

**DOCKET NO. 453-03-2033.M2**  
**[MDR TRACKING NO. M2-03-0317-01]**

_____, <i>Petitioner</i>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
	§	
<b>VS.</b>	§	
	§	<b>OF</b>
<b>NATIONAL UNION FIRE INSURANCE</b>	§	
<b>COMPANY OF PITTSBURGH, PA,</b>	§	<b>ADMINISTRATIVE HEARINGS</b>
<i>Respondent.</i>	§	

**DECISION AND ORDER**

\_\_\_\_ (Claimant), challenged the decision of the National Union Fire Insurance Company of Pittsburgh, PA (Carrier), denying preauthorization for epidural steroid injections (injections). In this decision, the Administrative Law Judge (ALJ) finds that Claimant met her burden of showing that the requested procedures are medically necessary and should have been preauthorized. Therefore, the ALJ orders Carrier to authorize the requested injections.

The hearing convened and closed on April 4, 2003, before ALJ Steven M. Rivas, with the State Office of Administrative Hearings (SOAH). Claimant appeared and was assisted by Juan Mireles, Ombudsman. Carrier appeared and was represented by Rhett Robinson, attorney.

**I.**  
**DISCUSSION**

1. Background Facts

Claimant was employed as a nurse and sustained a compensable lower back injury on \_\_\_\_\_, when she tried to lift a patient. After her injury, Claimant was treated by numerous physicians and participated in several pain management modalities. Claimant had some relief from her ongoing treatment, but still experiences lower back pain. A preauthorization request for injections for Claimant's back pain was denied by the Carrier as not medically necessary. The dispute was referred to an Independent Review Organization (IRO), which agreed with Carrier in denying preauthorization for the injections. Claimant appealed the IRO decision to SOAH.

2. Applicable Law

Pursuant to the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. § 408.021 *et seq.*, an employee who sustains a compensable injury is entitled to all 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.

Under § 401.011(19) of the Act, health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.

Certain categories of health care identified by the Commission require preauthorization, which is dependent upon a prospective showing of medical necessity under the Act § 413.014 and 28 TEX. ADMIN. CODE (TAC) § 134.600. In this instance under 28 TAC § 134.600(h)(10)(B),

preauthorization is required for rehabilitation programs that include chronic pain management/interdisciplinary pain rehabilitation.

### 3. Evidence

On November 7, 2001, Claimant came under the care of Donald Bacon, M.D., for treatment of her compensable back injury.<sup>1</sup> Claimant complained of lower back pain and numbness in parts of her legs. Dr. Bacon performed an MRI on Claimant on December 26, 2001, which revealed mild to moderate lumbar spondylosis, and mild stenosis at the L4-L5 and L5-S1 levels. Spondylosis is defined as the dissolution of a vertebra,<sup>2</sup> and spinal stenosis refers to the narrowing of the vertebral canal of the lumbar region.<sup>3</sup> Based on the results of the MRI, Dr. Bacon prescribed a series of injections to relieve the pain in Claimant's lower back. Dr. Bacon also diagnosed Claimant with radiculopathy, a pathological condition of a nerve root. According to Dr. Bacon, this condition causes a patient's legs to feel numb.

The first injections were performed on January 30, 2002, and Claimant reported "temporary relief" from the injections. On February 27, 2002, Dr. Bacon administered a second set of injections, which again brought temporary relief to Claimant.

On March 6, 2002, Dr. Bacon requested preauthorization to administer a third set of injections to Claimant, but was denied by the Carrier as not medically necessary. Dr. Bacon's repeated request for preauthorization on May 28, 2002, was again denied as not medically necessary.

Dr. Bacon admitted Claimant has also been treated for her injury by other methods such as counseling, aquatic therapy and medication.<sup>4</sup> Both Claimant and Dr. Bacon testified none of the treatment Claimant has undergone has brought any lasting relief.

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<sup>1</sup> Claimant was referred to Dr. Bacon by Alan Young, M.D. Claimant has also been treated by Gerald Greenfield, M.D., Cheryl Anderson, M.D., Rosie Butts, M.D., and Erlinda Belvis, M.D.

<sup>2</sup> DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, 27th Edition, 1994, at page 1563.

<sup>3</sup> *See Id.*, at page 1576.

<sup>4</sup> While not addressed at the hearing, Claimant's medication regimen would understandably cause concern. At various times during her treatment, Claimant has been prescribed Konopin to treat panic disorders, Xanax for anxiety disorders, Remerson for depression, Levsin for ulcers, Wellbutrin for depression, Vicodin for pain, Colace, a laxative, and Robaxin, a sedative. PHYSICIANS' DESK REFERENCE, 56th Edition, 2002.

Dr. Bacon testified the injections in question are just one type of “modality” that is being utilized to treat Claimant for her back pain. In addition to prescribing the injections, Dr. Bacon has also prescribed medication, counseling, a therapeutic adjustable bed, and aquatic therapy.

Carrier asserted it denied preauthorization for the requested injections because Claimant’s prior injections only resulted in partial relief, and the requested injections will also bring only a short period of relief.<sup>5</sup> Dr. Bacon agreed the prior injections brought Claimant some relief, and that the requested injections in this case will also bring Claimant some relief of her back pain.

Carrier also presented evidence that Claimant benefitted from the aquatic therapy she performed. Claimant attended one session of aquatic therapy on January 6, 2003, at The Palestra Rehabilitation and Sport Training Center in San Antonio, Texas, under the direction of Steven M. Vinson, PT, OCS. Carrier pointed out that the therapist’s treatment plan called for only aquatic therapy as well as home exercise.<sup>6</sup> Carrier argued Claimant should not receive preauthorization for the injections, because she derived benefit from other treatment methods like aquatic therapy.

Finally, Carrier argued Claimant’s request for injections should be denied, because Dr. Bacon intended to request a discogram rather than a third set of injections. According to Dr. Bacon, a discogram is a procedure that can accurately determine if Claimant’s back pain is originating from a vertebral disc.<sup>7</sup> Dr. Bacon’s preauthorization request for a discogram was denied by Carrier along with the preauthorization request for these injections. Carrier asked Dr. Bacon why he did not pursue the discogram, and Dr. Bacon admitted it “must have fallen through the cracks, but a discogram is still on the list of treatment plans for Claimant.” Dr. Bacon testified a discogram can be administered in place of injections or after the treatment by injections is complete.

#### 4. Analysis and Conclusion

Carrier asserted the injections are not medically necessary because Claimant’s relief from back pain will only last a “short period.” The ALJ agrees that any relief from the injections will likely be for a brief period. However, the statute does not stipulate that an employee is entitled to health care *so long as* such health care renders a long lasting or permanent relief of pain. Under the Act § 408.021(a), an employee who sustains a compensable injury is entitled to all health care that cures or relieves the effects naturally resulting from the compensable injury. The statute does not place a minimum amount of time that an employee must experience relief from her injuries in order to be entitled to health care. The statute only says that an employee who sustains a compensable injury is entitled to all health care that cures or relieves the effects from the compensable injury.

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<sup>5</sup> Letter of denial from Carrier dated October 21, 2002. Page 5 of Claimant’s exhibit.

<sup>6</sup> Physical therapy assessment dated December 31, 2002. Pages 9-10 of Carrier’s exhibit.

<sup>7</sup> Dr. Bacon testified if Claimant’s back pain is due to disc pathology, Claimant may require surgery.

Since Carrier admitted the injections will bring Claimant some relief, Carrier's rationale for denying preauthorization is not persuasive.

The rationale for the IRO decision is also unpersuasive. The decision states, "Pain management modalities other than epidural steroid injections have been at least as effective." This is true, but, according to Dr. Bacon, the other modalities (aqua therapy, medication, counseling, and a therapeutic bed) were prescribed as part of a series of non-surgical treatment. If any other "modality," for instance, medication, was shown to be effective, it would not make sense to halt any or all other "modalities" simply because one was shown to be effective.

The IRO decision also states, "There is no reason presented to suggest that additional epidural steroid injections would be beneficial." This assertion is simply incorrect. The testimony of Dr. Bacon and Claimant is that Claimant derived some relief from the prior injections. Therefore, it stands to reason Claimant will again benefit from another series of injections. Furthermore, there was no evidence presented by Carrier or contained in the IRO decision to indicate another series of injections would be detrimental to Claimant. The statement contained in the IRO decision is not supported by any of the evidence presented to the ALJ.

For the foregoing reasons, the ALJ concludes that the requested procedures are reasonable and medically necessary medical care for Claimant's compensable injury, and they should be preauthorized.

## **II. FINDINGS OF FACTS**

1. On \_\_\_\_\_, \_\_\_\_\_ (Claimant) was employed as a nurse and sustained a compensable back injury when she tried to lift a patient.
2. At the time of Claimant's compensable injury, Claimant's employer was covered by National Union Fire Insurance Company of Pittsburgh, PA (Carrier), under the Texas Workers' Compensation Act.
3. After her injury, Claimant underwent treatment by numerous physicians but found no relief from her back pain.
4. On November 7, 2001, Claimant came under the care of Donald Bacon, M.D. Claimant complained of lower back pain, and Dr. Bacon performed an MRI on Claimant on December 26, 2001.
5. The results of the MRI revealed mild to moderate lumbar spondylosis and mild stenosis at the L4-L5 and L5-S1 levels.
6. Dr. Bacon administered epidural steroid injections (injections) to Claimant's back on January 30, 2002. Claimant reported some back pain relief from the injections.
7. Dr. Bacon administered a second set of injections to Claimant's back on February 27, 2002, and Claimant again reported some back pain relief.

8. Dr. Bacon requested preauthorization for a third set of injections, and Carrier denied the request as not medically necessary.
9. Claimant requested medical dispute resolution through an Independent Review Organization (IRO). The IRO reviewed the dispute and issued a decision on December 20, 2002, finding that the requested procedures were not medically necessary.
10. Claimant appealed the IRO decision to the State Office of Administrative Hearings (SOAH).
11. Notice of the hearing in this case was mailed to the parties on February 10, 2003. 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. In the notice, the Commission's staff indicated that it would not participate in the hearing.
12. The hearing convened and closed on April 4, 2003, before Steven M. Rivas, Administrative Law Judge (ALJ). Claimant appeared with Juan Mireles, Ombudsman. Carrier appeared through Rhett Robinson, attorney.
13. The injections were prescribed as part of a treatment plan that included other modalities.
14. The prior injections rendered some pain relief to Claimant.
15. The requested injections will likely render some relief to Claimant, and they will not be detrimental to her.

### **III. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE § 413.031.
2. 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. GOV'T CODE ANN. ch. 2003.
3. Claimant timely filed its notice of appeal, as specified in 28 TEX. ADMIN. CODE § 148.3.
4. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE § 2001.052 and 28 TEX. ADMIN. CODE §148.4.
5. Under TEX. LABOR CODE § 408.021(a)(1), 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 that cures or relieves the effects naturally resulting from the compensable injury.
6. Claimant met her burden of proof to show that the requested injections should be preauthorized.

7. Based on the above Findings of Facts and Conclusions of Law, Claimant's request for preauthorization of the requested injections should be granted.

**ORDER**

IT IS ORDERED THAT the injections requested by Claimant be preauthorized.

**Signed this 30<sup>th</sup> day of April, 2003.**

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**STEVEN M. RIVAS  
STATE OFFICE OF ADMINISTRATIVE HEARINGS  
ADMINISTRATIVE LAW JUDGE**