

**DOCKET NO. 453-03-1326.M5
TWCC MDR Tracking M5-02-2072-01**

NORTH TEXAS OPEN AIR MRI,	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	OF
	§	
PACIFIC EMPLOYERS INSURANCE COMPANY,	§	
<i>Respondent</i>	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

North Texas Open Air MRI (North Texas) appealed an Independent Review Organization (IRO) decision concluding that Pacific Employers Insurance Company (Pacific Employers) should not be required to pay for magnetic resonance imaging (MRI) tests on the knees and lumbar spine of an injured worker (Claimant) performed on September 19, 2001. This decision concludes that Pacific Employers should pay for the knee MRIs but not the lumbar spine MRI.

I.

JURISDICTION & HEARING

The hearing was held on March 25, 2003, and April 7, 2003, before James W. Norman, Administrative Law Judge, at the State Office of Administrative Hearings (SOAH), 300 West 15th Street, Austin, Texas. North Texas appeared and was represented by H. Douglas Pruett, Attorney. Pacific Employers appeared and was represented by Christine Karcher, Attorney. The record was left open until April 30, 2003, for the filing of briefs. On May 2, 2003, North Texas filed an objection to a portion of Pacific Employers' brief. The record closed on May 2, 2003.

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

II.

DISCUSSION

A. Factual Background

On ____, while working at ____, the Claimant tripped over a co-worker's foot. She fell forward onto her right knee, twisted her back, and landed squarely on her back.

She presented to ____, on September 17, 2001, who performed diagnostic tests and referred her to North Texas for MRIs of the lumbar spine and both knees. North Texas performed the MRIs on September 19, 2001. The reports were essentially normal.¹

B. Scope of Dispute^{2, 3}

For the reasons explained below, the ALJ concludes that the issues to be decided in this case are those expressed in a peer review by ____, and those necessarily implied from denial code T.⁴

¹Ex. 1 at 22.

²The parties agree that the Spine Treatment Guideline (SPTG) and Lower Extremities Treatment Guideline (LETG) contained in former Commission Rules 28 TAC §§134.1001 and 134.1003 respectively apply to this case because they were in effect at the time of treatment and claim denial. (The guidelines were repealed effective January 1, 2002.)

³Pacific Employers' stated reason for denial was "Treatment/service falls outside parameters set in treatment guidelines."

⁴The T code ground for denial is styled "Treatment guidelines," with the explanation "Used when the IC is reducing or denying payment because the t/s falls outside the parameters set in the appropriate TWCC treatment guideline AND is not sufficiently documented to support the medical necessity of providing the t/s outside the parameters. An IC can NOT deny payment solely because t/s is outside the parameters in a treatment guideline." (Capitalizations in original.)

With the exception of the time recommendations for diagnostic interventions contained in the treatment guidelines, Pacific Employers is precluded from raising denial code T matters unless it also provided “a sufficient explanation to allow the sender to understand the reason(s) for the carrier’s action(s),” as required by 28 TAC § 133.304(c).⁵ The treatment time line exception is based on a general industry understanding that the words “parameters set in the appropriate TWCC treatment guideline” include at least the time recommendations for diagnostic interventions. This understanding was shown by Pacific Employers witness ____, who testified that the knee MRIs were within the LETG (because they were not outside any time line recommendation) and by North Texas’ acknowledgment on page 6 of its brief that “[T]he term “parameter” means treatment time lines, it does not mean documentation.”

Pacific Employers argued that it fully complied with § 133.304(c) because: (1) the rule requires that an insurance carrier must deny payment “in the form and manner prescribed by the commission;” (2) the form and manner prescribed by the Commission is simply a statement of denial code T; and (3) the absence of any need for further explanation of a code T denial was demonstrated by codes N and X, which expressly require further explanation or documentation. The ALJ finds this argument unconvincing because § 133.304(c) also says the “manner” of a required claim denial includes a sufficient explanation to allow the provider to understand the reason for the insurance carrier’s action. The rule requirement

⁵Section (c) provides,

(c) At the time an insurance carrier makes payment or denies payment on a medical bill, the insurance carrier shall send, in the form and manner prescribed by the Commission, the explanation of benefits to the appropriate parties. The explanation of benefits shall include the correct payment exception codes required by the Commission’s instructions, and shall provide sufficient explanation to allow the sender to understand the reason(s) for the insurance carrier’s action(s). A generic statement that simply states a conclusion such as “not sufficiently documented” or other similar phrases with no further description of the reason for the reduction or denial of payment does not satisfy the requirements of this section. . . .

became effective on July 15, 2000, more than a year before Pacific Employers denied the claim. It tracked the language of § 408.027(d) of the Labor Code, which has been in effect for many years.

Based on the above discussion, Pacific Employers' stated reason for denial, "Treatment/service falls outside parameters set in treatment guidelines," raises the treatment timeline issue and the concurrent issue expressly stated in denial code T (see quoted language in footnote 3) that the medical necessity of providing services outside the denial code parameters must be documented.

The following additional reasons for denial, stated in ___'s peer review, should also be considered:

. . . I do not agree with MRIs being performed 5 days after the injury and 2 days following the diagnostic radiographs. The MRIs were premature in that treatment had only been initiated 2 days prior without giving the patient time to respond to treatment. Further based on the initial evaluation and the x-rays I do not feel there was sufficient clinical findings to warrant the diagnostic MRIs.⁶

The peer review shows North Texas was notified of the following additional reasons for the claim denial: the MRIs were performed too soon to give the Claimant time to respond to treatment; and there were insufficient clinical findings to warrant the MRIs.⁷

C. MRI of the Lumbar Spine

Based on the discussion in Part B above, North Texas must demonstrate that the medical necessity of providing the MRI outside the SPTG time parameters (six weeks rather than five days post-injury)⁸ was sufficiently documented, that the MRI was not done too soon to give the Claimant time to respond to treatment, and that there were insufficient clinical findings to warrant the test.

For several reasons discussed below the ALJ concludes that the documentation did not persuasively support the medical necessity of providing the MRI outside the SPTG time parameters. It is

⁶Ex. 2 at 28.

⁷North Texas cited SOAH Docket 453-02-0731.M5, written by the undersigned ALJ, in support of its argument that Pacific Employers' stated reason for denial was inadequate. However, the fact findings and legal conclusions in that case show the decision hinged on the carrier's failure to provide a peer review to the provider after repeated requests, rather than a failure to adequately explain a denial code. Any dicta statement by the ALJ that the words "unnecessary medical treatment or service" are *per se* (always) inadequate is hereby disavowed.

⁸See the SPTG time line at 28 TAC § 134.1001(f)(2) and (3).

notable that the decision to provide the MRI was made only three days after the injury, when ___ first saw the Claimant and the MRI was performed two days later, on ____.

___ acknowledged that the Claimant was still in the acute phase of her injury, meaning her body was in a heightened state of inflammation.

North Texas cited the zero rating on the right Achilles S1 reflex portion of the ___'s initial examination as strong support for treatment/service outside the SPTG. Subsection (i)(5)(A) of the SPTG says "in cases of significant neurological deficit, diagnostics (E) & (F) [CT scans and MRIs] may also be appropriate for use in the first six weeks of treatment." Significant neurological deficit is defined at subsection (j)(53) of the SPTG to include "signs of sensory impairment."

The North Texas Achilles-S1-reflex argument was unconvincing.⁹ The SPTG says MRIs **may** be appropriate in the case of a significant neurological deficit. The evidence did not persuasively show why this case would justify an exception to the general rule (six weeks from the injury). To the contrary, ___'s testimony that the Claimant's soft tissue trauma and the resultant uptake of fluids could have caused the neurological package to be deficient was persuasive and uncontradicted. The same was true of his testimony that a traumatic event can cause the spine to go into temporary shock. ___'s testimony that ___'s finding in his initial narrative report that the Claimant's "toes are downgoing" is contrary to a negative S1 finding also carried weight.¹⁰ Moreover, ___ acknowledged that the Claimant's ability to walk heel to toe is indicative of an absence of problems at S1.

North Texas also maintained the Claimant's statement¹¹ that her low back pain radiated was an indication of a "significant neurological deficit" justifying departure from the parameters of the SPTG—the Claimant described the symptom as "tingling" rather than painful. This argument was unpersuasive because there was no expert evidence that tingling was a sign of sensory impairment.

⁹The results of this and other tests for the lumbar spine are shown at page 26 of Exhibit 1.

¹⁰ ___ conceded on cross-examination that the narrative did not specify on which foot the toes were downgoing—he agreed if the note referred to the left foot, it would not have contradicted the test because the negative reflex occurred on the right leg. However, the most reasonable interpretation of the note was simply that all the toes went down. It would seem peculiar to note toes as going down on one foot and not the other without saying so.

¹¹Ex. 1 at 12.

___ testified persuasively that the results in most of the other tests ___ identified as positive indicators for the MRI could have been false positives because of inflammation and fluid accumulation. His testimony that one would normally expect symptom reduction over time was convincing.

___ acknowledged that the Claimant's pain began to subside on September 20, 2001, the day after the MRI. There was further reduction a week later, beginning on September 27.

___ and the IRO doctor said the results of Claimant's physical examination by a medical consultation doctor, ___, on September 20, 2001, were essentially normal. ___ agreed the Claimant's bilateral reflexes were practically normal.

The IRO examining doctor, a medical doctor, saw "absolutely no indication" for an early MRI. He said an MRI five days after the injury should be supported by some physical evidence of the need for the test, but there was none. He concluded the MRI was performed "somewhat hastily."

Although North Texas correctly argued that ___ and Pacific Employers' doctor ___, both examined the Claimant and both concurred with the need for the MRI, their opinions were not really explained. ___ noted that the Claimant's lumbar spine showed decreased range of motion, with evidence of severe pain, spasm, paraspinous muscle group tenderness, and midline tenderness down to the region of the sacro-iliac joints, but did not say how that led him to conclude the MRI was warranted. Additional explanation by ___ and ___ might have been persuasive.

In conclusion, one can assume there are persuasive reasons for the SPTG's recommendation that under usual circumstances, MRIs should not be done during the first six weeks after an injury. North Texas did not identify those reasons and convincingly rebut them. On the other hand, ___ did express persuasive reasons that an MRI of the spine is ordinarily not appropriate until six weeks post-injury and demonstrated why those reasons apply to this case.

D. MRIs of the Knees¹²

The following issues applicable to the knee MRIs were stated in ___'s peer review: whether the MRIs were performed too soon to give the Claimant time to respond to treatment; and whether there were insufficient clinical findings to warrant the MRIs. The ALJ concludes the MRIs were timely and there were sufficient clinical findings to justify them.

¹²On May 2, 2003, North Texas filed objections to considering an attachment to Pacific Employers' April 11, 2003, brief entitled *Photographic Manual of Regional Orthopaedics and Neurological Tests*. The document referred to knee care. North Texas said it would be prejudiced by considering this evidence because it has not had a chance to give it to its expert and elicit responsive testimony. Pacific Employers did not respond to the objection. The objection is sustained.

An important distinction between the knee and lumbar MRIs is that the LETG says knee MRIs are indicated during the first two months post-injury to further diagnose meniscus tears.¹³ ___'s initial diagnosis included a possible meniscus tear.¹⁴

___ found effusion bilaterally on the Claimant's knees. The LETG provision that says a meniscus tear is an MRI indicator also says swelling is an indicator for a meniscus tear.¹⁵

___ testified that the McMurray's test was the "gold standard" for meniscus tears. He pointed out that ___ failed to make a positive finding for that test (on September 17, 2001, when he first saw the Claimant and then later on October 4, 2001).¹⁶ However, ___ did make a positive McMurray's test finding.¹⁷

¹³28 TAC § 134.1003(f)(5)(D).

¹⁴Pacific Employers pointed out that ___ did not make this diagnosis until his "Initial Narrative Report," dated September 26, 2003, one week after the knee MRIs. However, ___ said in his September 26 report that it was a compilation of his notes. Ex. 1 at 18. Moreover, the findings on which he based his possible-meniscus-tear conclusion, the Appley's compression and grinding tests, are shown in his September 17, 2001, notes. Ex. 1 at 27. There is insufficient reason to believe he was fabricating the September 26 report.

¹⁵28 TAC § 134.1003(f)(5)(D). (___ testified that swelling was a reason to postpone an MRI.)

¹⁶Ex. 1 at 27; Ex. 2 at 55.

¹⁷Ex. 1 at 44.

The IRO doctor's opinion on the knee MRIs was brought into question by an implicit conflict between his and ___'s opinions. After reviewing ___'s findings and other materials, the IRO doctor said there is "absolutely no indication for early MRIs of both knees." However, as indicated above, ___'s evaluation included a positive McMurray's test finding.¹⁸

___ testified that because all the tests ___ performed¹⁹ would likely be positive as a result of the pain, swelling, and inflammation during the acute phase of the injury, the MRI was not indicated. He said the fact the Claimant was ambulatory also showed she could have waited for the tests. He asserted it would have been better to wait to see if symptoms such as pain and swelling resolved. He said osteoarthritis could cause positive results in the Appley's compression test and this possibility could have been resolved by waiting for x-ray results before ordering the MRI.

The IRO doctor agreed that the early tests were not warranted. ___'s opinion carried significant weight and might have been decisive except that all the doctors who actually examined the Claimant concluded the knee MRIs were necessary. ___ stated his opinion after reaching positive findings for effusion and on the McMurray's and Appley's tests. ___ was specifically asked to comment on the medical necessity of the extensive diagnostic work-up; he concluded that the Claimant's treatment was appropriate.

Based on the above discussion, the ALJ concludes that the preponderant evidence shows the MRIs of the Claimant's knees were not performed too soon and there were sufficient clinical findings to warrant them.

III.

FINDINGS OF FACT

1. On ___, while working at ___, the Claimant tripped over a co-worker's foot and fell

¹⁸Ex. 1 at 5, 44.

¹⁹___ testified that the tests and symptoms causing him to conclude the knee MRIs were warranted included limited range of motion with pain in both knees; visible swelling in both knees; a bruise on the right knee; positive posterior and anterior drawer tests for both knees; positive Appley's compression, grinding, and distraction for both knees; and the nature of the injury.

forward onto her right knee, twisted her back, and landed squarely on her back.

2. The Claimant presented to ____, on September 17, 2001, who performed tests and referred her to North Texas Open Air MRI (North Texas) for a magnetic resonance imaging (MRI) of the lumbar spine and MRIs of both knees.
3. North Texas performed the MRIs on September 19, 2001.
4. All the MRI results were essentially normal.

MRI of the Lumbar Spine

5. The issues to be determined concerning the appropriateness of the lumbar spine MRI are whether North Texas can demonstrate that: the medical necessity of providing the MRI outside the Spine Treatment Guideline (SPTG) time parameters (six weeks after the injury) was adequately documented; the MRI was not performed too soon to give the Claimant time to respond to treatment; and there were not insufficient findings to warrant the MRI.
6. The documentation did not support the medical necessity of providing the MRI outside the SPTG time parameters.
 - a. The MRI was performed on ____, five days after the injury.
 - b. The Claimant was still in the acute phase of injury, when her body was in a heightened state of inflammation.
 - c. During the acute phase of the injury the trauma and resultant uptake of fluids could have caused the neurological package to be deficient.
 - d. A traumatic event can cause the spine to go into temporary shock.
 - e. The Claimant's toes were downgoing at the time of her initial examination by ____ on ____.
 - f. The Claimant was able to walk heel to toe at the time of her initial examination by ____.
 - g. The results of most of the tests ____ identified as positive indicators for the lumbar MRI could have been caused by inflammation and fluid accumulation.
 - h. The Claimant's pain began to subside within a few days after her injury.
 - i. North Texas did not identify and rebut the reasons that the lumbar spine MRI is

ordinarily not warranted until six weeks after an injury.

MRIs of the Knees

7. The issues to be determined for on appropriateness of the knee MRIs are whether North Texas can demonstrate that the MRIs were not performed too soon to give the Claimant time to respond to treatment and there were not insufficient findings to warrant the MRIs.
8. The MRIs were not performed too soon and there were sufficient clinical findings to warrant them.
 - a. On the initial ____, examination of the Claimant, ____ found swelling of the knees.
 - b. The McMurray's test is the "gold standard" for determining the presence of a meniscus tear.
 - c. The medical consultation doctor for the Claimant, ____, found the Claimant positive for the McMurray's and Appley's tests.
 - d. Other positive indicators for performing the knee MRIs were limited range of motion with pain in both knees; visible swelling in both knees; a bruise on the right knee; positive posterior and anterior drawer tests for both knees; positive Appley's compression, grinding, and distraction for both knees; and the mechanism of the injury.

Notice

9. All parties received at least ten days notice of the hearing, that included 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.
10. All parties had an opportunity 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(d) and TEX. GOV'T CODE ANN. ch. 2003.
2. The parties received proper and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. The standards stated in the Spine Treatment Guideline (former 28 TEX. ADMIN. CODE (TAC) § 134.1001) and Lower Extremities Treatment Guideline (former 28 TAC § 134.1003) apply to the MRIs done in this case.
4. The SPTG recommends that MRIs of the lumbar spine not be done until at least six weeks from the date of the injury unless there are exceptional circumstances. Former 28 TAC § 134.1001(f)(2) and (3).
5. Pacific Employers Insurance Company should not be required to pay for the lumbar spine MRI.
6. The LETG provides that an MRI may be indicated during the first two months after injury to diagnose a meniscus tear. Former 28 TAC § 134.1003(f)(50(D)).
7. Swelling is an indication of a knee meniscus tear. Former 28 TAC § 134.1003(f)(50(D)).
8. Pacific Employers Insurance Company should be required to pay for the knee MRIs.

ORDER

IT IS THEREFORE ORDERED that Pacific Employers Insurance Company pay North Texas Open Air MRI for the bilateral knee MRIs performed on the Claimant on September 19, 2001.

IT IS ORDERED FURTHER that Pacific Employers Insurance Company is not required to pay North Texas Open Air MRI for the lumbar spine MRI performed on the Claimant on September 19, 2001.

Signed this 26th day of June 2003.

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

