

AMERICAN HOME ASSURANCE
COMPANY,
PETITIONER

V.

_____,
RESPONDENT

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. DISCUSSION

America Home Assurance Company (Petitioner) appealed the Findings and Decision of the Texas Workers' Compensation Commission (Commission) acting through Envoy Medical Systems, LLC, an Independent Review Organization (IRO). The Commission's Order granted the preauthorization request of ___ (Respondent) for a repeat Magnetic Resonance Imaging (MRI) of the cervical spine and right shoulder. The Commission determined that the MRI was medically necessary within the meaning of Section 408.021 and 401.011(19) of the Texas Workers' Compensation Act, TEX. LABOR CODE ANN. § 401 et. seq. (the Act).

This decision denies the relief sought by Petitioner and preauthorizes the requested cervical spine and right shoulder MRI.

A one-day hearing convened May 27, 2003, before Administrative Law Judge (ALJ) Howard S. Seitzman. Dan C. Kelley represented Petitioner. Respondent appeared in person and was assisted by Commission Ombudsman Luz Loza. There were no contested issues of notice or jurisdiction. The record closed following adjournment of the hearing on May 27, 2003.

Respondent, a 50-year-old female, sustained a work related injury on ___, when her chair slipped and she fell out of her chair onto her right arm. She experienced pain in her neck, right shoulder and arm. Respondent has been seen by numerous physicians. Respondent had an MRI of her neck and shoulder in May 1998, an MRI of her cervical spine in January 2000, a cervical myelogram and post myelographic CT scan in December 2000, and dynamic x-rays of her neck in January 2001. Respondent has also had epidural injections.

Petitioner seeks to deny the requested MRI as not medically necessary. It relies, in part, upon Dr. William E. Blair, Jr., who conducted a peer review. Dr. Blair noted in his June 20, 2001 medical documentation review that Respondent does not require additional ongoing medical treatment or diagnostic tests and opines that the "farther ___ places herself from her current medical providers the better her life will be."

Petitioner also relies upon the testimony of Dr. Melissa Tonn who finds the requested MRI scan medically unnecessary. As evidenced by her testimony, Dr. Tonn concurs with many of Dr. Blair's conclusions.

Dr. Stacey Gillespie, the Designated Doctor selected by the Commission, evaluated Respondent on March 3, 2003. Dr. Gillespie, unlike Drs. Blair and Tonn, examined Respondent.

Dr. Gillespie noted that Respondent's primary problem during the examination was the right shoulder and AC joint dysfunction; some early adhesive capsulitis; scapular, humeral and thoracic dysfunction; and myofascial pain syndrome. She recommended diagnostic and therapeutic injections into the right shoulder subacromially with some aggressive range of motion in an effort to avoid the need for surgical manipulation of the shoulder.

Dr. Gillespie states that the majority of Respondent's "posterior cervical and cervicobrachial complaints are related to the shoulder." She believed four to six weeks of trigger point injections and aggressive therapy would significantly reduce Respondent's pain as Respondent's "shoulder range of motion scapulohumeral motion improves." Dr. Gillespie recommended further imaging of the shoulder if there was no improvement after the injections followed by therapy. Dr. Gillespie noted that the "cervical imaging can be done if there is a change in clinical symptomology, or if a decision is made to proceed with surgical intervention."

By letter dated March 11, 2003, the IRO concluded that a repeat MRI of the cervical spine and right shoulder was medically necessary for the diagnosis and treatment of the Respondent's condition. The IRO decision states that changes may have occurred, since the previous evaluations, that would demonstrate something correctable. The IRO decision also notes that the Respondent has developed a "frozen shoulder" and that an MRI evaluation of the shoulder may be beneficial in diagnosing the primary shoulder pathology.

Petitioner had the burden of proof in this proceeding. Pursuant to the Act, 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. Under the Act, 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.

The ALJ finds Dr. Gillespie's medical analysis most credible. The requested procedure is a diagnostic tool and not a therapeutic procedure. Respondent suffered an injury that never fully resolved. While the requested diagnostic procedure is not guaranteed to locate the pain generators and the source of debilitation, it provides the only reasonable alternative for attempting to identify the cause of the pain and the debilitation.¹ Petitioner failed to prove by a preponderance of the evidence that the requested diagnostic procedure is not necessary for the treatment of the pain and debilitation Respondent is experiencing. The ALJ finds the preponderance of the evidence supports preauthorization for the requested MRI of the cervical spine and right shoulder. The requested MRI of the cervical spine and right shoulder is medically necessary.

II. FINDINGS OF FACT

1. _____ (Respondent), a 50-year-old female, sustained a work related injury on _____, when her chair slipped and she fell out of her chair onto her right arm.

¹ While the Respondent failed to follow Dr. Gillespie's recommendation of four to six weeks of trigger point injections with aggressive therapy, the ALJ does not find that fact is sufficient to preclude preauthorization of the requested MRI. It is still possible for Respondent to follow Dr. Gillespie's recommended course of treatment prior to the MRI.

2. Respondent experienced pain in her neck, right shoulder and arm.
3. Respondent had an MRI of her neck and shoulder in May 1998, an MRI of her cervical spine in January 2000, a cervical myelogram and post myelographic CT scan in December 2000, and dynamic x-rays of her neck in January 2001. Respondent has also had epidural injections.
4. Respondent requested preauthorization for a repeat Magnetic Resonance Imaging (MRI) of the cervical spine and right shoulder.
5. American Home Assurance Company's (Petitioner) preauthorization review determined that the procedure was not medically necessary.
6. By letter dated March 11, 2003, Envoy Medical Systems, LLC, an Independent Review Organization (IRO) concluded that a repeat MRI of the cervical spine and right shoulder was medically necessary for the diagnosis and treatment of the Patient's condition.
7. Dr. Stacey Gillespie, the Designated Doctor selected by the Commission, examined and evaluated Respondent on March 3, 2003.
8. Respondent's primary problem during Dr. Gillespie's examination was the right shoulder and AC joint dysfunction; some early adhesive capsulitis; scapular, humeral and thoracic dysfunction; and myofascial pain syndrome.
9. Dr. Gillespie, believing that four to six weeks of trigger point injections and aggressive therapy would significantly reduce Respondent's pain as Respondent's shoulder range of motion improved, recommended diagnostic and therapeutic injections into the right shoulder subacromially with some aggressive range of motion in an effort to avoid the need for surgical manipulation of the shoulder.
10. Dr. Gillespie recommended further imaging of the shoulder if there was no improvement after the injections followed by therapy.
11. Respondent failed to follow Dr. Gillespie's recommendation of four to six weeks of trigger point injections with aggressive therapy.
12. Respondent has been seen by numerous physicians.
13. Respondent was evaluated, but not examined, by Drs. William E. Blair, Jr., and Melissa Tonn.
14. Dr. Gillespie's medical analysis is the most credible medical evaluation.
15. Respondent suffered an injury that never fully resolved.

16. While the requested diagnostic procedure is not guaranteed to locate the pain generators and the source of debilitation, it provides the only reasonable alternative for attempting to identify the cause of the pain and the debilitation.
17. An MRI of the cervical spine and right shoulder is necessary to properly evaluate Respondent.
18. The requested MRI of the cervical spine and right shoulder is medically necessary.
19. On March 13, 2003, Petitioner timely requested a hearing to contest the IRO decision of March 11, 2003.
20. The IRO decision is deemed a Decision and Order of the Texas Workers' Compensation Commission (Commission).
21. By letter dated April 15, 2003, the Commission issued a notice of hearing.
22. On April 22, 2003, Commission Ombudsman Luz Loza filed a notice of written appearance based upon Respondent's request for ombudsman assistance.
23. A one-day hearing was convened by Administrative Law Judge Howard S. Seitzman on May 27, 2003, in the hearing rooms of the State Office of Administrative Hearings.
24. Steven M. Tipton represented Petitioner. Respondent appeared in person with the assistance of Commission Ombudsman Luz Loza.
25. There were no contested issues of notice or jurisdiction.

III. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation 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(d) and TEX. GOV'T. CODE ANN. ch. 2003.
3. Petitioner timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 102.7 and 148.3.
4. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. ch. 2001.

5. 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).
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. Pursuant to TEX. LAB. CODE ANN. § 413.014, for a carrier to be liable for certain services and supplies, the service must be preauthorized by the carrier or by order of the Commission.
8. Based upon the foregoing findings of Fact and conclusions of Law, the requested MRI of the cervical spine and right shoulder is medically necessary.

ORDER

THEREFORE IT IS ORDERED that the relief sought by Petitioner America Home Assurance Company's is **DENIED** and the MRI of Respondent's cervical spine and right shoulder is preauthorized.

SIGNED this 19th day of June 2003.

HOWARD S. SEITZMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS