

SOAH DOCKET NO. 453-03-2377.M2
[MDR TRACKING NO. M2-02-1056-01]

JOHN A. SAZY, M.D.,
Petitioner

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BEFORE THE STATE OFFICE

VS.

OF

SECURITY INSURANCE COMPANY
OF HARTFORD,
Respondent

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

John A. Sazy, M.D. appealed an Independent Review Organization (IRO) decision denying preauthorization for Claimant _____ (Claimant) to undergo electromyography/nerve conduction velocity studies (EMG/NCV)¹ of the bilateral lower extremities. The IRO concluded that the EMG/NCV was not medically necessary. This decision agrees with the IRO and concludes that the EMG/NCV is not medically reasonable and necessary at this time. Therefore, Dr. Sazy's appeal is denied.

I. Jurisdiction, Notice, and Procedural History

Administrative Law Judge (ALJ) Catherine C. Egan convened the hearing on August 18, 2003, at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, 300 West 15th Street, Austin, Texas. Dr. Sazy appeared by telephone. Attorney Tommy Lueders appeared in person on behalf of Security Insurance Company of Hartford (Carrier). The Commission chose not to participate in the hearing. Jurisdiction and notice were not contested and will be addressed in the findings of fact and conclusions of law. The record was left open until August 22, 2003, for the parties to submit additional case authority regarding the weight to be placed on the IRO decision, at which time the record was closed.

II. Background

Claimant, a 56-year-old female, injured herself at work on _____, when she tripped on a mat and fell backward onto her lower back and buttocks. Claimant had previously injured her back and had a spinal fusion in 1986. Following the _____ accident, Claimant experienced severe pain in her lower back that radiated into her left leg. After conservative care failed to relieve Claimant's pain, Dr. Sazy performed spinal surgery on December 14, 2000. Specifically, Dr. Sazy performed a three level inter-body fusion on L3-L4, L4-L5, and L5 to S1.

¹Electromyography(EMG) is defined as "an electrodiagnostic technique for recording the extracellular activity (action potentials and evoked potentials) of skeletal muscles at rest, during voluntary contractions, and during electrical stimulation; performed using any of a variety of surface electrodes, needle electrodes, and devices for amplifying, transmitting, and recording the signals. *Dorland's Illustrated Medical Dictionary*, (28th ed. W. B. Saunders Company 1994).

Claimant initially did well post-operatively. In August 2001, her physical therapist documented that she had “no leg pain.”² On October 16, 2001, Patrick W. Donovan, M.D., P.A., Claimant's pain management doctor, evaluated Claimant's condition for an impairment rating. Dr. Donovan noted that Claimant “still has some ongoing localized lower lumbosacral back pain but the left lower extremity paresthesias are improved.”³ Dr. Donovan also noted that there was no evidence of any nerve root irritation.⁴

Dr. Sazy testified that Claimant began to experience lower back pain, and subsequently leg pain, almost a year after the spinal surgery in 2000. Dr. Sazy requested preauthorization for an EMG/NCV of Claimant's bilateral lower extremities. According to Dr. Sazy, the EMG/NCV would aid him in determining what nerves could be involved in the production of Claimant's leg symptoms. The EMG is an electrical test that would show which nerves are working, and which are not. However, Dr. Sazy's office notes for Claimant do not indicate that she experienced any pain in her legs post operatively. Carrier denied the request and Dr. Sazy appealed to the IRO.

The IRO upheld the Carrier's denial of preauthorization on the basis that the EMG/NCV studies were not medically necessary. The IRO decision stated the following:

The medical record documentation does not indicate any lower extremity findings or symptoms. The documentation is inadequate to support an indication for an EMG/NCV of both lower limbs. Therefore, it is determined that the EMG/NCV studies of the bilateral lower extremities are not medically necessary.

This appeal followed.

²Ex. 1 at 52.

³Ex. 2 at 3.

⁴Ex. 2 at 4.

III. Medical Necessity

A. Provider's Position

Dr. Sazy testified that Claimant began complaining of further back pain that radiated into her left leg several months after recovering from the spinal surgery. The EMG/NCV is necessary to determine the cause of the leg pain and the future course of treatment. According to Dr. Sazy, the spinal surgery he performed on Claimant was large and complex. X-rays of Claimant's spine do not show any loosened hardware or any problems with the fusion itself. Because of the nature of Claimant's pain, Dr. Sazy explained that Claimant could be suffering with any of the following: settling of the fusion; hypertrophy of the fusion; scar tissue; disk herniating; or stenosis above the level of the fusion.

Explaining that the spine is like a row of dominos, in that when one domino falls it hits another causing a chain reaction, a spinal fusion, fusing vertebrae together, can likewise cause a stress area directly above the fused vertebrae. This is where maximum force is generated and where the spine will be the weakest. Dr. Sazy testified that twenty percent of patients undergoing this type of operation are expected to experience trouble with the spine just above the operation site. Dr. Sazy believes that Claimant's discogenic pain is a result of the added stress on the disk above the fused disks because Claimant did well post-operatively and then subsequently developed back and leg symptoms.

The standard of care, explained Dr. Sazy, is to determine where Claimant's pain is coming from and to treat it. To determine where the pain is coming from and to isolate what is causing the pain, Dr. Sazy opined that he needs to order tests. The available tests include an MRI, CAT scan, CT mylogram and an EMG/NCV.

According to Dr. Sazy, an MRI would not help isolate the cause of Claimant's pain because the metal in Claimant's back would distort the MRI field to the point that it would not be interpretable. A CAT scan without the dye in the spinal canal would provide information about the bones and metal in Claimant's back, but would not provide information about the soft tissue, *i.e.* the disks, the nerves, the spinal canal, or scar tissue. A CT mylogram would show the soft tissue areas, and according to Dr. Sazy is essential to determine the origination of Claimant's pain. However, Carrier denied Dr. Sazy's request for a preauthorization to do a CT mylogram.

The EMG/NCV study, Dr. Sazy clarified, would allow him to correlate any findings from the CT mylogram with the nerve study. Dr. Sazy admitted that the medical records he provided to the IRO did not identify any complaints by Claimant of leg pain. But, Dr. Sazy reasoned, he would not order an EMG/NCV unless a patient had leg pain; therefore, she must have complained of leg pain.

The last time Dr. Sazy saw Claimant was on December 27, 2002. On June 6, 2003, Dr. Sazy's office called Claimant and confirmed that she wanted Dr. Sazy to go forward with the hearing.

B. Carrier's Position

The Carrier did not call a witness and instead relied on the records and cross examination of Dr. Sazy.

Under cross-examination, Dr. Sazy agreed that a CT mylogram would be the best test to isolate the cause of pain in Claimant's back, but noted that Carrier denied this test. Dr. Sazy acknowledged that the only matter before the ALJ is the medical necessity of the EMG/NCV. Likewise, he agreed that his notes failed to identify Claimant's leg pain.

Dr. Sazy explained that even though Claimant only had pain radiating into her left leg, he requested a test for both legs. It is necessary to have a normal control to know whether something is significant on one side versus the other.

C. ALJ's Analysis

Provider has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE (TAC) §§ 148.21(h) and (i); 1 TAC § 155.41. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury. 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). However, certain procedures, such as those involved in this case, require preauthorization from the carrier in order for the provider to obtain reimbursement. 28 TAC § 134.600(h). The decision of the IRO is to be given presumptive weight pursuant to 28 TAC § 133.301(v). However, this is a rebuttable presumption. As the party carrying the burden of proof, Dr. Sazy had to show by a preponderance of the evidence that the EMG/NCV is medically necessary.

The ALJ concludes that Dr. Sazy's requests for an EMG/NCV study should not be preauthorized at this time. According to Dr. Sazy, the purpose of the EMG/NCV is to isolate the cause of Claimant's pain in her left leg. However, nothing in Claimant's medical record supports Dr. Sazy's contention that Claimant has pain radiating into her leg. The physical therapy notes and Dr. Donovan's report state that Claimant has lower back pain, but no longer has any pain in her leg. This is consistent with Dr. Sazy's office notes that state Claimant suffers with lower back pain. The ALJ finds that the preponderance of the evidence presented failed to support the medical necessity of an EMG/NCV at this time. Therefore, Dr. Sazy's appeal is denied.

IV. Findings of Fact

1. Claimant____ (Claimant) suffered a compensable injury under the Texas Workers' Compensation Act on_____, when she tripped on a mat while at work and fell injuring her lower back.

2. At the time of the compensable injury, Security Insurance Company of Hartford (Carrier) was the responsible insurance carrier for Claimant's workers' compensation insurance coverage.
3. As a result of the compensable injury, Claimant suffered from lower back pain that radiated into her left leg.
4. On December 14, 2000, after conservative care failed to relieve Claimant's pain, John A. Sazy, M.D. performed spinal surgery on Claimant's lower back.
5. Following surgery, Claimant's condition improved so significantly that she no longer experienced pain in her legs.
6. Several months after surgery, Claimant began having lower back pain.
7. Claimant's complaints of pain were limited to her lower back.
8. Provider requested that the Carrier preauthorize electromyography/nerve conduction velocity studies (EMG/NCV) on Claimant's bilateral lower extremities.
9. An EMG/NCV is medically necessary in this case only if Claimant experienced pain in her leg or legs.
10. Claimant reported no post-surgical leg pain.
11. Carrier denied Provider's request for preauthorization.
12. Provider requested medical dispute resolution.
13. The Independent Review Organization denied Provider's appeal.
14. Provider requested a hearing before the State Office of Administrative Hearings, seeking preauthorization of the EMG/NCV.
15. An EMG/NCV study of the bilateral lower extremities is not reasonably required at this time for Claimant's medical condition.
16. A hearing was conducted August 18, 2003, with both Provider and Carrier present. The Commission chose not to participate in the hearing. At the request of the parties, the record remained open until August 22, 2003, for the filing of case authority, at which time the record closed.
17. All parties received 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.

V. Conclusions of Law

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (Act), TEX. LABOR CODE ANN. § 413.031.
2. 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).
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 hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TEX. ADMIN. CODE (TAC) § 133.305(g).
5. Provider had the burden of proof in this proceeding. 28 TAC §§148.21(h) and (i); 1 TAC §155.41.
6. Based on the Findings of Fact, an EMG/NCV of Claimant's lower extremities was not shown to be medically necessary for the proper treatment of Claimant at this time. TEX. LABOR CODE ANN. §§ 401.011(19) and 408.021.
7. Based on the Findings of Fact and Conclusions of Law, Carrier should not be required to pay for an EMG/NCV for Claimant at this time.

ORDER

IT IS, THEREFORE, ORDERED that the request for preauthorization by John A. Sazy, M.D. for ____ (Claimant) to undergo electromyography/nerve conduction velocity studies of the bilateral lower extremities is denied.

SIGNED September 19, 2003.

**CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**