDER**

**IT IS, THEREFORE, ORDERED** that preauthorization is hereby denied for an EMG of Claimant's lower extremities and for a discogram with CT scan, as requested by John A. Sazy, M.D., on behalf of Claimant.

**SIGNED July 23, 2003.**

**THOMAS H. WALSTON  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**