

**SOAH DOCKET NO. 453-03-2378.M2**  
**TWCC MRD NO. M2-03-0528.01**

|                              |   |                                |
|------------------------------|---|--------------------------------|
| <b>ACE INSURANCE COMPANY</b> | § | <b>BEFORE THE STATE OFFICE</b> |
| <b>OF TEXAS,</b>             | § |                                |
| <b>Petitioner</b>            | § |                                |
|                              | § |                                |
| <b>V.</b>                    | § | <b>OF</b>                      |
|                              | § |                                |
| <b>JOHN A. SAZY, M.D.,</b>   | § |                                |
| <b>Respondent</b>            | § | <b>ADMINISTRATIVE HEARINGS</b> |

**DECISION AND ORDER**

**I. DISCUSSION**

Ace Insurance Company of Texas (Petitioner) requested a hearing following an adverse determination by the Texas Workers' Compensation Commission (Commission) acting through the Ziroc, an Independent Review Organization (IRO), approving the preauthorization request of John Sazy, M.D., to perform a lumbar discogram with CT scan on \_\_\_\_ (Claimant).<sup>1</sup>

The ALJ finds the lumbar discogram with CT scan is not reasonable or medically necessary at this time and therefore grants the relief sought by Petitioner.

On September 2, 2003, Administrative Law Judge (ALJ) Catherine C. Egan convened the hearing at the State Office of Administrative Hearings (SOAH), Austin, Texas. Attorney John Pringle represented Petitioner. Provider, Dr. Sazy, appeared *pro se* by telephone. Jurisdiction and notice were not contested and will be addressed in the findings of fact and conclusions of law. The hearing was recessed shortly after it began to allow Dr. Sazy additional time to file a motion to set aside the deemed admissions. The hearing was set to reconvene on February 23, 2004.

On February 20, 2004, Dr. Sazy filed a letter with SOAH advising the ALJ that he wished to withdraw the contested case hearing. Because it was not Dr. Sazy's appeal, the request was not granted. The hearing reconvened on February 23, 2004. Dr. Sazy did not appear. Attorney John Pringle appeared for Petitioner. The record closed the same day.

Claimant sustained a work-related injury to her lower back on \_\_\_\_\_. In May 1993, Claimant underwent spinal surgery to fuse the L5/S1 disk. A bone stimulator was implanted in her spine to encourage the fusion. Despite the surgery, Claimant continued to experience lower back and bilateral leg pain. On May 11, 1995, Claimant underwent another spinal surgery at the L5/S1 level. After the surgery, Claimant continued to experience lower back and bilateral leg pain and was treated with conservative care. Claimant went to Dr. Sazy for treatment in July 1998. When conservative measures failed to relieve Claimant's complaints of pain, Dr. Sazy requested preauthorization to perform a discogram in preparation for another surgical procedure.

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<sup>1</sup> The decision by the IRO is deemed to be a Commission Decision and Order.

According to Dr. Sazy, the purpose of the discogram is to "focus in on" the patient's problems. It is not to determine if Claimant needs surgery. Dr. Sazy stated that he has already determined that Claimant needs further surgical intervention. Dr. Sazy opined that Claimant's pain likely comes from the disk above the fused disk and from complications in the areas surrounding the prior spine surgeries. Dr. Sazy stated that the discogram will aid him in determining which disk, and where on the disk, to operate.

Petitioner denied preauthorization asserting that another surgical procedure is not reasonable or medically necessary, and therefore diagnostic tests for another surgery are unnecessary. Noting that Claimant has already undergone two MRIs, both revealing that the spinal mass is solid, Petitioner maintains that Claimant is not a candidate for another spinal surgery. Finally, Petitioner asserts that "a discogram is not a reliable indicator of pain generator to help guarantee pain relief," and creates a risk for additional complications to Claimant.<sup>2</sup>

In support of this position, Petitioner called John Obermiller, M.D., and Marcus Villarreal, M.D., to testify. Dr. Obermiller has been board-certified in physical medicine and rehabilitation for eighteen years and treats patients with work-related injuries. According to Dr. Obermiller, Claimant has been diagnosed with chronic pain syndrome; psychological issues that contribute to her reports of pain; failed back syndrome; a significant amount of emotional disruption; and depression.

Dr. Obermiller explained that during a discogram a contrast medium is injected into the disk to see if the medium leaks out or swells the disk so that the disk pushes into the spinal canal or against the nerves. According to Dr. Obermiller and Dr. Villarreal, an integral part of the discogram is dependent upon the patient's reports of pain while the test is ongoing, making it primarily a subjective test. Unfortunately, pain intensity may be strongly influenced by the patient's psychological condition, particularly if the patient has been in pain for a long period of time, as has Claimant, and is depressed. Moreover, Dr. Villarreal elaborated, major risks are associated with discograms. These major risks include rupturing a disk, going through a disk and puncturing other areas of the spine, infection, and an adverse or allergic reaction to the contrast medium.

