

DOCKET NO. 453-03-1316.M2
[MDR TRACKING NO. M2-02-1010-01]

JOHN A. SAZY, M.D.,
Petitioner

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BEFORE THE STATE OFFICE

VS.

OF

TEXAS WORKERS' COMPENSATION
COMMISSION and WINN DIXIE
STORES, Respondents

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

John A. Sazy, M.D., appealed an Independent Review Organization (IRO) decision denying preauthorization of a magnetic resonance imaging (MRI) and CT discogram for an injured worker's lumbar spine on the basis that they were not medically necessary. This decision concludes that the MRI and CT discogram are medically necessary and should be authorized.

I. JURISDICTION & HEARING

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

The hearing was held on February 18, 2003, before James W. Norman, Administrative Law Judge (ALJ), at the State Office of Administrative Hearings (SOAH), Fourth Floor, William P. Clements Building, 300 West Fifteenth Street, Austin, Texas. Dr. Sazy appeared on behalf of himself and the injured worker (Claimant). The Carrier, Winn Dixie Stores, appeared and was represented by Attorney Tommy W. Lueders. The Texas Workers' Compensation Commission did not appear. The record was left open until February 21, 2003, for Dr. Sazy to submit copies of IRO decisions. He did so and the record closed on February 21, 2003.

II. DISCUSSION

A. Background

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 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).

The Claimant, _____, is a 41-year-old female who was injured at work on _____, when she was run over by a pallet jack. She has received extensive treatment since that time. Dr.

Sazy¹ last saw the Claimant in May 2002. At that time, he requested preauthorization of several procedures, including the procedures at issue in this case, a CT discogram and MRI of the Claimant's lumbar spine. Dr. Sazy also requested non-invasive tests and epidural injections. The Carrier denied the requests.

B. Medical Necessity of the Procedures

1. Dr. Sazy

Dr. Sazy maintained all he is asking to do is to try to determine why the Claimant is hurting. He said he will be able to sort out the Claimant's situation and have a better idea of what to do with her, including the possibility of surgery or simply epidural injections, when the tests are completed. His contentions are primarily based on the following:

- a May 27, 1997, CT discogram of the Claimant's spine showed concordant low back pain after an injection at the L3/L4 level of her spine;²
- according to Dr. Sazy, the CT discogram indicated surgery was warranted;
- in Dr. Sazy's opinion, the treatment for the Claimant's compensable injury was never completed because her doctor's license was revoked;³
- the Claimant still complains of debilitating pain;
- Dr. Sazy argued it would be below the standard of care for a doctor to treat the Claimant on the basis of tests as remote as 1997;
- Dr. Sazy believes the tests are necessary to determine the Claimant's present condition; and

¹Dr. Sazy is a board certified orthopedic surgeon. He studied advanced spinal surgery for a year after his orthopedic-surgery residency. He subsequently trained under a doctor in Germany who he described as probably the world's best spinal surgeon.

²Dr. Sazy testified a dye is injected into the patient's spinal disc during a CT discogram. If the disc is disrupted, it will reproduce the patient's pain. The test will show whether surgical intervention is warranted.

³The Claimant's doctor at the time of the May 27, 1997, CT discogram, Bruce Hinkley, subsequently lost his medical license.

- Dr. Sazy contended that June 12, 1997, electromyogram (EMG) tests—showing bilateral L-5 radiculopathy⁴ manifested by the bilateral absence of the peroneal F-wave response—give credence to the Claimant’s pain complaints.

Dr. Sazy addressed two separate IRO reports that denied his requests.⁵ The first is a document from an entity called Concentra dated June 24, 2002. A utilization review nurse wrote a letter setting forth a physician advisor’s opinion that authorization of the CT discogram should be denied because

There is no documentation of any surgical indications at this time. The L3-4 concordant discography in 1997 did not show abnormal morphology. Therefore, [the Claimant is] unlikely to be a surgical candidate based on that information alone. . .

Dr. Sazy’s primary criticism of the report is that the words “concordant discography” are inconsistent with the first sentence saying there are no surgical indications. According to Dr. Sazy, concordant discography means the Claimant’s pain was reproduced by the discography and this showed an indication for surgery is invalid. He contended the IRO’s interpretation of the data and the doctor’s notes because no spinal surgeon would ever conclude from the words “concordant discography” that surgical intervention is unnecessary. Dr. Sazy maintained it is not necessary for a disc to have abnormal morphology for surgery to be indicated.⁶ He also criticized the report for not containing the reviewing doctor’s actual words. He said there is no indication of what the doctor examined or of whether the reviewing nurse has ever been involved in any spinal surgery.

