

**DOCKET NO. 453-03-3331.M5**  
**MDR Tracking No. M5-03-0917-01**

<b>TEXAS IMAGING AND DIAGNOSTIC CENTER</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
<i>PETITIONER</i>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>CONTINENTAL CASUALTY COMPANY</b>	§	
	§	
<i>RESPONDENT</i>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Texas Imaging and Diagnostic Center (Provider) seeks reimbursement for a magnetic resonance imaging (MRI) of the left foot provided to the injured worker, (Claimant), on, Continental Casualty Company (Carrier) denied payment, stating that the MRI was not medically necessary. Subsequently, \_\_\_\_, certified as an independent review organization (IRO), determined that the MRI was not medically necessary. Provider appealed the IRO’s decision, arguing that the MRI was medically necessary and that full reimbursement should be ordered. The Administrative Law Judge (ALJ) finds that the MRI was not medically necessary and denies reimbursement.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

On October 16, 2003, ALJ Michael J. O’Malley convened the hearing at the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas. Carrier appeared through its attorney, Jane Lipscomb Stone. Provider appeared through its attorney, Peter N. Rogers. After the evidence was presented, the record of the hearing closed on October 30, 2003, when the last closing argument was filed. There were no contested issues of jurisdiction or notice in this proceeding. Therefore, those matters are set out in the findings of fact and conclusions of law without further discussion here.

**II. BACKGROUND, EVIDENCE, AND ANALYSIS**

**A. Background**

On \_\_\_\_, Claimant suffered a compensable injury to his left foot. Claimant caught his left foot in a gap of a trailer bed when the vehicle pulling the trailer stopped suddenly, causing heavy metal rails to crush his left foot. Allen S. Kent, M.D., an orthopedist, began seeing Claimant on October 12, 2000. On January 4, 2001, Dr. Kent recommended physical therapy for Claimant. On January 15, 2001, Claimant began physical therapy at Sante Rehabilitation Group. Claimant continued physical therapy until March 20, 2001. On March 22, 2001, Dr. Kent found that Claimant had very little tenderness in his left foot. In addition, x-rays showed complete ossification of the fracture. Dr. Kent concluded that Claimant was at maximum medical improvement (MMI) and could return to full-time unrestricted work as of March 23, 2001. On \_\_\_\_, Claimant suffered another injury to his neck and soon thereafter changed treating doctors from Dr. Kent to Alex X. Rivera, D.C. at Alta Healthcare Clinic (Alta).

On August 22, 2001, Dr. Rivera began to treat Claimant for his left-foot injury. After extensive chiropractic care to Claimant's left foot, Alta referred Claimant to Provider for an MRI.

## **B. Parties' Positions and Evidence, and ALJ's Analysis**

### **1. Provider's Position and Evidence**

Provider argues that the MRI was medically necessary to rule out the existence of bone marrow edema, bone bruise, stress fracture, soft tissue injury, fluid collection, or tendon integrity problems. Spencer Sloane, D.C., another Alta chiropractor, testified on behalf of the Provider. Although Dr. Sloane was not the treating doctor at Alta, he testified he worked with Dr. Rivera in treating Claimant. Dr. Sloan stated that the left-foot MRI was medically necessary for the following reasons. He indicated that Claimant complained of pain a year after the injury had occurred and after receiving extensive conservative care. Having exhausted conservative treatment of the left foot that did not relieve the pain, Dr. Sloane testified that the MRI became necessary to rule out any undiagnosed internal derangement disorder. Alta referred Claimant to Philip M. Cantu, M.D. to treat Claimant for his chronic pain. Most of Claimant's pain was related his neck injury-which is not part of this case-that occurred on \_\_\_\_\_. Dr. Cantu, however, observed continued pain in Claimant's left foot and ankle as late as October 23, 2001. Based on Dr. Cantu's assessment and its own observations of Claimant's pain, Alta referred Claimant to Provider to conduct an MRI of the left foot.

### **2. Carrier's Position and Evidence**

Carrier argues that the MRI of the left foot was not medically necessary because there was no clinical basis indicating any continued left-foot problems almost 15 months after the injury. Marvin E. Van Hal, M.D., an orthopedic surgeon, testified on behalf of Carrier. He testified that the possible conditions that could exist according to Provider-bone marrow edema, bone bruise, stress fracture, soft tissue injury, fluid collection, and tendon integrity problems-were not possible diagnoses that would warrant performing an MRI. Dr. Van Hal noted that Dr. Kent, the first treating doctor, diagnosed Claimant's fracture on the left forefoot of the distal shaft of the third metatarsal. Claimant began an extensive rehabilitation program and, on March 22, 2001, Dr. Kent determined that Claimant had reached MMI and could return to full-time, unrestricted work on March 23, 2001.

Carrier next points out that four months passed after the date of the MMI with no reports of pain or left-foot problems. On \_\_\_\_ Claimant suffered a neck injury. After the neck injury, Claimant changed treating doctors and began treatment for his neck and foot injury at Alta. Carrier notes that Alta provided chiropractic care to Claimant's left foot from August, 2001 through October, 2001. Carrier claims that the chiropractic care was unnecessary based on a report by Donald Mauldin, M.D. Dr. Mauldin performed a records review on November 5, 2001, and concluded that chiropractic care was not needed for a foot fracture that had already properly healed. On November 16, 2001, Frank J.

Rodriguez, Jr., M.D., an orthopedist, treated Claimant and found that there was no obvious fracture. And, Carrier notes that Dr. Rodriguez did not recommend an MRI. Carrier argues that there was excessive treatment for a left foot fracture once Claimant decided to be treated at Alta. Dr. Van Hal testified that there should have been a finding, after an orthopedic examination, that a specific pathology existed to warrant an MRI. In this case, Carrier claims there were no objective indicators in Alta's records that would indicate the need for further diagnostic testing.