Dr. Obermiller emphasized that both Patrick Donovan, M.D., and Frank Rodriguez, Jr., M.D., Claimant's prior treating doctors, found that Claimant was not a surgical candidate. Dr. Sazy is the only doctor who has treated Claimant who recommends surgical intervention, explained Dr. Obermiller and Dr. Villarreal. Noting that the only reason for doing a discogram is to lead to surgery, Dr. Obermiller argued that it unnecessary because additional spinal surgery is not medically necessary.

Dr. Obermiller opined that a discogram is not a reasonable diagnostic option when all Claimant's objective tests fail to show that an intervertebral disk is the source of Claimant's pain. According to Dr. Obermiller and Dr. Villarreal, Claimant will report pain when she receives the injection during the discogram regardless of whether Claimant has a problem with a disk because she has chronic pain syndrome. Relying on the lack of objective medical evidence to show that an intervertebral disk is causing Claimant's lower back pain and Claimant's psychological condition, Dr. Obermiller and Dr. Villarreal contended that further spinal surgery will not relieve or cure Claimant's lower back pain and that she is a poor candidate for a discogram.

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<sup>2</sup> Ex. 2 at 3 and 14.

Petitioner has the burden of proof in this proceeding. Petitioner proved that at the time of the hearing Claimant was not a candidate for spinal surgery or for a discogram. Consequently, Dr. Sazy's request for preauthorization to perform a discogram with CT scan on Claimant is not reasonable and medically necessary as of the date of the hearing.

## **II. FINDINGS OF FACT**

1. \_\_\_\_ (Claimant) sustained a work-related injury to her spine on \_\_\_\_.
2. At the time of the compensable injury, Ace Insurance Company of Texas (Petitioner) was the responsible workers' compensation insurance carrier.
3. Claimant suffered injuries to her lumbar spine.
4. Claimant experienced lumbar and bilateral leg pain.
5. In May 1993, Claimant underwent spinal surgery to fuse disks at the L5/S1 level.
6. Claimant continued to experience lower back and bilateral leg pain following surgery.
7. Claimant has been diagnosed with chronic pain syndrome; psychological issues that contribute to her reports of pain; failed back syndrome; a significant amount of emotional disruption; and depression.
8. In an effort to resolve the cause of Claimant's pain, another spinal surgery to the lumbar spine at the L5/S1 level was performed in May 1995.
9. Claimant continued to experience lower back and bilateral leg pain following surgery.
10. John Sazy, M.D., began treating Claimant in July 1998.
11. When conservative treatments failed, Dr. Sazy determined that Claimant should undergo additional surgery to the lumbar spine and requested preauthorization for Claimant to have a lumbar discogram with CT scan.
12. The requested procedure, a discogram, is a diagnostic procedure which would aid Dr. Sazy in determining what disk level to operate upon if surgical intervention was reasonable and medically necessary.
13. The objective tests in the medical record do not show that Claimant's pain is being caused by an intervertebral disk or that further surgery will alleviate Claimant's pain.
14. At the time of the hearing, further surgical intervention to relieve Claimant's complaints of lower back and bilateral leg pain was not reasonable or medically necessary.
15. At the time of the hearing, the discogram with CT scan was not reasonable or medically necessary.

16. Petitioner denied the preauthorization request for a lumbar discogram with CT scan on Claimant.
17. By letter dated January 22, 2003, the Texas Workers' Compensation Commission (Commission) acting through the Ziroc, an IRO, granted the preauthorization request of Dr. Sazy for a lumbar discogram with CT scan on Claimant.
18. Petitioner timely requested a hearing to contest the Commission's decision.
19. By letter dated March 7, 2004, the Commission issued a notice of hearing.
20. On September 2, 2003, Administrative Law Judge (ALJ) Catherine C. Egan, convened the hearing. Attorney John Pringle represented Petitioner. Provider, Dr. Sazy, appeared *pro se* by telephone. The hearing was recessed shortly after it began to allow Dr. Sazy additional time to file a motion to set aside the deemed admissions. The hearing reconvened on February 23, 2004. Dr. Sazy did not appear. The record closed the same day.

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

1. The Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 413.031.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T. CODE ANN. ch. 2003.
3. The IRO decision is deemed a Decision and Order of the Commission.
4. Petitioner timely requested a hearing in this matter pursuant to 28 TAC § 133.308.
5. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. ch. 2001.
6. 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).
7. Petitioner had the burden of proof in this matter, which was the preponderance of evidence standard. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41(b).
8. Based on the findings of fact, a lumbar discogram with CT scan procedure for Claimant is not reasonable and medically necessary at this time.

## **ORDER**

**THEREFORE IT IS ORDERED** that Ace Insurance Company of Texas' request for relief **is granted** and Dr. Sazy's request for preauthorization of a lumbar discogram with CT scan procedure on \_\_\_\_ is **denied**.

**SIGNED March 26, 2004.**

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