

**JOHN A. SAZY, M.D.,
Petitioner**

v.

**PACIFIC EMPLOYERS
INSURANCE COMPANY,
Respondent**

§ **BEFORE THE STATE OFFICE**
§
§
§ **OF**
§
§
§ **ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

This is an appeal from a decision by an Independent Review Organization (IRO) affirming Pacific Employers Insurance Company's (Carrier) denial of preauthorization for a discogram with post CT scan as not medically necessary. The decision affirms the IRO because the Petitioner failed to appear at hearing, and the evidence supports the finding that the procedure is not medically necessary.

I. PROCEDURAL HISTORY, NOTICE & JURISDICTION

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

On January 7, 2004, Barbara C. Marquardt, Administrative Law Judge (ALJ), convened the hearing on the 4th floor of the William P. Clements Building, 300 West Fifteenth Street, Austin, Texas. John A. Sazy, M.D. (Petitioner), who had been granted a telephone appearance, was unavailable at both telephone numbers called by the ALJ.¹ John Pringle, attorney, appeared and represented the Carrier. The record closed on the same day.

II. LEGAL STANDARDS

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. 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.²

Certain categories of health care identified by the Texas Workers' Compensation Commission, including discograms, require preauthorization. Preauthorization is dependent upon a prospective showing of medical necessity.³ Thus, the issue in this case is whether the evidence

¹There was ample correspondence in the file to convince the ALJ that Petitioner was well-informed about the date and time of the hearing. Having spoken to personnel at two of Petitioner's offices, the ALJ determined this was an intentional failure to appear at hearing. As of the date this decision issues, Petitioner has not filed any pleading concerning his failure to appear.

²TEX. LAB. CODE ANN. §408.021. "Health care" includes "all reasonable and necessary medical . . . services." TEX. LAB. CODE ANN. §401.011(19).

³TEX. LAB. CODE ANN. §413.014; 28 TEX. ADMIN. CODE §134.600(h)(7).

supports the decision that it is not medically necessary to give the injured employee, ___ (Claimant), a discogram with post CT scan.

III. DISCUSSION

1. Background Facts

The Claimant, who is 36 years old, was injured at work on ___, ___, when the chair she was sitting in broke. It caused her to fall to the ground directly on her back. She has undergone an MRI (magnetic resonance imaging), X-rays, a myelogram and an EMG. She sought treatment for low back pain radiating into the lower extremities, with more pain on the left than on the right. The diagnosis is lumbar radiculitis with involvement at the L4-5 and L5-S1 levels. Her treatments have included cervical and lumbar epidural steroid injections.

2. The IRO Decision

The decision was written by a board-certified neurosurgeon (Reviewer). The Reviewer found no basis in the medical records to justify a discogram as a diagnostic tool for the Claimant. In the Reviewer's opinion, discography would not be a reliable tool to determine whether surgical intervention is needed to treat the Claimant's injury.

3. Other Evidence

Because of Petitioner's failure to appear, the Carrier presented a *prima facie* case supporting the finding that a discogram is not medically necessary for the Claimant. The points made at hearing, and included in the record, include the following:

- A July 30, 2001, MRI found the Claimant's cervical spine was normal.
- On March 22, 2002, it was determined that the Claimant had reached MMI (maximum medical improvement) from the injury.
- An MRI done on May 23, 2002, found degenerative changes in the lumbar spine only and neither evidence of a herniated disc nor nerve root involvement.
- On July 16, 2002, the Claimant was given a 5% whole person impairment rating due to her injury.
- A lumbar myelogram with CT scan on November 6, 2002, found degenerative changes, including a very minimal disc bulge at L3-4, and minimal displacement of the left S-1 nerve root sleeve at the L5-S1 level.
- On March 13, 2003, William H. Mitchell, M.D., an orthopedic surgeon, examined the Claimant. He concluded that she had lumbar spondylosis (pre-existing) without evidence of radiculopathy, and that surgery was not indicated.
- Petitioner requested preauthorization for a discogram, because he wishes to perform spinal surgery on the Claimant.

4. Conclusion

The preponderance of the evidence is that the Claimant does not need surgery for her

condition. Therefore, a discogram, which can be used as a diagnostic tool prior to spinal surgery, is not medically necessary and should not be preauthorized.

IV. FINDINGS OF FACT

1. ____ (Claimant) was injured at work on ____, when the chair she was sitting in broke. It caused her to fall to the ground directly on her back.
2. The Claimant sought treatment for low back pain radiating into the lower extremities, with more pain on the left than on the right.
 - a. The diagnosis is lumbar radiculitis with involvement at the L4-5 and L5-S1 levels.
 - b. Her treatments have included cervical and lumbar epidural steroid injections.
3. One of the Claimant's treating physicians, John A. Sazy, M.D. (Petitioner), requested preauthorization for a discogram with post CT scan in an effort to prove the need to do surgery on the Claimant.
4. An Independent Review Organization (IRO) affirmed Pacific Employers Insurance Company's (Carrier) denial of the request referenced in Finding 3, because it was not medically necessary.
5. Petitioner requested this hearing at the State Office of Administrative Hearings in a timely manner to contest the IRO's decision.
 - a. On January 7, 2004, Barbara C. Marquardt, Administrative Law Judge (ALJ), convened the hearing on the 4th floor of the William P. Clements Building, 300 West Fifteenth Street, Austin, Texas.
 - b. The Petitioner, who had been granted a telephone appearance, was unavailable at both telephone numbers called by the ALJ.
 - c. John Pringle, attorney, appeared and represented the Carrier.
 - d. The hearing proceeded in Petitioner's absence, because he did not appear or return the ALJ's call within ten minutes of the time he was telephoned.
6. Surgery is not warranted in Claimant's case, and a discogram with post CT scan (a diagnostic tool that can be used prior to spinal surgery) is not medically necessary.
 - a. An MRI done on May 23, 2002, found degenerative changes in the lumbar spine only and neither evidence of a herniated disc nor nerve root involvement.
 - b. A lumbar myelogram with CT scan on November 6, 2002, found degenerative changes, including a very minimal disc bulge at L3-4, and minimal displacement of the left S-1 nerve root sleeve at the L5-S1 level.
 - c. On March 13, 2003, William H. Mitchell, M.D., an orthopedic surgeon, determined the Claimant had lumbar spondylosis (pre-existing) without evidence of radiculopathy, and that surgery was not indicated.

V. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LABOR CODE ANN. (Act) §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 Act §413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
3. Petitioner was required to obtain preauthorization from the Carrier for the test referenced in Finding 3 pursuant to Act §413.014 and 28 TEX. ADMIN. CODE §134.600(h)(7).
4. As referenced in Finding 5, Petitioner violated 1 TEX. ADMIN. CODE §155.45(e) by failing to be ready to proceed with the telephone hearing at the agreed date and time. Therefore, the ALJ proceeded with the hearing on the merits in Petitioner's absence.
5. Based on the foregoing, Petitioner is not entitled to preauthorization for the requested test, because it is not medically necessary. Act §413.014; 28 TEX. ADMIN. CODE §134.600(h)(7).

ORDER

IT IS ORDERED that Petitioner, Dr. John A. Sazy, is not entitled to preauthorization for a lumbar discogram with post CT scan for ____

SIGNED February 2, 2005.

**BARBARA C. MARQUARDT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**