### 3. ALJ's Analysis

The issue is whether it was medically necessary for Claimant to undergo an MRI of the left foot almost 15 months after the injury. The ALJ finds that Provider did not meet its burden of proof that an MRI was medically necessary. The timing of the MRI is important in this case. Because Dr. Kent found Claimant to be at MMI improvement on March 22, 2001,<sup>1</sup> it was necessary for Provider to show a specific pathology that would warrant an MRI almost 15 months after the injury. After Dr. Kent concluded that Claimant was at MMI, Claimant did not complain of pain in his left foot until July 2001, after he suffered a neck injury and began treatment with Alta. Although certain doctors at Alta noted Claimant's subjective left-foot pain,<sup>2</sup> there was never a specific pathology that was associated with the pain. The x-rays performed on March 22, 2001, indicated complete ossification of the fracture.<sup>3</sup> Therefore, as of March 22, 2001, the fracture had healed according to Dr. Kent, and Dr. Kent further indicated that Claimant could return to full-time, unrestricted work.<sup>4</sup> Dr. Kent's assessment that the fracture had healed was later confirmed by Dr. Rodriguez, who examined Claimant on November 16, 2001, just a few weeks before the MRI. After examining Claimant, Dr. Rodriguez did not recommend an MRI.<sup>5</sup>

Claimant is entitled to "all health care reasonably required by the nature of the injury as and when needed . . . that cures or relieves the effects naturally resulting from the compensable injury."<sup>6</sup> However, in this case, Claimant's compensable injury had healed; therefore, no further tests were necessary. Provider did not show by a preponderance of the evidence that the MRI was medically necessary. Therefore, after considering the documentary evidence and the testimony of Drs. Sloane and Van Hal, the ALJ concludes that the MRI was not medically necessary for the reasons discussed above.

### III. FINDINGS OF FACT

1. On \_\_\_\_, Claimant \_\_\_\_ (Claimant), suffered a compensable injury to his left foot in the course and scope of his employment.
2. Continental Casualty Company (Carrier) insured Claimant on the date of the injury.
3. Allen S. Kent, M.D., and orthopedist, began seeing Claimant on October 12, 2000.
4. Claimant continued physical therapy until March 20, 2001.

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<sup>1</sup> Carrier Ex. 2 at 69, and 764-765.

<sup>2</sup> Carrier Ex. 2 at 851-853.

<sup>3</sup> Carrier Ex. 2 at 69.

<sup>4</sup> *Id.*

<sup>5</sup> Carrier Ex. 1 at 823-825.

<sup>6</sup> TEX. LAB. CODE ANN. § 408.021.

5. On March 22, 2001, Dr. Kent found that Claimant had very little tenderness in his left foot.
6. On March 22, 2001, x-rays showed complete ossification of the left-foot fracture.
7. On March 22, 2001, Dr. Kent determined that Claimant was at maximum medical improvement (MMI) and could return to full-time unrestricted work on March 23, 2001.
8. On\_\_\_\_, Claimant suffered a neck injury.
9. After Claimant's neck injury, he changed treating doctors and began treatment at Alta Health Care (Alta) with Alex X. Rivera, D.C. as his treating doctor.
10. On August 22, 2001, Dr. Rivera began to treat Claimant's left-foot injury.
11. There was not documented treatment for Claimant's left-foot injury between March 22, 2001, and August 10, 2001.
12. On November 16, 2001, Frank J. Rodriguez, Jr., M.D., an orthopedist, examined Claimant and found that the left-foot fracture had completely healed.
13. After extensive chiropractic care to Claimant's left foot, Alta referred Claimant to Texas Imaging and Diagnostic (Provider) for an MRI.
14. On December 5, 2001, Provider performed the MRI on the left foot, which was normal.
15. There was no specific pathology based on an orthopedic examination that would warrant an MRI of the left foot on December 5, 2001.
16. Carrier denied payment for the MRI as not medically necessary.
17. On March 31, 2003, the Independent Review Organization (IRO) denied the request for reimbursement for the MRI.
18. On May 5, 2003, Provider appealed the IRO's decision and requested a hearing before the State Office of Administrative Hearings (SOAH).
19. On June 2, 2003, the Texas Workers' Compensation Commission (Commission) issued the notice of hearing.
20. 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 held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
21. On October 16, 2003, Administrative Law Judge Michael J. O'Malley convened the hearing on the merits. Representatives of the Provider and Carrier participated. The hearing adjourned the same day, and the record closed on October 30, 2003.

#### IV. 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. SOAH 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 and 413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Pursuant to 28 TEX. ADMIN. CODE § 148.21(h), Provider had the burden of proving by a preponderance of the evidence that the MRI of the left foot, performed almost 15 months after the injury, was medically necessary.
5. The MRI was not medically necessary because the orthopedic examinations showed that the left-foot fracture had healed as of March 22, 2001, and Claimant was at MMI and could return to full-time, unrestricted work as of March 23, 2001.
6. Based on the foregoing findings of fact and conclusions of law, Provider is not entitled to reimbursement of left-foot MRI performed on Claimant on December 5, 2001.

#### **ORDER**

**IT IS HEREBY ORDERED** that Texas Imaging and Diagnostic Center is not entitled to reimbursement from Continental Casualty for the MRI rendered to Claimant\_\_\_\_. on December 5, 2001.

**SIGNED November 10, 2003.**

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**MICHAEL J. O'MALLEY**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARING**