

AMERICAN HOME ASSURANCE COMPANY, Petitioner	§	BEFORE THE STATE OFFICE
	§	
	§	
	§	
v.	§	OF
	§	
TEXAS WORKERS' COMPENSATION COMMISSION and _____, Respondents	§	ADMINISTRATIVE HEARINGS
	§	

DECISION AND ORDER

I. Summary

American Home Assurance Company (Carrier) sought review of a decision by the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC or Commission) declining to preauthorize lumbar spinal injections to treat _____'s (Claimant) back injury. The substantive review of Carrier's claim was conducted by an Independent Review Organization (IRO). Carrier had denied preauthorization for the treatment on the ground that the need for the services had not be documented. In a decision issued on May 2, 2003, the IRO officer¹ concluded that Carrier had demonstrated that there was a medical need for lumbar spinal injections and recommended preauthorization.

Based on the evidence, the Administrative Law Judge (ALJ) concluded that Petitioner failed to meet its burden of proof to show that the medical services at issue are not necessary or that Claimant had failed to document that such services are necessary. The lumbar facet injections are preauthorized.

II. Discussion

It is undisputed that on _____, Claimant suffered a lumbar strain while shelving car batteries in the course of her employment in the automotive department of a retail store. Her current diagnosis is lumbago, pain in the lumbar area. Carrier Exh. 1, p. 3.

In October 2003, Claimant's treating doctor, Shakeb Hashmi, M.D., referred her to Michael Ellman, M.D., a pain specialist, to have her evaluated for the need for treatment beyond the conservative measures that had been administered through Dr. Hashmi's office. The conservative treatments had not significantly reduced or eliminated Claimant's back pain. Prior to the referral to Dr. Ellman, Claimant had undergone eight weeks of physical therapy with stabilizing home exercises and stretching, and had been prescribed pain medication, which she still takes. Claimant Exh. 1, pp. 8-9. After examining Claimant in October 2002, Dr. Ellman sought preauthorization for the a series of three spinal facet injections. Dr. Ellman recommended this treatments both for possible relief of

¹ The IRO company in this case was Ziroc, a division of ZRC Services, Inc. As is the practice when this company serves as an IRO, Ziroc did not disclose the identity of the reviewer it employed, although he or she was identified as a board-certified orthopedic surgeon. Claimant Exh. 1, pp. 10-12.

Claimant's pain, and for their diagnostic use to isolate or rule out potential causes of her ongoing pain. On January 29, 2003, Carrier denied that request on the grounds Claimant had failed to document that a series of lumbar injections was medically necessary. Carrier Exh. 1, pp. 5-6. In May 2003, the IRO reviewer concluded that the medical notes demonstrated that Claimant would benefit from the injections since she was suffering radicular pain and had not responded to previous treatment.

On several dates in September 2002, Claimant reported leg pain to her health care providers. The radiating pain is intermittent. An MRI (magnetic resonance imaging) examination was performed on January 7, 2003. It revealed a three-millimeter central disc herniation at the L5/S1 level, which contacts the sacral nerve, and a disc herniation at the L4/L5 level, which contacts the dural sac. Claimant Exh. 1, pp. 10-12. In April 2003, Radie Perry, M.D., the TWCC-designated doctor in this case, concluded that trials of facet or trigger point injections may benefit the patient.² Claimant Exh. 1, pp. 1-3. Testifying for the Carrier, Melissa Tonn, M.D., stated that the lack of reproducible leg pain (radiculopathy) and the absence of findings consistent with radiculopathy in the electromyography (EMG) test performed in September 2002 supported a conclusion the injections were not needed. The results of that test were normal.

The medical opinion evidence in this case and results of the most current test, the MRI support the conclusion that Claimant would benefit from a course of lumbar facet injections. Carrier failed to meet its burden to show that need for these treatments had not been documented, so the treatment is preauthorized.

