

DOCKET NO. 453-03-3420.M2
MDR TRACKING NO. M2-03-0727-01

**AMERICAN HOME ASSURANCE
COMPANY,**
Petitioner

V.

ARUN LALL, M.D.
Respondent

§
§
§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Petitioner, American Home Assurance Company (Petitioner, the Carrier), appealed a decision of an independent review organization (IRO) designated by the Texas Workers' Compensation Commission (Commission), in which an IRO doctor determined diagnostic lumbar facet injections should be preauthorized for Claimant____ (Claimant). Respondent, Arun Lall, M.D.(Respondent, Dr. Lall) administered the injections after receiving the IRO decision.¹ The ALJ concludes the Carrier failed to prove the injections were not medically reasonable and necessary and should not have been preauthorized.

I. REASONS FOR DECISION

1. Summary of the Evidence

Claimant, a stocker at a ____ store, suffered a job-related injury on ____, when she tripped over a box and her knees hit a pallet.² Initially, she was diagnosed with back strain and contusions of the left and right knees and received three weeks of conservative treatment, including physical therapy, various anti-inflammatory medications, and muscle relaxants. (Ex. 1, p. 15.) Her pain persisted, and she was seen by several doctors in the year following her injury.³

¹ Though the preauthorization request technically is moot, the parties chose to try the issue of whether the injections were medically necessary, and thus, whether preauthorization should have been granted. In other, distinguishable contexts, State Office of Administrative Hearings (SOAH) Administrative Law Judges (ALJs), including this ALJ, have concluded that they could not order preauthorization after the services requiring preauthorization have been provided. The basis for that conclusion lies in TEX. LABOR CODE § 413.014, which provides that a Carrier is not liable for services requiring preauthorization unless the provider has obtained either preauthorization from the carrier or an order from the Texas Workers' Compensation Commission (the Commission). Here, Dr. Lall performed the services at issue *after* the IRO issued its decision; thus, the IRO's decision (though not entitled "order") essentially triggered Claimant's entitlement to the services, subject to this appeal.

² The accounts of Claimant's injury vary somewhat in the reports prepared by the various doctors who evaluated her. Some doctors reported that Claimant tripped over a *pallet*, whereas others report that she tripped over a *box*. However, all doctors reported that Claimant fell onto the pallet.

³ After the first three weeks of conservative treatment, she was referred to Larry Linkover, M.D., an orthopedic surgeon. Claimant complained to Dr. Linkover of persisting pain in her neck, left shoulder, low back, and both knees. Dr. Linkover evaluated Claimant but reported that her clinical exam was "completely normal." He recommended Claimant take Naprosyn and return to work on light duty. (Ex. 1, pp. 17-19.) On May 20, 2002, Claimant consulted

An MRI performed on July 22, 2003, revealed multiple anomalies in Claimant's spine, including degenerative disc disease, multi-level disc herniation, facet anthropathy, and varying levels of fluid in the facet joints at L3-L4, L4-L5, and L5-S1. (Ex. 1, pp. 23-24.)

Claimant first saw Respondent, Dr. Lall, on August 5, 2003. Dr. Lall has a background in anesthesiology and currently specializes in interventional pain management. During her initial consultation with Dr. Lall, Claimant complained of low back pain extending into the bilateral groin and down into the mid-calf area of both legs. (Ex. 1, p. 26.) She described her pain as being at level 8 on a 10-point scale. Based on his review of Claimant's MRI report and his examination of her, Dr. Lall concluded that Claimant had multi-level cervical and lumbar disc herniation, cervical and lumbar radiculopathy, lumbar facet anthropathy, and myofascial pain syndrome. (Ex. 1, pp. 26-28.) Dr. Lall administered lumbar epidural steroid injections (ESIs) to Claimant in August, September, and November, 2002; after each injection, Claimant reported reduced radicular pain. However, she still complained of back pain radiating into the groin area. In Dr. Lall's opinion, the logical "next step" was to see if Claimant's pain was coming from the lumbar facet joints. Therefore, on December 27, 2002, he requested preauthorization for diagnostic lumbar facet injections at levels L3-4, L4-5, and L5-S1 (CPT Codes 64440, 64442, and 64443, respectively). According to Dr. Lall, Claimant's case was "as clear as it gets" for the use of diagnostic lumbar facet injections because of the following factors:

- Claimant reported pain in the lower back that radiated into her buttocks and groin area. The type of pain Claimant was experiencing and the fact that it radiated into the buttocks and groin suggested involvement of the facet joints.
- Dr. Lall's examination of Claimant revealed tenderness over the facet joints at L3-4, L4-5, and L5-S1.
- A lumbar MRI showed facet anthropathy and varying levels of fluid in the facet joints at L3-L4, L4-L5, and L5-S1. (Ex. 1, pp. 23-24.)

In testimony at the hearing, Dr. Lall explained his rationale for seeking the preauthorization at issue: Lumbar facet joints are capable of being a source of low back pain and "referred pain" in the lower limbs. Facet blocks can be performed to test the hypothesis that the target joint is the source of the patient's pain. When a facet block is performed, the target joint is anesthetized. If the patient's pain is not relieved by the facet block, the joint cannot be considered the source of pain. If the patient's pain is relieved, however, the joint may be considered the likely source of pain, subject to steps being taken to ensure that the observed response is not false-positive.

The Carrier denied the preauthorization request on the basis that the requested injections were not medically reasonable and necessary:

Gilbert Mayorga, M.D. In that consultation, she complained of pain in the low back, cervical spine, left knee, and lower left leg. Dr. Mayorga essentially confirmed Claimant's initial diagnosis and prescribed more oral medications and an additional four weeks of physical therapy. (Ex. 1, pp. 20-21.)

Request is excessive and unsupported. No basis by which to assume medical necessity of additional spinal inj. > 8 mos. post incident w/no

evidence of lasting progress towards recovery. No attention to RTW. Request exceeds national treatment guidelines. (Ex. 1, p. 5.)

On April 4, 2003, an independent review organization (IRO) doctor, who is board-certified in neurological surgery, determined that:

Based upon treatment guidelines and care standards, it is appropriate to treat the patient for what appears to be a lumbar-sacral spine syndrome and lumbar radicular syndrome, at least partially due to lumbar facet syndrome. It is therefore appropriate for the patient to undergo diagnostic lumbar facet blocks on the right at levels L3/4, L4/5, and L5/S1 as a prelude to recommendations for possible facet radio-frequency denervation.

Following receipt of the IRO doctor's decision, Dr. Lall performed the diagnostic lumbar facet injections on April 17, 2003. Approximately 10 days later, Claimant reported to Dr. Lall that her pain had decreased from level 8 on a 10-point scale, to level 2 on the same scale. Therefore, on May 6, 2003, Dr. Lall requested preauthorization for radio-frequency denervation procedures. Based on Dr. Lall's representation that the diagnostic lumbar facet injections had reduced Claimant's pain, Melissa Tonn, M.D. (the same physician adviser who had denied preauthorization for the diagnostic facet injections and testified as the Carrier's expert witness in this proceeding) preauthorized the radio-frequency denervation procedures.

Dr. Lall performed the radio-frequency denervation procedures in May 2003.⁴ According to Dr. Lall, the procedure reduced Claimant's pain by approximately 75 percent initially, though Dr. Tonn testified that Claimant subsequently has sought preauthorization for a pain management program.

2. Analysis

The Carrier argued that diagnostic lumbar facet injections were not medically reasonable and necessary for two reasons: (1) their effectiveness as a diagnostic tool is questionable, and (2) they were not medically necessary for Claimant. As the petitioner, the Carrier had the burden of proof.

Both parties introduced excerpts from scientific literature supporting their respective positions on the question of whether lumbar facet injections are effective diagnostic tools. The Carrier's scientific literature consisted primarily of one- and two-page printouts from Internet sources, whereas Dr. Lall provided copies of what appear to be peer-reviewed medical articles

⁴ In that procedure, the doctor inserts a needle with a hot electrode tip into the facet joint. By touching a nerve with the hot electrode tip, the doctor attempts to disable the nerve for 6-12 months or longer. This process breaks the pain spiral cycle and permits the joint to rest. Often, the pain does not return.

prepared by specialists in pain management and supported by substantial bibliographies. The ALJ found both parties' documentary evidence left some questions unanswered; however, on the whole, she found the scientific literature submitted by Dr. Lall to contain more detailed reasoning, and thus, to be more persuasive.

The Carrier's expert witness, Dr. Tonn, is an occupational medicine physician and board-certified in pain management. Dr. Tonn testified that she is not necessarily opposed to facet injections or radio-frequency denervation procedures "in the right patient." However, she was concerned about the history of this claim. According to Dr. Tonn, Claimant provided several different versions of how she was injured and her areas of injury appear to have expanded over the course of her treatment. Essentially, Dr. Tonn appeared to be concerned that Claimant may be malingering and complaining of medical conditions unrelated to her compensable injury.

The ALJ did not find, in the record, evidence that Claimant has significantly changed her account of how she was injured. The record reflects that Claimant's primary language is Spanish. Though some doctors who took Claimant's medical history wrote that Claimant tripped over a box, whereas others reported that she tripped over a pallet, the ALJ found no evidence that this discrepancy was due to intentional misrepresentation by Claimant as opposed to misunderstanding or inaccurate reporting by the doctors taking her medical history. Moreover, whether Claimant tripped over a box or a pallet does not seem essential to an understanding of the issues in this case.

The ALJ was unable to determine, from the record, whether Claimant is in fact malingering. Dr. Lall disagreed with Dr. Tonn's assessment that Claimant's list of conditions has expanded over time; he interpreted Claimant's earlier medical records to include references to the complaints Claimant expressed to him. Dr. Lall did not offer an opinion as to whether Claimant is malingering; however, he testified that he does not request preauthorization from carriers to conduct "fluff." Given that Dr. Lall has actually examined and treated Claimant, whereas Dr. Tonn has not, the ALJ concludes that Dr. Lall's opinion is at least as credible as Dr. Tonn's. Moreover, the record reflects that Dr. Lall had objective reasons, besides Claimant's subjective complaints, for believing diagnostic lumbar facet injections should be tried.

For these reasons, the ALJ concludes the Carrier did not meet its burden of proving that the services were not medically necessary and that preauthorization was not warranted. Therefore, the Carrier should pay for the reasonable cost of the services. Whether the specific amounts charged by Dr. Lall were reasonable was not at issue, and is not decided, in this case.

II. FINDINGS OF FACT

1. On ____, Claimant ____ sustained a work-related injury.
2. On the date of injury, Claimant's employer was ____, and its workers' compensation insurance carrier was American Home Assurance Company (Carrier).
3. As a result of the compensable injury, Claimant suffered back strain and contusions of the left and right knees.

4. Claimant first saw Respondent, Arun Lall, M.D., on August 5, 2003. Claimant complained of low back pain extending into the bilateral groin and down into the mid-calf area of both legs.
5. Dr. Lall diagnosed Claimant as having multi-level cervical and lumbar disc herniation, cervical and lumbar radiculopathy, lumbar facet anopathy, and myofascial pain syndrome.
6. Dr. Lall administered lumbar epidural steroid injections (ESIs) to Claimant in August, September, and November, 2002; after each injection, Claimant reported reduced radicular pain.
7. Notwithstanding the reduction in pain following the ESIs, Claimant still experienced back pain radiating into the groin area.
8. Lumbar facet joints are capable of being a source of low back pain and “referred pain” to the groin and lower limbs.
9. Diagnostic lumbar facet injections provide a means of determining whether a specific lumbar facet joint is the source of a patient’s pain.
10. Diagnostic lumbar facet injections were medically reasonable and necessary services for Claimant because of the following factors:
 1. Claimant reported pain in the lower back that radiated to her buttocks and groin area. The type of pain Claimant was experiencing and the fact that it radiated into the buttocks and groin suggested involvement of the facet joints.
 2. Dr. Lall’s examination of Claimant revealed tenderness over the facet joints at L3-4, L4-5, and L5-S1.
 3. A lumbar MRI performed on July 22, 2003, showed facet anopathy and varying levels of fluid in the facet joints at L3-L4, L4-L5, and L5-S1.
11. On December 27, 2002, Dr. Lall requested preauthorization for diagnostic lumbar facet injections at levels L3-4, L4-5, and L5-S1 (CPT Codes 64440, 64442, and 64443, respectively).
12. The Carrier denied the preauthorization request on the basis that the requested injections were not medically reasonable and necessary.
13. Dr. Lall timely filed a request for dispute resolution with the Texas Workers’ Compensation Commission (Commission).
14. On April 4, 2003, an independent review organization (IRO) doctor, who is board-certified in neurological surgery, determined that the requested injections should be preauthorized.

15. Following receipt of the IRO doctor's decision, Dr. Lall performed the diagnostic lumbar facet injections on April 17, 2003.
16. Approximately 10 days later, Claimant reported to Dr. Lall that her pain had decreased from level 8 on a 10-point scale, to level 2 on the same scale.
17. On May 6, 2003, Dr. Lall to the Carrier that the diagnostic lumbar facet injections had reduced Claimant's pain and requested preauthorization for radio-frequency denervation procedures.
18. Based on Dr. Lall's representation that the diagnostic lumbar facet injections had reduced Claimant's pain, the Carrier preauthorized the radio-frequency denervation procedures.
19. Dr. Lall performed the radio-frequency denervation procedures in May 2003, and the procedures resulted in a reduction in Claimant's pain.
20. After the IRO decision was issued, the Carrier timely requested a contested case hearing by a State Office of Administrative Hearings Administrative Law Judge.
21. Notice of the hearing was sent June 9, 2003. 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 to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
22. The hearing was held July 7, 2003, with Administrative Law Judge Renee M. Rusch presiding and Dr. Lall and a representative of the Carrier participating. The Commission did not participate in the hearing. The hearing adjourned the same day, and the record closed on July 14, 2003.

III. 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. LABOR CODE ANN. §§ 402.073(b) and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. The parties received adequate and timely notice of the hearing in accordance with GOV'T CODE §§ 2001.051 and 2001.052.
3. The Carrier had the burden of proof by a preponderance of the evidence in this matter. 28 TEX. ADMIN. CODE § 148.21 (h) and (i); 1 TEX. ADMIN. CODE § 155.41.
4. An employee who sustains 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. LABOR CODE ANN. §408.021(a).

5. Health care includes all reasonable and necessary medical services. TEX. LABOR CODE § 401.011(19).
6. Pursuant to TEX. LABOR CODE §413.014, for a carrier to be liable for certain services and supplies, those services and supplies must be preauthorized. 28 TEX. ADMIN. CODE §134.600.
7. The diagnostic lumbar facet injections requested by Dr. Lall require preauthorization. 28 TEX. ADMIN. CODE §134.600.
8. Petitioner failed to meet its burden of proving that diagnostic lumbar facet injections did not constitute reasonable and necessary medical services for Claimant and that preauthorization was not warranted.
9. Based on the foregoing Findings of Fact and Conclusions of Law, preauthorization of diagnostic lumbar facet injections for Claimant was warranted. TEX. LABOR CODE §§ 408.021(a) and 413.014; 28 TEX. ADMIN. CODE § 134.600.
10. Lumbar facet injections.

ORDER

IT IS, THEREFORE, ORDERED that the Carrier, American Home Assurance Company, shall reimburse Arun Lall, M.D., for the reasonable cost of the diagnostic lumbar facet injections at issue in this case.

SIGNED this 9th day of September, 2003

**RENEE M. RUSCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**