

DOCKET NO. 453-03-3348.M2
MDR TRACKING NO. M2-03-0867-01

JOHN A. SAZY, M.D.,
Petitioner

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BEFORE THE STATE OFFICE

V.

OF

PACIFIC
INDEMNITY COMPANY,
Respondent

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

John A. Sazy, M.D. (Petitioner) is appealing the decision of Ziroc, an independent review organization (IRO) denying preauthorization for an MRI. The IRO determined from the medical documentation submitted for review that the requested medical procedure was not medically necessary to treat the Claimant's condition. The Administrative Law Judge (ALJ) finds the request for preauthorization should be granted because the requested treatment is medically necessary.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

On August 11, 2003, ALJ Wendy K. L. Harvel convened the hearing at the William P. Clements Building, 300 West 15th Street, Austin, Texas. Petitioner appeared *pro se* via telephone. Pacific Indemnity Company (Respondent or Carrier) was represented by William Weldon, attorney. Notice and jurisdiction were not contested and will be addressed in the findings of fact and conclusions of law. Following the presentation of evidence, the hearing and the record closed on August 11, 2003.

II. DISCUSSION

1. Background

The Claimant, who is a ___ year old female, underwent spinal fusion surgery in May 1999, as the result of a compensable injury that occurred on ____. The fusion occurred at the L5-S1 level. Petitioner performed the surgery and is still Claimant's treating doctor. After the surgery, many of Claimant's complaints resolved. Since June 2001, she has, however, complained of increased pain in her lower back and in her right leg. Dr. Sazy believes that the pain is due to degeneration at the L4-L5 level that has accelerated due to the fusion at the L5-S1 level. He believes that an MRI will diagnose whether there is accelerated degeneration, and from the MRI results, he will determine the proper course of treatment.

2. Medical Records

The documentary evidence consisted of thirteen pages of medical records.¹ The records reflect that a myelogram and post-myelogram CT scan of the lumbar spine were performed on October 27, 1999. At that time, L4-L5 disc spaces were found to appear normal, but “[a] small amount of epidural contrast is present to the left posterolaterally, likely from the injection. This mildly deforms the posterolateral aspect of the thecal sac. However, there is no neural foraminal narrowing or spinal stenosis.”² A subsequent myelogram and post-myelogram CT scan of the lumbar spine were performed on July 20, 2001. Findings at the L4-L5 level indicated that the results were normal.³

The Carrier denied preauthorization of the requested MRI. The reason given was that there was no indication of how Claimant’s symptoms or findings had changed since the myelogram CT scan because her history had always been back pain and right leg pain.⁴

3. Testimony of Dr. Sazy

Dr. Sazy is the Claimant’s current treating physician. He testified that the MRI is necessary to determine if the Claimant’s pain is a result of accelerated degeneration of the disc space above the fusion. He testified that in about twenty percent of fusions, the disc immediately adjacent to the fused disc will deteriorate rapidly as a result of the fusion. The Claimant, according to Dr. Sazy, exhibits the classic symptoms of someone who is suffering from accelerated degeneration. He testified he needs the MRI to determine the source of Claimant’s pain.

On cross-examination, Dr. Sazy testified that although the radiologist read the July 2001 myelogram as being normal, Dr. Sazy read it as abnormal. Therefore, he is requesting the MRI so that he can obtain a diagnosis of the Claimant’s pain and develop a treatment plan.

4. Carrier’s Evidence

Carrier presented documentary evidence only. Carrier’s case consisted of the few pages of medical records offered into evidence and argument. The medical records show the results of the two myelogram CT tests as well as the Carrier’s denial of the preauthorization request.

¹ Ex. 1.

² Ex. 1 at 14.

³ Ex. 1 at 10.

⁴ Ex. 1 at 2.

III. CONCLUSION

The burden is on the Petitioner to show that necessity for the requested procedure has been adequately documented. Dr. Sazy has examined the Claimant. He believes that additional diagnostic testing is needed to determine if the Claimant needs surgical intervention or less invasive therapy. Carrier's evidence consisted of a paper review by a physician who has not examined Claimant. A preponderance of the evidence supports preauthorization of the requested procedure.

IV. FINDINGS OF FACT

1. On ____, the Claimant sustained an on-the-job injury.
2. At the time of the Claimant's injury, Pacific Indemnity Company (Respondent or Carrier) provided workers' compensation insurance to the Claimant's employer.
3. The Claimant was treated with spinal fusion surgery at the L5-S1 level in May 1999.
4. The Claimant received relief from pain following the surgery, but since 2001, has complained of increased low back and right leg pain.
5. John A. Sazy, M.D. (Petitioner), Claimant's current treating physician, recommends an MRI to determine the source of the Claimant's ongoing pain.
6. The MRI will indicate whether additional intervention is necessary to treat the Claimant's ongoing pain.
7. The Carrier denied the Petitioner's request for preauthorization of an MRI.
8. The Petitioner requested dispute resolution services from the Texas Workers' Compensation Commission's Medical Review Division.
9. On April 28, 2003, Ziroc, an independent review organization, issued its decision denying preauthorization because an MRI was not necessary without a change in symptoms of physical findings.
10. Petitioner filed a request for hearing to contest the denial of preauthorization of the requested services.
11. The Commission sent notice of the hearing to the parties on June 4, 2003. The hearing notice informed the parties of the matter to be determined, the right to appear and be represented by counsel, the time and place of the hearing, and the statutes and rules involved.
12. The hearing on the merits convened on August 11, 2003, before Wendy K. L. Harvel, Administrative Law Judge. Petitioner appeared *pro se*. Respondent appeared through William Weldon, attorney.

V. 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. §§ 402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. Petitioner timely filed notice of appeal, as specified in 28 TEX. ADMIN. CODE §148.3.
4. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE § 148.4(b).
5. Petitioner had the burden of proving the case by a preponderance of the evidence, pursuant to 28 TEX. ADMIN. CODE § 148.21(h) and (i), and 1 TEX. ADMIN. CODE § 155.41.
6. As provided by TEX. LAB. CODE ANN. § 413.014 and 28 TEX. ADMIN. CODE § 134.600(h)(1), preauthorization is required for all non-emergency hospitalizations.
7. Based on the Findings of Fact, the requested medical procedure is medically necessary.
8. Based on the Findings of Fact and Conclusions of Law, Claimant is entitled to preauthorization for the medically necessary treatment.

ORDER

IT IS, THEREFORE, ORDERED that Respondent, Pacific Indemnity Company, pay the reasonable and necessary cost of providing the Claimant the requested MRI.

SIGNED this 15th day of August, 2003.

WENDY K.L.HARVEL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS