

**SOAH DOCKET NO. 453-03-2693.M2
MDR Tracking No. M2-03-0493-01**

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

V.

**TWIN CITY FIRE INSURANCE,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

John A. Sazy, M.D. (Provider), challenged the decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) denying preauthorization for a pre-surgery MRI test for _____ (Claimant) in connection with his cervical spine injury. The review was conducted by an independent review organization (IRO). The MRD concluded that the MRI examination was not medically necessary to treat Claimant.

Based on the evidence, Provider failed to meet its burden of proof to show that the proposed MRI test is medically necessary to treat Claimant's compensable injury. Preauthorization for Provider to administer this treatment is denied.

The hearing in this matter convened on September 8, 2003, in Austin, Texas, with Administrative Law Judge (ALJ) Cassandra Church presiding. The record closed October 6, 2003. Dr. Sazy represented himself. Twin City Fire Insurance (Carrier) was represented by Christine Karcher, attorney.

I. DISCUSSION

On ____, Claimant injured his cervical spine and suffered a closed-head injury in an automobile accident on the job.

In November 2002, Provider requested preauthorization for an MRI examination of Claimant's cervical spine in preparation for surgery. Carrier and the MRD, acting through an Independent Review Organization (IRO), denied preauthorization on the grounds that prior diagnostic examinations had provided sufficient information to allow Provider to proceed with surgery. The medical necessity for the surgery itself is not at issue here.

Provider argued that as the last MRI examination of Claimant's cervical spine was performed three years earlier, on May 14, 2001, an additional MRI examination would be needed to determine whether any changes had occurred in that interval. He usually orders any test more than one year old be readministered before he performs a surgery. Provider also stated that the most-recent EMG testing, performed on September 15, 2000, suggested that Claimant may have an impingement at the C7-T1 spine level. Provider Exh. 1, P. 43. He argued that since this finding differed from those on earlier tests, it also demonstrated that another MRI examination was warranted in order to confirm Claimant current condition.

Provider explained that surgery is being proposed so long after the injury because the effects of Claimant's closed-head injury had prevented him from earlier being able to make an informed decision on the surgery or to properly care for himself after the surgery. He also stated that surgery is being considered because Claimant was unwilling to undergo further steroid injection treatments which, in October 2002, had been Providers first choice of therapies. Provider Exh. 1, p. 1.

Carrier relied on the IRO decision in this case as well as the grounds stated by its reviewing doctor. In general, both those reviewers pointed to the lack of either new symptoms or signs of neurological deterioration appearing in the interim between the last test and the present. Carrier Exh. 2. Carrier's medical reviewer also questioned the need for additional testing three years after the injury, and pointed to the lack of evidence of any re-injury or Claimant's participation in an exacerbating activity in the past two years.

The test results themselves do not clearly support Provider's point as they are in fair agreement concerning the source within the spine of Claimant's problem. The MRI from May 14, 2001, showed minimal spondylosis at the C3-C4 level, and a minimal posterocentral disc bulge at the C5-C6 and C6-C7 levels.¹ Provider Exh. 1, p. 12. These findings are similar to those from an MRI taken on _____, the day of the injury, which showed a tiny disc protrusion at the C4-C5 level and spondylosis at the C4-C6 levels. Provider Exh. 1, p. 50. An EMG test dating from February 11, 2000, had also showed Claimant had acute right C8 radiculopathy. Provider Exh. 1, p. 35. Manual testing in 2000 also attributed Claimant's arm pain to difficulties at the C6-C8 levels. Provider Exh. 1, p. 70. An epidural spinal injection administered in May 2000 to the C3-C4 level of Claimant's failed to relieve Claimant's arm pain. Provider Exh. 1, pp. 6, 64.

The ALJ cannot dispute Provider's general thesis that no surgeon should operate on any patient without current pre-surgical diagnostic information. However, the evidence concerning Claimant's condition in November 2002 did not demonstrate that another MRI study would be warranted. Testing performed prior to November 2002 did not clearly demonstrate a change or deterioration in condition that would warrant the need for additional testing. Further, Provider was unable to explain how the differences among the tests described above were so significant that new data would alter his

proposed surgical approach.² The nature and purpose of the surgery which Provider proposes to perform were not clearly stated, so the necessity of the test requested to support a specific procedure could not be evaluated. In sum, Provider failed to meet his burden of proof to show that an additional MRI examination would be reasonable or medically necessary to treat Claimant's compensable injury, so preauthorization is denied.

¹ The May 14, 2001, MRI also showed Claimant had a T1 level vertebral body hemangioma. A hemangioma is as a cluster of blood vessels which form a mass, and is usually a congenital anomaly. It was never mentioned as contributor to Claimant's arm pain. See *Stedman's Medical Dictionary*, 27th Ed. (2000), p. 795.

² As late as October 2002 Provider's records listed Dr. Robert Weatherford as Claimant's treating doctor. However, that listing was not current because Dr. Rebecca Schmidt became Claimant's treating doctor on November 16, 2001. In addition to its medical arguments, Carrier also asserted that the lack of a referral from Claimant's then-current treating doctor barred preauthorization, citing 28 TEX. ADMIN. CODE § 180.22(c). However, medical necessity is the only issue in dispute so this ruling does not cover the proper application of 28 TEX. ADMIN. CODE § 180.22(c).

II. FINDINGS OF FACT

1. On ____, ____ (Claimant) suffered a compensable closed head and upper-neck injury in an on-the-job automobile accident.
2. Twin City Fire Insurance (Carrier) was the responsible insurer.
3. On ____, Claimant had no narrowing of the central spinal canal or nerve apertures (foramina) of the spine, a tiny disc protrusion at the C4-C5 level, and spondylosis at the C4-C5 and C5-C6 levels.
4. An MRI test on May 14, 2001, showed similar findings to the examination done on ____.
5. In May 2000, Claimant was given an epidural steroid injection at the C3-C4 level. The injection was unsuccessful in reducing Claimant's arm pain.
6. EMG tests conducted in February and September 2000 showed the source of radiating pain to lie between the C7-T1 levels.
7. In October 2002, John Sazy, M.D. (Provider), recommended additional epidural steroid injections to the C7-T1 levels, or in the alternative, a surgical procedure on Claimant's cervical spine to relieve the pain. Claimant was unwilling to undergo additional injections.
8. In November 2002, Provider requested preauthorization for an MRI study of Claimant's cervical spine in preparation for surgery. The specific surgical procedure proposed is unknown.
9. In 2001 and 2002, Claimant did not display any significantly different or worsening pain symptoms, or any significant deterioration of his condition. Claimant continued to have persistent arm pain for which medications were prescribed.
10. In 2001 and 2002, Claimant did not re-injure his cervical spine or undertake any exacerbating activities.
11. On January 1, 2003, Carrier denied preauthorization on the basis that the additional MRI test was medically unnecessary.
12. Provider appealed the Carrier's denial of preauthorization to the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission).
13. On February 13, 2003, based on the review by an Independent Review Organization (IRO), Independent Review Incorporated, the MRD upheld Carrier's denial of preauthorization.
14. On February 20, 2003, Provider requested a hearing on the MRD decision.

15. On April 3, 2003, the Commission issued a notice of hearing that included the date, time, and location of the hearing, the applicable statutes under which the hearing would be conducted, and a short, plain statement of matters asserted. The case was continued on motion of the parties.
16. Administrative Law Judge Cassandra Church conducted a hearing on the merits of this case on September 8, 2003, and the record closed October 6, 2003.

III. CONCLUSIONS OF LAW

1. 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 and TEX. GOV'T CODE ANN. ch. 2003.
2. Provider timely requested a hearing, as specified in 28 TEX. ADMIN CODE § 148.3.
3. Proper and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Provider, as the petitioning party, has the burden of proof in this proceeding pursuant to TEX. LAB. CODE ANN. § 413.031 and 28 TEX. ADMIN CODE § 148.21(h).
5. Provider failed to meet its burden of proof to show that an MRI examination is medically necessary to treat or reasonably required to relieve the effects of or promote recovery from a compensable injury suffered by Claimant, within the meaning of TEX. LAB. CODE ANN. §§ 408.021 and 401.011(19).

ORDER

IT IS ORDERED that preauthorization for John Sazy, M.D., to administer an MRI test of Claimant's cervical spine is hereby denied.

SIGNED May 13, 2004.

**CASSANDRA J. CHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**