III. Findings of Fact

1. On ____, ____ (Claimant) suffered a compensable injury, a lumbar strain, while loading car batteries to shelves from a pallet to a retail store display.
2. American Home Assurance Company (Carrier) was the responsible insurer on Claimant's on the date of injury.
3. Between August 2002 and mid-October 2002, Claimant underwent a course of conservative treatment including eight weeks of physical therapy, home exercises and stretching, and administration of prescription pain medication. This treatment was unsuccessful in eliminating or significantly reducing Claimant's lower back pain. She continues on pain medication.
4. Between August 2002 and mid-October 2002, Claimant experienced intermittent episodes of radicular pain to her leg, as well as ongoing lower back pain.
5. In October 2002, Claimant's treating doctor referred Claimant to Michael Ellman, M.D. (Provider), a pain specialist, to evaluate the need for further treatment beyond the conservative care regime.

² The purpose of the designated doctor examination is not to determine appropriate treatment, but rather eligibility for impairment income benefits. TEX. LABOR CODE ANN. §§ 408.121, 408.122, and 408.125. Nevertheless, Dr. Perry's opinion is recent, is based on examination of Claimant, and is from a neutral source, so is entitled to some weight in regard to treatment issues.

6. On October 28, 2003, Provider recommended a bilateral lumbar facet injections at the L3 through S1 levels to attempt to relive Claimant's pain and to aid in diagnosing the precise condition causing Claimant's pain. Provider sought preauthorization for the procedure.
7. As revealed by an MRI (magnetic resonance imaging) test performed on January 7, 2003, Claimant has a central disc herniation at the L5/S1 level which contacts the sacral nerve and a disc herniation at the L4/L5 level which contacts the dural sac.
8. On January 29, 2003, Carrier denied preauthorization for the facet injections on the grounds that Provider had not documented the medical necessity for this treatment.
9. In April 2003, the TWCC-designated doctor, Radie Perry, M.D., recommended a trial of either trigger point or facet injections to treat Claimant's persistent pain.
10. Claimant appealed Carrier's denial of benefits to the Medical Review Division (MRD) of the Texas Workers Compensation Commission (TWCC), which referred the dispute to an Independent Review Organization (IRO).
11. On May 2, 2003, a case reviewer for ____, the assigned IRO, concluded that the facet injections were medically necessary and had been appropriately documented. The reviewer was a board-certified orthopedic surgeon.
12. On March 29, 2003, Carrier filed a timely request for a hearing at the State Office of Administrative Hearings (SOAH) on the MRD decision rendered on its behalf by the IRO.
13. On June 10, 2003, the Commission issued a notice of hearing which included the date, time, and location of the hearing, the applicable statutes under which the hearing would be conducted, and a short, plain statement on the nature of the matters asserted.
14. SOAH Administrative Law Judge (ALJ) Cassandra Church convened a hearing on these issues on August 12, 2003, and the record closed on August 13, 2003, to allow the parties to submit case authority.

IV. Conclusions of Law

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction to decide the issues presented pursuant to TEX. LABOR 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. LABOR CODE ANN. § 413.031 and TEX. GOV'T CODE ANN. ch. 2003.
3. The notice of hearing issued by the Commission was sufficient under the terms of TEX. GOV'T CODE ANN. § 2001.052.
4. Carrier, the Petitioner, has the burden of proving by a preponderance of the evidence that it should prevail in this matter, pursuant to TEX. LABOR CODE ANN. § 413.031.

5. A course of bilateral facet injections for which Claimant and Provider sought preauthorization is the type of treatment program which must be preauthorized according to TEX. LABOR CODE ANN. § 413.015 and 28 TEX. ADMIN. CODE § 134.600.
6. Carrier failed to prove by a preponderance of the evidence that Provider had failed to document the medical necessity for a course of facet injections. Provider did document that the injections would be a service reasonably required to relieve the effects of or promote Claimant's recovery from the compensable injury she suffered, within the meaning of TEX. LABOR CODE ANN. §§ 408.021 and 401.011(9).

ORDER

IT IS HEREBY ORDERED that Claimant ___'s request for preauthorization for a course of bilateral facet injections in the L3 to S1 lumbar areas, to be administered under the direction of Dr. Michael Ellman, is hereby preauthorized.

ISSUED August 28, 2003.

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