The second IRO report was contained in an October 29, 2002, letter from Independent Review Incorporated (IRI) signed by Gilbert Prud’homme, IRI’s secretary and general counsel. It stated the claim was reviewed by a physician who is board certified in orthopedic surgery. In a paragraph titled “clinical history,” the letter said the Claimant has had physical therapy, medication, epidural blocks, and is being treated for depression, but is still in pain. The stated rationale for the decision was

⁴Radiculopathy is a disease of the nerve roots. *Dorland’s Illustrated Medical Dictionary* (1994 ed.) at 1404.

⁵The evidentiary record did not show why there were two IRO reviews.

⁶Morphology is defined as the form and structure of a particular organism, organ, or part. *Dorland’s* at 1058.

The patient's normal neurological examination and no findings, either on physical examination or objective testing, are evidence that no surgery is indicated. The reviewer also noted the equivocal results of [a] lumbar discogram.

Dr. Sazy criticized the IRI rationale as apparently containing a lay person's interpretation of the notes of a doctor who did not examine the Claimant or look at her x-rays. The summary did not say what evidence the doctor looked at and did not otherwise show what he did. Dr. Sazy said he could not imagine more tenuous evidence.⁷

Dr. Sazy acknowledged there is a psychological component to the Claimant's pain, but maintained that is true of all pain and virtually any person would be depressed after years of debilitating pain. He said a discogram is a very painful procedure and the Claimant's willingness to go through it a second time is itself a strong indication that her pain is real.

Dr. Sazy agreed that the Claimant has suffered disc degeneration, but said a diagnosis of disc degeneration does not describe the cause. He maintained there could be a multitude of reasons for the condition, including natural change compounded by trauma from an accident. In his opinion, the most reasonable conclusion is the Claimant's condition is related to her compensable injury, given the facts that she sustained a compensable injury in ____ and has suffered pain since that time. He also said it is not unusual to have an injury and experience symptoms later.

Dr. Sazy acknowledged the Claimant's condition was first diagnosed as a sprain or strain, but said after the pain continued, it became apparent that the diagnosis was wrong.

Dr. Sazy said his opinion would not be changed by an EMG study performed in February 2000 by Benjamin Agana, M.D., showing negative evidence for of radiculopathy or neuropathy.⁸ He explained that an EMG is a snapshot in time. At certain times, a disc might not be compressing a nerve. Thus, a disc might look okay in certain circumstances but not in others. He also referred to the above-cited June 12, 1997, EMG as showing a different conclusion.

Dr. Sazy contended a determination of maximum medical improvement (MMI) does not mean further treatment might not be needed or beneficial. MMI determinations can be post- or pre-surgery.

2. Carrier

⁷Dr. Sazy also contended it is well-known that IROs are paid by insurance carriers and are biased in their favor.

⁸Dr. Agana concluded the Claimant had chronic low back pain with lumbar degenerative disc disease, lumbar facet hypertrophy, and depression with no EMG evidence if radiculopathy or neuropathy.

The Carrier stressed the remoteness of the injury and questioned whether diagnostic studies are appropriate for an injury more than eight years old. It questioned whether the Claimant's current complaints are related to the compensable injury at all.

The Carrier relied heavily on a detailed report from Donald Mauldin, M.D., an orthopedic surgeon. Dr. Mauldin wrote the following on December 6, 2002, in response to a question asking whether further medical services, treatments, and diagnostics are medically necessary and related to the injury:

Based on review of the present records, I would feel this individual has become a chronic pain patient with no objective evidence of significant pathology. Therefore, there is nothing in the present records to indicate that this individual should require ongoing diagnostic studies or treatments from her low back strain that occurred in _____ in which she never did respond to any type of conservative measures and failed to improve in a normal physiologic type fashion. Likewise, her workup with her MRI did not demonstrate any significant abnormalities to support her level of complaints.⁹

In response to a question asking whether any further treatment or future diagnostics are necessary, Dr. Mauldin wrote:

At this point in time, I would not feel that any further diagnostic studies would benefit this individual . . . She has had way in excess of what one would normally require for conservative measures including psychological counseling, pain management and work conditioning. . . . There is nothing to indicate that the claimant has received a significant structural injury that would result in a permanent problem relative to the lumbar spine. . . .¹⁰

Dr. Mauldin also wrote: at most, the Claimant experienced a lumbar strain that should have responded within the first two to three months of treatment; there is no evidence the Claimant sought immediate medical care on the date of injury; the Claimant should have had multiple complaints within 48 hours of her injury if she had significant injuries; there is no evidence of significant structural injury; there is evidence of significant symptom magnification—the Claimant has had persistent chronic subjective complaints; the Claimant appears to have symptoms and treatment “far in excess” of what one would normally expect from a contusion to her thigh and possible lumbar strain; there was never any significantly defined lesion that would have caused the Claimant to have continued complaints on a subjective basis; there is no evidence the Claimant has responded at all to treatment; at most, the Claimant should be on a home exercise program with over-the-counter anti-

⁹Ex. 3.

¹⁰*Id.*

inflammatory medications as needed; and the Claimant should have required treatment no longer than the first three or four months after the accident.

Dr. Mauldin described the Claimant's lengthy treatment history, including the following:

- September 7, 1994, x-ray of the Claimant's lumbar spine was negative;
- on September 7, 1994, George Mingea, M.D., diagnosed the Claimant's condition as a lumbar sprain;
- on September 20, 1994, Sayed Shah, M.D., concluded the Claimant had restricted range of motion in her neck with spasms, painful motion, tenderness and spasms in her thoracic region, and 1+ reflexes;
- on September 20, 1994, Dr. Shah diagnosed the Claimant's condition as thoracic spine syndrome, trauma to her lateral chest, pain in her leg, left knee pain, lumbosacral spine syndrome, right shoulder pain, left arm and wrist pain, paresthesia¹¹ in her arms and cephalgia;¹²
- December 9, 1994, MRI of the Claimant's lumbar spine showed a two millimeter annular bulge at the L4/L5 and L5/S1 levels that "barely touches and effaces the thecal sac at L4-5."
- Francisco Battle, M.D., a neurosurgeon, saw the Claimant on January 31, 1995, and concluded she had a lumbar myofascial¹³ injury, but did not think she was a surgical candidate;
- Charles Davis, M.D., saw the Claimant on February 1, 1995, and concluded she reached MMI with 0% whole person impairment;
- Terrence Miller, M.D., a designated doctor, wrote in April 1995 that he thought the Claimant would reach MMI in June 1995;

¹¹Paresthesia is an abnormal touch sensation often in the absence of an external stimulus. *Dorland's* at 1234.

¹²Cephalgia means a headache. *Dorland's* at 298.

¹³Myofascial means pertaining to or involving the fascia surrounding and associated with muscle tissue. *Dorland's* at 1092. Fascia is a sheet or band of fibrous tissue such as lies deep to the skin or forms an investment for muscles and various other organs of the body. *Dorland's* at 608.

- Augusto Caesar Lastimososa, M.D., examined the Claimant on May 19, 1995, after a referral for a neurological evaluation, and concluded that her neurological examination was unremarkable;
- June 5, 1995, functional capacity evaluation indicated de-conditioning, restricted range of motion, and the need for work hardening;
- the Claimant had increased pain from work hardening and did not show up for her August 7 and 8, 1995, sessions;
- Dr. Davis reevaluated the Claimant on September 11, 1995, and concluded she had reached MMI with a 7% whole person impairment;
- Dr. Shah opined that the Claimant reached MMI on October 5, 1995, with a 14% whole person impairment rating;
- Another doctor reevaluated the Claimant on October 31, 1995, and concluded she had a 10% whole person impairment rating;
- Robert Veri, M.D., examined the Claimant on May 6, 1996, and concluded she had diffuse neck and back pain associated with numbness and tingling in her arms and legs;
- Bruce Hinkley, M.D., evaluated the Claimant on April 15, 1997, and noted she had problems in lifting;
- Dr. Hinkley recommended a CT discogram and SSEP/DSEP/NVC (EMG) studies;
- May 27, 1997, discogram revealed concordant low back pain with injection at the L3/L4 level of the Claimant's spine;
- June 12, 1997, EMG studies were consistent with bilateral L5 radiculopathy;
- the Claimant underwent L3/L4 facet injections on June 16, 1997, and August 29, 1997;
- Dr. Hinkley thought the Claimant was a candidate for 360-degree fusion/decompression;
- after seeing the Claimant on February 9, 1998, Gregory Ward, M.D. concluded she should receive pain management but not surgery;
- the Claimant underwent work conditioning in September 1998;
- Benjamin Agana, M.D., performed an EMG on the Claimant on February 14, 2000, that showed no evidence of radiculopathy or neuropathy; and

- Dr. Agana concluded the Claimant had chronic low-back pain with lumbar degenerative disc disease, lumbar facet hypertrophy, and depression.

3. Analysis

The ALJ concludes that Dr. Sazy's requests for MRI and CT discogram testing should be authorized. This decision is based primarily on the nature of the request—diagnostic tests to find the cause of the Claimant's problem. The record shows a lot of controversy over the need for diagnostic tests, with strong opinions on both sides of the issue. Dr. Sazy's opinion is supported by objective tests, particularly the June 1997 discogram showing concordant low back pain. He also cited the June 1997 EMG as showing the Claimant's pain is real. Dr. Sazy's opinion is also supported by Dr. Hinkley. Dr. Mauldin believes there is no physical basis for the Claimant's complaints. His opinion is supported by a negative MRI in 1994, a negative EMG in 2000, and the fact the Claimant's pain does not appear to have been helped by any treatment. Dr. Mauldin's opinion is supported by other experts.

In the context of a strong controversy over what may be wrong with the Claimant, Dr. Sazy's plea to be permitted to perform testing to try to determine the exact nature of her problem was persuasive. A controversy over testing is not the same as one over treatment because its purpose is to determine what is needed rather than to perform a particular procedure. Although there is some doubt on the issue, the preponderant evidence shows the testing is reasonably required by the nature of the Claimant's injury in view of the long and conflicting nature of the evidence on the Claimant's injury.

III. FINDINGS OF FACT

1. _____, the Claimant, suffered a compensable injury on _____, when she was run over by a pallet jack at work.
2. After extensive treatment over a period of several years, the Claimant presented to John A. Sazy, M.D., an orthopedic surgeon who last saw her in May 2002.
3. In May 2002, Dr. Sazy requested that certain procedures be preauthorized, including the procedures at issue in this case, a CT discogram and a magnetic resonance imaging (MRI).
4. Winn Dixie Stores, the Carrier, denied Dr. Sazy's requests.
5. Dr. Sazy requested medical dispute resolution.
6. Two independent review organization reports denied Dr. Sazy's request.
7. Dr. Sazy requested a hearing before the State Office of Administrative Hearings, seeking preauthorization of the CT discogram and MRI.
8. The MRI and CT discogram will provide Dr. Sazy with a better idea of the nature of the Claimant's current condition and how to proceed with her treatment.

9. A May 27, 1997, CT discogram of the Claimant's spine showed concordant low back pain after an injection at the L3/L4 level of her spine.
10. The May 27, 1997, discogram was an indication for spinal surgery.
11. The Claimant's treatment of her compensable injury was never completed because of the revocation of the medical license of her doctor at that time.
12. Electromyogram tests performed on June 12, 1997, show bilateral L/5 radiculopathy, supporting the credibility of the Claimant's pain complaints.
13. The 1997 tests are too remote in time to serve as a basis for current treatment decisions.
14. The Claimant is still experiencing debilitating pain.
15. The CT discogram and MRI are reasonably required by the nature of the Claimant's injury.
16. A hearing was conducted on February 18, 2003.
17. Dr. Sazy and the Carrier attended the hearing.
18. 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.
19. 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. The CT discogram and MRI are medically necessary. TEX. LABOR CODE ANN. §§ 401.011(19) and 408.021.
4. The Carrier should pay for the CT discogram and MRI.

ORDER

IT IS, THEREFORE, ORDERED that the magnetic resonance imaging and CT discogram requested by John A. Sazy, M.D., on behalf of the Claimant be, and the same are hereby, authorized.

IT IS ORDERED FURTHER that Winn Dixie Stores pay for providing the Claimant with a magnetic resonance imaging and CT discogram.

SIGNED this 4th day of March, 2003.

JAMES W. NORMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS