



## B. Legal Standards

Petitioner has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE § 148.21(h). Pursuant to the Texas Worker's Compensation Act, an employee who has sustained 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 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. TEX. LAB. CODE ANN. § 408.021(a).

### 3. Evidence

In this case, Petitioner has the burden of proof because the IRO determined that the discogram was not medically necessary. Petitioner testified on her on her own behalf, and the ALJ admitted in evidence the medical reports in which Petitioner's doctors recommend the discogram. Petitioner testified that she had suffered lower back pain for two years without any relief. Petitioner has had epidural injections with only temporary and mild improvement. Petitioner has also had four weeks of physical therapy with no improvement in her symptoms. Petitioner's MRI of the lumbosacral spine showed L5-S1 disc desiccation and disc bulging. Based on the lack of success of the physical therapy and the epidural injections, and the results of the MRI, Dr. Giri and Dr. Ravula recommended the discogram to further evaluate Petitioner's condition. Petitioner's Ex. 1 at 1-4.

Respondent offered and the ALJ admitted in evidence the medical documents it submitted to the IRO.<sup>1</sup> Respondent did not present any witnesses. Respondent argues that the discogram is not medically necessary. In reaching this conclusion, Respondent relies on the July 19, 2001 MRI, which showed normal lumbar alignment and no spondylolysis. It further relies on the June 28, 2001 x-rays, which showed normal lordotic curvature in the lumbar spine.<sup>2</sup> Because the injury did not involve a herniated disc, Respondent does not believe the discogram is warranted.

### 4. ALJ's Analysis

The ALJ finds that the preauthorization is warranted in this case. Petitioner testified that she has been in pain for two years. The epidural injections and physical therapy did not provide her any relief. She now takes vicodin to deal with her pain. Dr. Ravula and Dr. Giri, both highly trained physicians, have recommended the discogram to further evaluate Petitioner's lower back pain. In his

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<sup>1</sup> These records included the preauthorization denials and the peer review report. *See* Respondent's Ex. 1.

<sup>2</sup> The MRI and x-rays were never offered in evidence, but the IRO decision, which is in evidence, references the MRI and the x-rays.

report, Dr. Giri stated that he could not continue to treat Petitioner without the discogram. Petitioner's Ex. 1 at 2. The peer review report indicated that Petitioner should participate in a physical therapy program to treat her lower back pain. Respondent's Ex. 1 at 7. Petitioner participated in a physical therapy program for four weeks, but the program offered her no relief. The evidence shows that Petitioner's doctors have tried to treat Petitioner's pain through physical therapy and epidural injections with no success. Because Petitioner has not responded to standard treatment, the doctors need more information, through the discogram, to determine the cause of Petitioner's pain and to develop a satisfactory treatment plan. For these reasons, the discogram is medically necessary.

### **III. FINDINGS OF FACT**

1. On \_\_\_\_\_, \_\_\_\_\_ (Petitioner) suffered a compensable lower back injury while lifting copy paper to place in the copy machine.
2. At the time of Petitioner's compensable injury, Mesquite ISD (Respondent) was the self-insured workers' compensation insurer.
3. Petitioner suffers from lower back pain caused by the injury.
4. Petitioner received epidural injections and participated in four weeks of physical therapy, neither of which relieved her pain.
5. Petitioner's MRI of the lumbosacral spine showed L5-S1 disc desiccation and disc bulging.
6. Bala K. Giri, M. D., a neurosurgeon, and Radhika Ravula, M. D., a pain management doctor, seek preauthorization for a lumbosacral spine discogram (discogram) to determine the source of Petitioner's pain.
7. Without the discogram, Dr. Giri and Dr. Ravula cannot treat Petitioner's lower back pain.
8. The preauthorization request was submitted, and Respondent repeatedly denied the request, stating that the discogram was not medically necessary.
9. In a decision issued December 20, 2002, the Independent Review Organization (IRO) denied preauthorization for the discogram.
10. On January 27, 2003, Petitioner appealed the IRO's decision and requested a hearing before the State Office of Administrative Hearings (SOAH).
11. On February 18, 2003, the Texas Worker's Compensation Commission (Commission) issued the notice of hearing.

12. 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 held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
13. On March 13, 2003, Administrative Law Judge (ALJ) Michael J. O'Malley convened the hearing on the merits. Respondent appeared through its attorney, Mark H. Sickles. Petitioner appeared at the hearing and was assisted by Juan Mireles, Ombudsman for the Commission.
14. Because Petitioner suffers from continued pain in her lower back, preauthorization of the discogram is warranted to determine the source of her pain and to develop an appropriate treatment plan.

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

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (the Act), TEX. LABOR CODE ANN. § 413.031.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(d) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Petitioner had the burden of proof in this case pursuant to 28 TEX. ADMIN. CODE § 148.21(h).
6. Petitioner proved that the discogram should be preauthorized.
7. Petitioner, who sustained a compensable injury, is entitled to all health care reasonably required by the nature of the injury as and when needed. She is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances her ability to return to or retain employment, which would include the discogram requested by Petitioner. The Act § 408.021(a).
8. Petitioner's request for preauthorization for the discogram is medically necessary and should be approved.

**ORDER**

**IT IS ORDERED** that preauthorization for the discogram, requested by Petitioner, is granted.

**SIGNED this 21<sup>st</sup> day of March 2003.**

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**MICHAEL J. O'MALLEY**  
**Administrative Law Judge**  
**State Office of Administrative Hearings**