

DOCKET NO. 453-03-3114.M2
MDR TRACKING NO. M2-03-0625-01

_____,	§	BEFORE THE STATE OFFICE
Petitioner	§	
v.	§	OF
	§	
TEXAS MUTUAL INSURANCE	§	ADMINISTRATIVE HEARINGS
COMPANY,	§	
Respondent	§	

DECISION AND ORDER

____ (Claimant) appealed the findings of the Texas Workers' Compensation Commission's Medical Review Division (MRD), which denied Claimant's request for preauthorization of a caudal catheter series because it found it was not reasonable or necessary health care under TEX. LAB. CODE ANN. § 408.021. This decision finds that the Claimant has met her burden of proof and preauthorizes the requested caudal catheter series.

I. PROCEDURAL HISTORY

The hearing convened before Lilo D. Pomerleau, Administrative Law Judge (ALJ) with the State Office of Administrative Hearings, on June 11, 2003, in the William P. Clements Building, 300 West 15th Street, Austin, Texas. Attorney Christopher Trickey appeared and represented Texas Mutual Insurance Company (Respondent). Commission Ombudsman Luz Loza appeared and aided the Claimant in presenting her case. The Claimant appeared via telephone. The record remained open until June 16, 2003, to receive additional documentation from the Claimant.

II. LEGAL STANDARDS

The services at issue require preauthorization, which is dependent upon a prospective showing of medical necessity. In this proceeding, the Claimant bore the burden of proving by a preponderance of the evidence that the requested caudal catheter series should have been preauthorized by the Carrier. *See* 28 TEX. ADMIN. CODE § 148.21(h) and (i).

Workers' compensation insurance covers all medically necessary health care, which includes all reasonable and necessary medical aid, examinations, treatments, diagnoses, evaluations, and services. Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.011 (19)(A) (Vernon Supp. 2002). An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the compensable injury, as and when needed. TEX. LAB. CODE ANN. § 408.021 (Vernon 1996). 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. *Id.*

III. FACTUAL BACKGROUND

The Claimant injured her back on____, while employed with a radio broadcasting company. She continued to work until 1997. She has received chiropractic services, physical therapy, aquatic therapy, approximately 15 epidural steroid injections, botox injections, and four separate caudal catheter series, dated May 4, 1999, October 26, 1999, April 4, 2000 and January 9, 2002. She has also attended a pain management program. She is not a surgery candidate. An MRI performed in 1999 documented degenerative desiccation at the L4-L5 and L5-S1 levels of her spine without significant bulging or focal disc herniation or narrowing. Pet. Ex. 10 at 307.

The caudal catheter series entails putting a needle into the caudal epidural space and injecting contrast to show where scar tissue formation exists. Once the contrast is injected, an epidural catheter is inserted through the needle and advanced to the area where the scar tissue has been detected. The doctor injects a saline solution with an enzyme to break up the scar tissue and then injects more contrast to see if the scar tissue has indeed been dissolved. Additionally, the doctor injects a steroid and an anesthetic to help anesthetize and decrease inflammation in the affected area. The patient is then kept overnight in the hospital and undergoes a repeat injection of just the anesthetic in the hypertonic saline solution for two successive days and the catheter is removed on the third day. Pet. Ex. 10 at 35.

The Carrier denied preauthorization for another caudal catheter series for the Claimant. The Claimant filed a request with the Workers' Compensation Commission (Commission) for medical dispute resolution. On March 31, 2003, an independent review organization issued a decision finding the caudal catheter series was not in the mainstream of generally accepted procedures and was not medically necessary.

IV. THE PARTIES' POSITIONS

A. The Claimant

In support of her request for the caudal catheter series, the Claimant presented testimony from Miles Day, M.D., a pain management specialist, who is board certified in anesthesiology with added qualifications in pain management. He practices with the International Pain Institute, which is affiliated with Texas Tech University's School of Medicine. He testified that the Claimant suffers from radiculopathy caused by nerve root compression. He could not state definitively the cause of the nerve root compression but believed that scar tissue is to blame.

Dr. Day testified that the Claimant has experienced good results with the caudal catheter procedure on four separate occasions, most recently on January 9, 2002. Seven weeks after the January 9, 2002 procedure, the Claimant's pain level was reduced to a two from a ten on a ten point scale. *See* Pet. Ex. 10 at 121. He testified that the pain relief lasts up to six months. He explained that the Claimant has four separate pain generators in her back; however, this procedure only addresses the radiculopathy in her limbs. After the procedure, she is able to take less narcotic medication, although she still takes a number of other prescriptions. He believed that the procedure, which costs about \$4-5,000, is a cost-effective and less invasive alternative to surgery that allows her to take less medication.

Dr. Day disagreed that the procedure is not in the mainstream. The procedure was developed about ten to fifteen years ago by Dr. Racz, his colleague at the International Pain Institute. The procedure is performed roughly five to ten times a week at his clinic and they have performed about 4,000 to 5,000 of these procedures, with few problems. Pet. Ex. 10 at 5. According to Dr. Day, the American Medical Association recognizes the procedure and assigned it a Current Procedural Terminology (CPT) billing code in 2000.

The medical documentation reflects that Alvaro Hernandez, M.D., has treated the Claimant since 1996. He originally provided the referral to Dr. Day at the International Pain Institute. The record demonstrates that he concurred with the recommendation for an additional caudal catheter series and found that it is the only thing that has provided her relief and markedly improved the quality of her life for a four to six month period. He believed it is medically necessary treatment and totally medically appropriate. Pet. Ex. 10 at 315.

The Claimant testified that she has experienced significant pain relief from the caudal catheter series on four separate occasions. She testified that her pain is overwhelming and that many activities of daily living are beyond her when she is in severe pain. After the caudal catheter series, for a period of four to six months, she is able to get out of bed, walk down stairs, take a bath, and use a toilet without assistance. She testified that her pain level now is absolutely debilitating. She is barely able to walk and has difficulty eating and sleeping. She currently is taking the maximum amount of narcotic medication for breakthrough pain as is allowed by Dr. Day.

B. The Carrier

The Carrier maintains that the procedure is not reasonable or medically necessary.

Nicolas Tsourmas, M.D., a board certified orthopaedic surgeon, testified that the caudal catheter series is not an appropriate treatment for the Claimant. First, he testified that the procedure is controversial and is outside the mainstream of medicine. He has personally observed the procedure being performed, and he and his colleagues at the hospital in which he practices determined that the procedure was too risky and should not be allowed at their institution. He did not believe that it is a standard protocol of medicine and believed that it could cause more harm than good.

Second, he believed that the treatment was medically unnecessary for the Claimant because he could not find any basis for her radiculopathy in her MRIs. Nor did he see any evidence of adhesions or scar tissue. As he explained, he would expect to see nerve root compression if there is radiculopathy, but the MRI in 1999 did not show any neural compression, adhesions, or scar tissue. Further, he had never seen scar tissue due to leakage of the disc material into the surrounding areas as mentioned by Dr. Day. Overall, he believed that the information available was inadequate to determine the source of her pain. He recommended an alternative course of treatment of physical therapy and medication and believed that a more recent MRI might be helpful in determining the origin of her radiculopathy.

Clark Watts, M.D., a board certified orthopaedic surgeon also testified on behalf of the Carrier. His testimony focused on the published articles submitted by the Claimant in support of the caudal catheter series. *See* Pet. Ex. 6-9. He stated that the studies chronicled in the articles were of little value in demonstrating the efficacy of the procedure. One article was not applicable as it did not address lysis of scar tissue with the hypertonic solution. *See* Pet. Ex. 6. Further, the studies were retrospective in nature, not prospective. Dr. Watts also explained that the “placebo effect” also has to be considered in studies that are not “double-blinded,” such as these, so that both the patients and the doctors do not know who is receiving the treatment being tested and who is receiving the “placebo.” Dr. Tsourmas also testified that the studies provided by the Claimant were published in *Pain Digest*, which is not a peer-reviewed publication, and he did not find any of the studies persuasive or reliable.

V. ANALYSIS AND RECOMMENDATION

The ALJ finds the Claimant has met her burden of proof to demonstrate that the caudal catheter series is reasonable and medically necessary health care that should be preauthorized

The ALJ finds that the Claimant met her burden to show that the procedure is reasonable and not experimental. While the studies provided were less than compelling, the un rebutted testimony of Dr. Day established that the American Medical Association assigned a CPT code for the caudal catheter series in 2000. The 1996 Medical Fee Guideline adopted pursuant to 28 TEX. ADMIN. CODE §134.201 in its preliminary notice of disclaimer specifically refers to CPT publications and states that they “contain the complete and most current listings of CPT descriptive terms and numeric identifying codes and modifiers for reporting medical services and procedures.” Therefore, the ALJ finds that the caudal catheter series is not outside the mainstream, as the Carrier argues, but rather has been performed with sufficient regularity that the AMA determined it necessary to provide it with a CPT code. This evidence outweighs Dr. Tsourmas’ personal experience at the hospital in which he practices.

The next issue is whether the procedure is medically necessary for the Claimant. Most troubling is the lack of evidence as to the origin of the Claimant's radiculopathy. The ALJ found compelling Dr. Tsourmas' testimony that there is no evidence of neural compression, and therefore, no understanding of the cause of the Claimant's radiculopathy. The Claimant in her testimony does not distinguish between radicular pain and other pain in her back. But Dr. Day's testimony establishes that the procedure will only relieve her radicular symptoms. In reviewing the documentation, the ALJ also notes that the procedure may be losing some of its effectiveness as it is repeated. *See* Pet. Ex. 10 at 173.

In ordering the preauthorization of the procedure, the ALJ is ultimately persuaded by Dr. Day's and the Claimant's testimony. Most importantly, the procedure has succeeded in relieving her pain on three separate occasions. The Claimant and Dr. Day testified, and the documentation confirms, that her pain is reduced from four to six months after the procedure takes place. The Claimant testified that after the procedure her pain is reduced to a two from a ten on a ten-point scale and she is able to engage in many activities of daily living that are beyond her when she is in severe pain.

Therefore, the ALJ finds that an additional caudal catheter series is reasonable and medically necessary health care.

VI. FINDINGS OF FACT

1. The Claimant injured her back on____, while employed with a radio broadcasting company.
2. Texas Mutual Insurance Company provided workers' compensation insurance to the Claimant's employer on the date of the injury.
3. The Carrier denied preauthorization for a fifth caudal catheter series. The Claimant timely filed a request with the Workers' Compensation Commission (Commission) for medical dispute resolution.
4. On March 31, 2003, an independent review organization issued a decision finding the caudal catheter series was not in the mainstream of generally accepted procedures and was not medically necessary.
5. The Claimant filed a timely request for hearing to contest the findings and decision of the MRD.
6. On May 15, 2003, the Commission issued notice of the contested hearing in this matter to all parties. The notice of hearing contained a statement of the time, place and nature of the hearing; a statement of 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 to be asserted.

7. On June 11, 2002, Administrative Law Judge Lilo D. Pomerleau convened a hearing on the merits in Austin, Texas, and the Carrier appeared. The Claimant appeared via telephone and was aided in the presentation of her case by Luz Loza, Commission Ombudsman. The record closed June 16, 2003.
8. Since 1993, the Claimant has received chiropractic services, physical therapy, aquatic therapy, approximately 15 epidural steroid injections, botox injections, and four separate caudal catheter series, dated May 4, 1999, October 26, 1999, April 4, 2000, and January 9, 2002. She has also attended a pain management program.
9. An MRI performed in 1999 documented degenerative desiccation at the L4-L5 and L5-S1 levels of her spine without significant bulging or focal disc herniation or narrowing.
10. For four to six months after the January 9, 2002 caudal catheter series, the Claimant's pain was reduced to a two out of ten on a ten-point pain scale, and she was able to engage in activities of daily living such as getting out of bed, bathing, and using the toilet.
11. The caudal catheter series entails putting a needle into the caudal epidural space and injecting contrast to show where scar tissue formation exists. Once the contrast is injected, an epidural catheter is inserted through the needle and advanced to the area where the scar tissue has been detected. The doctor injects a saline solution with an enzyme to break up the scar tissue and then injects more contrast to see if the scar tissue has indeed been dissolved. Additionally, the doctor injects steroid and an anesthetic to help anesthetize and decrease inflammation in the affected area. The patient is then kept overnight in the hospital and undergoes a repeat injection of just the anesthetic in the hypertonic saline solution for two successive days, and the catheter is removed on the third day.
12. In 2000, the American Medical Association assigned the caudal catheter series a Current Procedure Terminology (CPT) code.
13. Miles Day, M.D., a pain management specialist, who is board certified in anaesthesiology with added qualifications in pain management, recommended the treatment at issue for the Claimant's pain relief. The caudal catheter series has been performed approximately 4,000 to 5,000 times at the International Pain Institute, which is affiliated with Texas Tech University's School of Medicine. The procedure is performed at that institution roughly five to ten times a week.

14. Alvaro Hernandez, M.D., the Claimant's treating physician, also recommended the treatment as medically necessary and appropriate.
15. An additional caudal catheter series is reasonable and necessary health care for the Claimant.

VII. 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. §§ 402.073(b) and 413.031(d) and TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000).
2. Adequate and timely notice of hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. An additional caudal catheter series is reasonably required health care under TEX. LAB. CODE ANN. § 408.021.
4. Claimant is preauthorized to receive the caudal catheter series.

ORDER

IT IS, THEREFORE, ORDERED that preauthorization for the caudal catheter series is granted.

SIGNED AT AUSTIN, TEXAS the 14th day of July, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

**LILO D. POMERLEAU
ADMINISTRATIVE LAW JUDGE**