

**SOAH DOCKET NO. 453-03-2430.M2
[MDR TRACKING NO. M2-03-0471-01]**

**AMERICAN HOME ASSURANCE
COMPANY,**
Petitioner

VS.

,
Respondent.

§ BEFORE THE STATE OFFICE

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

American Home Assurance Company (Carrier) appealed the decision of the Independent Review Organization (IRO) issued on February 19, 2002. The IRO ordered preauthorization for the reasonable and necessary costs of a lumbar myelogram for _____ (Claimant). In this decision, the Administrative Law Judge (ALJ) finds that Carrier met its burden of showing that the requested treatment was not reasonable and necessary medical care and should not have been preauthorized by the IRO. Therefore, the Carrier is not ordered to give preauthorization for the requested treatment.

The hearing convened and closed on May 21, 2003, before Steven M. Rivas, ALJ. Carrier was represented by Dan Kelley, attorney. _____ appeared and was assisted by Juan Mireles, Ombudsman.

I. **DISCUSSION**

1. Background Facts

Claimant was an employee of _____, and complained of back pain on _____, after moving merchandise and office equipment. Claimant underwent extensive treatment following his report of back pain and came under the care of several treating doctors, the latest being Luis Duarte, M.D. Claimant found no relief from any of the treatment rendered in the years following his complaint of back pain. On November 26, 2002, Dr. Duarte recommended Claimant undergo a lumbar myelogram and sought preauthorization from Carrier, which was denied as not medically necessary.

1. Applicable Law

Under the TEX. LAB. CODE ANN. § 408.021 (a), 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."

2. Evidence and Analysis.

In support of Carrier's position that the lumbar myelogram was not medically necessary, Carrier presented testimony and reports of Melissa D. Tonn, M.D., and Prof. Stanley J. Bigos, M.D. Dr. Tonn's report, dated March 9, 2003, contained a detailed history of Claimant's complaints and treatment, while Dr. Bigos' report, dated February 25, 2003, was a peer review that addressed the medical necessity of the requested lumbar myelogram.

Based on her review of the records, Dr. Tonn testified Claimant was not a suitable candidate for surgery, and thus, required no pre-surgery diagnostic tests like the requested lumbar myelogram.

Dr. Tonn found that Claimant had an MRI performed on May 26, 1999, which revealed pre-existing degenerative spondylosis at multiple levels, multi-level disc disease, and disc bulging; all of which, Dr. Tonn testified, was not a result of Claimant's compensable injury. Dr. Tonn further testified after reviewing all of Claimant's records, she was unable to find any evidence that Claimant sustained any injury that would have caused Claimant to develop incapacitating low back pain. Nevertheless, Claimant underwent spinal surgery at the L4-L5 level on March 20, 2000.

Additionally, Dr. Tonn noted Claimant underwent numerous MRI exams, including one on February 5, 1999 - two months before Claimant began complaining of back pain. According to Dr. Tonn, the results of that MRI and the one performed on May 26, 1999, reflected no changes.

Dr. Tonn testified Claimant's subjective complaints of back pain do not correlate with the findings on Claimant's MRI exams. Furthermore, Dr. Tonn asserted Claimant has engaged in symptom exaggeration based on the findings and extensive treatment since he first reported back pain. As part of his ongoing treatment, Claimant has undergone spinal surgery, physical therapy, epidural steroid injections, rest, and medication. Dr. Tonn asserted there is no evidence that a repeat surgical procedure would cure or relieve Claimant's complaints, therefore, a diagnostic test like a lumbar myelogram is not medically necessary.

In Dr. Bigos' peer review, he opined that there was insufficient evidence in the Claimant's medical records that supported further diagnostic treatment in preparation of surgery. Dr. Bigos based his contention on the lack of objective findings contained in Claimant's medical records. The records indicated Claimant's pain was not the result a compensable injury, but rather due to pre-existing disc degenerative disease.

