

**SOAH DOCKET NO. 453-03-2175.M2**  
**[MDR TRACKING NO. M2-03-0461-01]**

<b>JOHN A. SAZY, M.D.,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<i>Petitioner</i>	§	
	§	
<b>VS.</b>	§	<b>OF</b>
	§	
<b>LUMBERMAN'S MUTUAL</b>	§	
<b>CASUALTY COMPANY,</b>	§	<b>ADMINISTRATIVE HEARINGS</b>
<i>Respondent.</i>	§	

**DECISION AND ORDER**

John A. Sazy, M.D. (Provider), challenged the decision of Lumberman's Mutual Casualty Company (Carrier) denying preauthorization for a CT myelogram and EMG for \_\_\_ (Claimant). In this decision, the Administrative Law Judge (ALJ) finds that Provider met its burden of showing that the requested procedures are reasonable and necessary medical care and should have been preauthorized. Therefore, the ALJ orders Carrier to authorize the requested procedures.

The hearing convened and closed on March 18, 2003, before Steven M. Rivas, Administrative Law Judge (ALJ). Provider appeared and represented himself. Carrier appeared and was represented by Wayne Gill, hearing representative.

**I.**  
**DISCUSSION**

**1. Background Facts**

Claimant sustained a compensable head and neck injury on \_\_\_\_\_, when a box of Coney Island hot dogs fell on top of her. After her injury, Claimant was treated by Kristopher Schmidt, D.C., and Kent Weldon, D.O., who administered epidural steroid injections to parts of her neck and rendered general chiropractic care. Claimant reported no improvement following this initial treatment and subsequently came under the care of Provider on March 8, 2002. Provider recommended Claimant undergo a CT myelogram<sup>1</sup> and EMG<sup>2</sup> to further investigate the cause of Claimant's pain. Provider's request for preauthorization to administer these tests was denied by the

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<sup>1</sup> A diagnostic procedure where a radiopaque contrast dye is injected into the spinal canal. X-rays are then performed which reveal the anatomy of the spinal canal. Myelograms can be used to diagnosis disk disease, spinal stenosis and tumours of the spinal canal. On-line Medical Dictionary; Published at the Dept. of Medical Oncology, University of Newcastle Upon Tyne.

<sup>2</sup> A test which measures muscle response to nerve stimulation. Used to evaluate muscle weakness and to determine if the weakness is related to the muscles themselves or a problem with the nerves that supply the muscles. Also known as electromyogram and electromyograph. On-line Medical Dictionary; Published at the Dept. of Medical Oncology, University of Newcastle Upon Tyne.

Carrier as not medically necessary. The dispute was referred to an Independent Review Organization (IRO), which agreed with Carrier's position in its decision dated January 13, 2003.

## 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 TEX. LAB. CODE ANN. § 401.011(19), 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 dependant 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)(7), preauthorization is required for the CT myelogram and EMG test.

## 3. Evidence

### 1. CT Myelogram and EMG

Provider requested preauthorization for the CT myelogram because this procedure would allow Provider an opportunity to view the condition of the vertebral discs in Claimant's neck, which is an area where Claimant continues to report pain. An MRI was previously performed on Claimant on November 7, 2001, but Provider argued the MRI did not give the same amount of bony detail that a CT myelogram would render.

Provider also requested an EMG to examine the state of Claimant's nerve condition because, Provider asserted, Claimant's prior treatment might not have revealed any nerve damage following the injury as it takes some time for nerves to show a "pathological response." Provider specifically addressed a prior EMG exam that was also performed on Claimant on November 7, 2001. The results of that exam were normal, but Provider argued it is not unusual for EMG results to be normal when the EMG is performed shortly after the accident.<sup>3</sup>

### 2. Possible Annular Tear not Mentioned in IRO Decision

Provider argued that although the MRI did not offer sufficient bony detail of Claimant's spine, there were some relevant findings the IRO reviewer did not consider. According to the results of the MRI, Claimant had "a 1 mm bulge of the annulus at C3-C4 associated with posterior midline

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<sup>3</sup> In this case, the prior EMG was performed on November 7, 2001, almost a month after the injury.

annular tear.” Provider asserted this finding was probably overlooked by the IRO reviewer because it was not mentioned in the IRO decision. According to Provider, this finding is significant because it clearly indicates a possible annular tear, which could be the cause of Claimant’s ongoing pain. Provider argued this condition could be confirmed with the procedures he is now requesting.

The IRO decision contains a brief medical history of Claimant, and reflects the MRI exam that was performed on November 1, 2001. However, the decision does not mention the possible annular tear. There is no way to tell if the reviewer did not believe the MRI finding was not relevant, or if the reviewer overlooked that finding completely. The ALJ is persuaded by Provider’s testimony that such a finding would be relevant to the reviewer’s rationale in denying the requested procedures. Since the finding is not mentioned in the IRO decision, the ALJ finds Provider’s argument compelling and believes at this point a closer look into Claimant’s condition is warranted.

### **3. Reversal of Cervical Curvature**

Another result from the MRI revealed Claimant’s “reversal of the cervical curvature.” This finding was mentioned in the IRO decision, but the reviewer did not comment on whether this condition contributed to Claimant’s pain. Provider testified this is a condition where the person’s spine begins to straighten in an attempt to prevent further injury. Provider asserted this condition is present only when a person is experiencing pain in their neck and back, and cannot be accomplished voluntarily. Provider argued the MRI results clearly demonstrated that Claimant was still experiencing pain. Provider testified the requested procedures would shed light on the cause of this condition.

### **4. Carrier’s Position**

Carrier argued there was no evidence to support preauthorization for the requested procedures, relying on reports from other physicians who examined Claimant. One report was from John B. Payne, D.O., dated November 29, 2001. Dr. Payne noted the normal results on both the prior EMG and on a neurological examination he performed on Claimant. Another report presented by Carrier was from Gregory A. Ward, M.D., dated May 3, 2002. Dr. Ward also performed a neurological examination on Claimant and found normal results.

#### **4. Analysis**

Carrier’s evidence is not persuasive because Dr. Payne’s report also indicates Claimant had “significant distress” during the neurological examination. Dr. Payne also concluded Claimant suffered from “chronic neck pain.” Furthermore, Dr. Payne stated additional “treatments and diagnostics” were medically necessary to treat Claimant’s pain. Thus, Dr. Payne’s exam is more supportive of Provider’s case.

Dr. Ward’s report is equally unconvincing because the report indicates that after Dr. Ward reviewed the MRI findings, he discussed further treatment options with Claimant “including further workup with a cervical myelogram and postmyelo CT.” This report is very favorable to the Provider’s position because it reflects Claimant’s ongoing pain and lack of progress from Claimant’s initial treatment.

While Carrier asserted the requested procedures were not medically necessary, there is sufficient evidence in the record that the procedures are medically necessary and that they should be

preauthorized by the Carrier.

5. Conclusion

After reviewing the evidentiary record, the ALJ finds that the Provider, as the party appealing the IRO decision, has met its burden of proof. Specifically, Provider has established by a preponderance of the evidence that the requested treatment is medically necessary to further investigate the cause of Claimant's pain and treat Claimant's compensable injury.

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

**II.  
FINDINGS OF FACTS**

1. \_\_\_\_\_ (Claimant) sustained a compensable injury on\_\_\_\_\_.
2. As a result of the compensable injury, Claimant suffered pain in her neck and back.
3. Claimant was initially treated by Kristopher Schmidt, D.C., and Kent Weldon, D.O., for her injuries.
4. Claimant found no relief from Drs. Schmidt or Weldon and subsequently came under the care of John A. Sazy, M.D. (Provider), on March 8, 2002.
5. Claimant continued to complain of pain in her neck and back, and Provider recommended Claimant undergo a CT myelogram and EMG to investigate the cause of Claimant's pain.
6. Provider sought preauthorization from Liberty Mutual Casualty Company (Carrier) and was denied.
7. Provider sought medical dispute resolution with an Independent Review Organization (IRO), which concurred with Carrier and denied preauthorization in its decision issued January 13, 2003.
8. Provided timely requested a hearing before the State Office of Administrative Hearings (SOAH).
9. Notice of the hearing in this case was mailed to the parties on February 18, 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.
10. The hearing convened and closed on March 18, 2003, before Steven M. Rivas, Administrative Law Judge (ALJ). Provider appeared and represented himself. Carrier was represented by Wayne Gill, hearing representative. The hearing was adjourned and the record closed the same day.

11. Claimant has undergone prior treatment for her injury.
12. Claimant continues to experience pain in her neck and back area as a result of her injury.
13. Claimant had an MRI exam on November 7, 2001. A CT myelogram would display more bony detail than an MRI. A CT myelogram is necessary to investigate the cause of Claimant's ongoing pain.
14. The results of the MRI suggested a possible annular tear.
15. The MRI results revealed reversal of the cervical curvature in Claimant's neck. This condition indicates Claimant is experiencing pain in her neck and back area. A CT myelogram is necessary to investigate the cause of this condition.
16. The fact that an EMG done on the Claimant on November 7, 2001, produced normal results does not mean another EMG is not medically necessary.
17. The EMG was done one month following the injury. Findings of nerve pathology are not always evident just after an injury. The EMG is medically necessary to investigate whether or not nerve damage or pathology is the cause of Claimant's ongoing pain.

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

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. ("the Act").
2. SOAH has jurisdiction over 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. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. The Provider, as Petitioner, had the burden of proof on its appeal by a preponderance of the evidence under the Act § 413.031 and 28 TEX. ADMIN. CODE §148.21(h).
5. Under § 408.021(a), 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.
6. Under 28 TAC §134.600(h)(7), preauthorization is required for the CT myelogram and EMG test.

### **ORDER**

**IT IS, THEREFORE, ORDERED** that preauthorization for the requested CT myelogram and EMG procedures is granted.

**Signed this 17th day of April, 2002.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**STEVEN M. RIVAS  
ADMINISTRATIVE LAW JUDGE**