



Under TEX. LAB. CODE ANN. §401.011(19), health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.

Certain categories of health care identified by the Commission require preauthorization, which is dependent upon a prospective showing of medical necessity under the Act § 413.014 and 28 TEX. ADMIN. CODE (TAC) §134.600. In this instance under 28 TAC § 134.600(h)(7), preauthorization is required for the prescribed discogram.

### 3. Evidence and Arguments

Dr. Legrand did not testify at the hearing, but Claimant testified her understanding of her diagnoses is pathology in the L4-L5 and L5-S1 regions of her spine. Based on conversations with Dr. Legrand, Claimant testified she believes the requested procedure will provide her an opportunity to closely examine her spine in order to determine the source of her ongoing pain.

Additionally, Claimant testified she is aware that a discogram may cause great discomfort, but she is willing to undergo this procedure so that she can be treated for her back pain and get on with her life. The record additionally reflects Claimant continued to work while undergoing treatment for her injury, but is currently unemployed due to her back pain.

Carrier argued the discogram is not medically necessary because prior diagnostic tests revealed no pathology present in Claimant's spine. In support of its position, Carrier presented a medical report that stated Claimant underwent a lumbar myelogram and CT scan, which showed "nothing of any major significance."<sup>1</sup>

Carrier's other argument was that discograms in general are not valid and offer no medical benefit for any patient. In support of this position, Carrier offered a report on discograms prepared by Thomas Long, M.D., which included a description of the procedure.<sup>2</sup> According to the report, a typical discogram begins by injecting a patient's disc space (L4-L5 for example) with dye. The disc space is supposed to be a closed area, so under ideal conditions, no dye should leak from that space. Any leakage would reveal the existence of a tear (annular tear) in the disc, which would be considered pathological.

According to the report, another sign that a doctor looks for is whether the patient experiences pain during the procedure. If leakage and pain are both present during a discogram, the patient is considered to have pathology in the discs that revealed leakage and that were painful during the procedure.

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<sup>1</sup> This is a page from an unsigned medical report dated November 19, 2001, page 13 of Carrier's Exhibit.

<sup>2</sup> It appears that Dr. Long is the Associate National Medical Director for Travelers Insurance, but the record does not expressly indicate with whom he is employed. The report is dated February 20, 2002, pages 14-15 of Carrier's Exhibit.

Carrier argued this report debunks the position that leakage is a sign of pathology because the report points out many people who experience no back pain have annular tears due to age, and therefore, leakage is not a clear indicator of pathology. Additionally, annular tears can occur during a discogram if sufficient pressure is applied during an injection to a part of the disc called the annular ligament.

Carrier additionally argued the report also discredits the belief that pain during a discogram is an indicator of pathology based on a case study where 10% of patients having no pathology complained of pain during a discogram procedure. The report stated these “false positive” results are further proof that the discogram yields invalid and unreliable results.

#### **D. Analysis and Conclusion**

Claimant is not entitled to received preauthorization for the discogram because she did not provide sufficient evidence of medical necessity. The ALJ is convinced that none of the prior treatment has brought any lasting relief of Claimant’s back pain, but this fact alone does not prove the discogram is medically necessary at this time.

The only other evidence presented by Claimant in support of her position was that she believed Dr. Legrand prescribed this procedure in order to determine the cause of her pain. However, without any testimony from Dr. Legrand to that effect, including any necessary explanation, the evidence carries little weight.

The report on discograms offered by Carrier was only marginally persuasive because the ALJ has never before seen a report that completely invalidates the results and necessity for a discogram procedure. However, since Claimant offered no evidence to contrary, the ALJ will give some weight to the report findings.

The peer review that states Claimant had no significant findings on a prior lumbar myelogram and CT scan is only marginally persuasive as well because the report as offered is incomplete and unsigned. Unfortunately for Claimant, no evidence from Dr. Legrand distinguishing or discrediting the results was presented. Therefore, the ALJ will give some consideration of the findings noted on the report.

Neither party presented any convincing evidence supporting its position, but, the ALJ finds, after weighing the evidence and arguments presented by both sides, the Claimant did not prove she is entitled to received preauthorization for the discogram procedure.

## **II. FINDINGS OF FACTS**

1. \_\_\_\_ (Claimant) was employed by \_\_\_\_ and sustained a compensable back injury on \_\_\_\_ when she fell off a ladder while placing items on a supply shelf.
2. At the time of Claimant’s compensable injury, Claimant’s employer was covered by the Travelers Indemnity Company of Texas (Carrier) under the Texas Workers’ Compensation Act.

3. Claimant was treated by Robert Legrand, M.D., who performed various diagnostic tests, administered steroid and nerve block injections, prescribed three weeks of physical therapy, and prescribed medication.
4. The treatment rendered to Claimant brought no lasting pain relief of Claimant's back pain.
5. Dr. Legrand prescribed a lumbar discogram for Claimant and Carrier denied preauthorization as not medically necessary.
6. Claimant requested medical dispute resolution through the Texas Workers' Compensation Commission's (the Commission) Medical Review Division, which referred this dispute to an Independent Review Organization (IRO).
7. The IRO held the lumbar discogram was not medically necessary.
8. Claimant appealed the IRO decision to the State Office of Administrative Hearings (SOAH).
9. Notice of the hearing in this case was mailed to the parties on September 16, 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. In the notice, the Commission's staff indicated that it would not participate in the hearing.
10. The hearing convened and closed on October 16, 2003, before Steven M. Rivas, Administrative Law Judge (ALJ). Claimant appeared with Barton Levy, Ombudsman. Carrier appeared through Dan Flanigan, Carrier's workers' compensation representative.
11. Claimant's medical records noted no significant findings on her prior diagnostic tests.
12. One case study has shown the discogram to be an invalid procedure.
13. Claimant offered insufficient evidence to conclude the discogram was reasonably required by the Claimant's injury.

### **III. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE § 413.031.
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. Claimant timely filed its 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 § 2001.052 and 28 TEX. ADMIN. CODE § 148.4.

5. Under TEX. LABOR CODE § 408.021(a)(1), 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 that cures or relieves the effects naturally resulting from the compensable injury.
6. Claimant did not meet her burden of proof to show that the requested procedures should be preauthorized.
7. Based on the above Findings of Facts and Conclusions of Law, Claimant's request for preauthorization of the requested procedures should be denied.

**ORDER**

IT IS ORDERED THAT the Claimant's request for lumbar discogram is denied.

**Signed October 28, 2003.**

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**STEVEN M. RIVAS  
STATE OFFICE OF ADMINISTRATIVE HEARINGS  
ADMINISTRATIVE LAW JUDGE**