Claimant called Gregory Lind, M.D., who candidly admitted he did not have as clear an understanding of this case as Dr. Duarte. Dr. Lind was unable to demonstrate that he was familiar with the circumstances of this case. During the hearing, Dr. Lind spent a great deal of time organizing his file rather than testifying on behalf of the Claimant. However, Dr. Lind testified the lumbar myelogram was a procedure that may reveal the cause of Claimant's pain, because after reviewing the records, Dr. Lind asserted he was not sure why Claimant continued to complain of back pain after years of treatment.

The IRO issued its report on February 19, 2002, and found the lumbar myelogram was medically necessary. The IRO decision stated:

The MRI results suggest, but do not conclusively identify the L3-L4 and L4-L5 levels as the potential sources of the patient's symptoms and warrants

further investigation with a myelogram/CT scan.

The reviewer's rationale is unpersuasive based on the fact he said the MRI results merely "suggest" the location of Claimant's "potential" source of pain. Claimant's witness did nothing to support the IRO reviewer's rationale. Conversely, Carrier presented sufficient evidence that persuaded this ALJ to conclude the IRO decision was either incorrect or at least unfounded.

3. Conclusion.

After reviewing the evidentiary record, the ALJ finds that the Carrier, as the party appealing the IRO decision, has met its burden of proof. Specifically, Carrier established by a preponderance of the evidence that the requested treatment is not medically necessary to treat Claimant's compensable injury.

For the foregoing reasons, the ALJ concludes that the requested procedure is not reasonable and necessary medical treatment for Claimant's compensable injury, and should not be authorized.

**II.
FINDINGS OF FACTS**

1. _____ (Claimant) was an employee of _____ and began complaining of back pain on _____.
2. As a result Claimant's back pain, Claimant was treated by several physicians but continued to complain of back pain.
3. On November 26, 2002, Luis Duarte, M.D., recommended Claimant undergo a lumbar myelogram to determine if Claimant is a suitable candidate for spinal surgery.
4. Claimant had at least two MRI examinations which revealed Claimant suffered from pre-existing disc degenerative disease.
5. Claimant sought preauthorization from American Home Assurance Company (Carrier) and was denied.
6. Carrier denied preauthorization, maintaining that the requested treatment was not medically necessary. Carrier asserted Claimant was not a proper candidate for a lumbar myelogram.
7. Claimant sought medical dispute resolution with an Independent Review Organization (IRO), which authorized Claimant undergo the requested treatment in its decision issued February 19, 2002.
8. Carrier timely appealed the IRO decision to the State Office of Administrative Hearings (SOAH).
9. Notice of the hearing in this case was mailed to the parties on March 12, 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. In the notice, the Commission's staff indicated that it would not participate in the hearing.

10. The hearing convened and closed on May 21, 2003, before Steven M. Rivas, Administrative Law Judge (ALJ). Carrier was represented by Dan Kelley, attorney. Claimant appeared and was assisted by Juan Mireles, Ombudsman.
11. Claimant has pre-existing disc degenerative disease and has previously undergone spinal surgery.
12. Claimant has received extensive treatment including surgery, physical therapy, rest, and medication.
13. Claimant's diagnostic test have not revealed any objective findings that indicate repeat surgery or pre-surgery diagnostic tests are medically necessary.

III. CONCLUSIONS OF LAW

5. The Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE § 413.031.
6. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
7. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE § 2001.052 and 28 TEX. ADMIN. CODE § 148.4.
8. Carrier had the burden of proof on its appeal by a preponderance of the evidence, pursuant to TEX. LAB. CODE ANN. § 413.031 and 28 TEX. ADMIN. CODE §148.21(h).
5. Under TEX. LABOR CODE § 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. Carrier proved that the lumbar myelogram is not medically necessary for treating Claimant's complaint of back pain.
7. Based on the above Findings of Fact and Conclusions of Law, Carrier's appeal should be granted, and the request for preauthorization should be denied.

ORDER

IT IS ORDERED THAT the appeal of American Home Assurance Company is granted. The ALJ disagrees with the decision of the Independent Review Organization ordering preauthorization for lumbar myelogram. Carrier is not ordered to issue preauthorization for the requested treatment.

Signed this 20TH day of June, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

**STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE**