

DOCKET NO. 453-03-3788.M2
MDR TRACKING NO. M2-03-0933-01

JOHN A. SAZY, M.D.,
Petitioner

V.

TRAVELERS INDEMNITY COMPANY
OF CONNECTICUT,
Respondent

§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

John A. Sazy, M.D. (Petitioner) is appealing the decision of Independent Review Incorporated, an independent review organization (IRO) certified by the Texas Department of Insurance, in Texas Workers' Compensation Commission (Commission or TWCC) Medical Review Division tracking number M2-03-0933-01, denying preauthorization for the requested discogram of the lumbar spine with post discogram CT scan. 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 13, 2003, ALJ Michael J. Borkland convened the hearing at the William P. Clements Building, 300 West 15th Street, Austin, Texas. Petitioner appeared *pro se* via telephone. Travelers Indemnity Company of Connecticut (Respondent or Carrier) appeared through Dan Flanagan, TWCC Austin Representative. 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 was closed that same day.

II. DISCUSSION

1. Background

The Claimant, a 41-year old male, suffered a neck, upper back, and lower back injury when carrying a stove up a flight of stairs on___. One of the Claimant's co-workers slipped and dropped his portion of the stove, which caused the injury when the Claimant attempted to prevent the stove from falling down the stairs. Treatment for the injury included epidural steroid injections,

physical therapy, and medications. The Claimant began seeing Petitioner on March 4, 2003, for ongoing pain. The Petitioner seeks preauthorization for a discogram¹ with CT scan to determine the source of the Claimant's pain.

2. Medical Records

The documentary evidence presented consisted of the documentation reviewed by the IRO (Exh.1), 16 pages of documents submitted at the hearing by the Carrier (Exh. 2), and an article from Spine 1995, Volume 20, No. 18 (Exh. 3) filed by Petitioner in response to Exh. 2. The records reflect that an MRI of the lumbar spine was performed on October 9, 2002. Findings included broad-based disc protrusions at the L4-L5 and L5-S1 levels; posterior annular tear at L5-S1; 1 to 2 mm eccentric bulges of the annulus to the right and left of midline at L3-L4; a 1 mm broad-based disc protrusion at L2-L3; a 3 to 4 mm anterior disc protrusion into the prevertebral soft tissue facet at T10-T11 associated with anterior annular tear; and desiccation of the discs at T10 through T12 and at L4 through S1.

The Claimant was seen by Joseph P. Viernow, D.C., on October 4, 2002. The Claimant primarily complained of stabbing pain, restricted movement, and limited activity. Additionally, the Claimant reported pain radiating to his left thigh and back stiffness. Dr. Viernow treated the Claimant with chiropractic manipulation, therapy, and other physical modalities. (Exh. 1, pages 25 - 27) The Claimant continued to see Dr. Viernow, who reported on February 3, 2003, that the Claimant continued to suffer from stiffness and restricted movement. Dr. Viernow referred the Claimant for an orthopaedic consult. (Exh. 1, pages 28 and 29)

Alan B. Hurschman, M.D., initially saw the Claimant on December 2, 2002. The Claimant reported that he was suffering from back pain, and constant pain running down his left hip into his leg. He rated the pain level between five and seven, and said that it caused him difficulty sleeping at night. Dr. Hurschman's treatment consisted of epidural steroid injections, a bilateral facet joint injection, continued physical therapy, and medication. (Exh. 1, pages 17 - 21)

Petitioner examined the Claimant on March 4, 2003. The Claimant reported that physical therapy and epidural steroid injections provided relief for only about a week and then the symptoms returned. Additionally, the Claimant stated he had stopped taking his prescribed medication because it did not provide him relief and it made him grouchy. Petitioner assessed the Claimant as having degenerative foraminal stenosis at L4-L5 and L5-S1, and a posterior annular tear at L5-S1. His plan was to obtain a discogram of the lumbar spine with post discogram CT scan of the L3-L4, L4-L5, and L5-S1 levels to rule out concordant pain and to assess the annular tear. (Exh. 1, pages 10 - 13,

¹ A discogram is an x-ray photograph of an intervertebral disc made after injection of a radiopaque substance. Merriam Webster's Medical Dictionary (1995), at page 181.

and 22 and 23) Further, Petitioner submitted a letter to the Carrier stating that discography was requested to determine whether a disc was a pain generator; the official position of the National Association of Spinal Surgeons supports the use of discography in preoperative planning; and TWCC guidelines support the use of dicography in preoperative planning. (Exh. 1, page 6)

On March 11, 2003, the Carrier denied Petitioner's request for preauthorization of the lumbar discogram. The Carrier stated that there was insufficient medical information to justify the request as being medically necessary because clinical improvement documented that additional conservative treatment was indicated. (Exh. 1, pages 7 and 8) On March 21, 2003, the Carrier issued a second denial stating that the current medical documentation in concert with current evidence based medical literature did not provide sufficient documentation to support the necessity for the requested procedure. (Exh. 1, pages 3 and 4)

The Carrier submitted an internal paper prepared by Thomas Long, M.D., which expressed the Carrier's position on the medical necessity of discograms. The author stated that discograms have no validity and produce no medical benefits. Further, discograms can produce devastating infections, and exacerbate disc protrusion and worsen annular tears. He concluded by stating that discograms can never be justified. (Exh. 2, pages 15 and 16)

In response to the Carrier's internal position paper on discograms, Petitioner submitted a position statement from the North American Spine Society Diagnostic and Therapeutic Committee, which was published in the journal Spine, Volume 20, No. 18, September 15, 1995. The authors conducted a comprehensive review of the literature discussing lumbar discography, and concluded that most of the current literature supports the use of discography in select situations, such as with patients experiencing persistent pain and disc abnormality is suspected, or with patients being considered for fusion. Further, the authors stated that discography should be performed on patients who have failed conservative treatment such as therapy, and noninvasive diagnostic tests have not provided sufficient information. (Exh. 3)

3. Testimony of Dr. Sazy

Petitioner, an orthopaedic surgeon, is the Claimant's current treating physician. He obtained his orthopedic training at the Medical College of Pennsylvania, and received specialized training at the Chicago Spine Fellowship, which is the oldest and one of the most prestigious fellowships in the country. Petitioner later studied in Germany under a one of the world's leading back surgeons, and became a specialist in reconstructive and revision spine surgery. He has patented several surgical products for the spine.

Petitioner testified that the Claimant has a posterior annular tear at the L5-S1 level. He stated that this is significant because a tear in a disc that is in communication with the area containing nerves is highly associated with discogenic pain, which is pain emanating from a disc. Petitioner further testified that disc removal is necessary to relieve discogenic pain and a discogram is the best method of identifying the problem disc prior to surgery. Petitioner stressed that the standard of care requires a discogram prior to surgery, and the Claimant is an ideal candidate for the procedure. In response to a question from the ALJ, Petitioner testified that there could be no additional medical evidence to support the requested procedure other than what has been provided.

III. CONCLUSION

The Claimant failed conservative treatment. He is still experiencing extensive pain, and Petitioner believes the standard of care requires him to determine the pain's source before he moves forward with further treatment. He testified that the best test to determine whether an annular tear is causing discogenic pain is a discogram. A discogram may be an invasive test with some risks; however, the internal paper provided by the Carrier which stated that discogram results are invalid and of no benefit was not persuasive and did reflect the views expressed in the majority of the literature reviewed for preparation of the paper provided by Petitioner.

This is not a close case. The burden is on the Petitioner to show that necessity for the requested procedure has been adequately documented. The medical records of the three treating physicians and Petitioner's testimony overwhelmingly proved medical necessity for the requested procedure. The evidence supports preauthorization of the requested procedure.

IV. FINDINGS OF FACT

1. On ____, the Claimant sustained an on-the-job injury to his neck, upper back, and lower back when carrying a stove up a flight of stairs.
2. At the time of the Claimant's injury, Travelers Indemnity Company of Connecticut (Respondent or Carrier) provided workers' compensation insurance to the Claimant's employer.
3. An MRI of the lumbar spine performed on October 9, 2002 revealed a broad-based disc protrusions at the L4-L5 and L5-S1 levels; a posterior annular tear at L5-S1; 1 to 2 mm eccentric bulges of the annulus to the right and left of midline at L3-L4; a 1 mm broad-based disc protrusion at L2-L3; a 3 to 4 mm anterior disc protrusion into the prevertebral soft tissue facet at T10-T11 associated with anterior annular tear; and desiccation of the discs at T10 through T12 and at L4 through S1.

4. The Claimant was treated with epidural steroid injections, physical therapy, and medications.
5. The treatment referred to in Finding of Fact No. 4 provided only temporary relief.
6. The Claimant continued to experience ongoing pain and consulted John A. Sazy, M.D. (Petitioner), an orthopaedic surgeon.
7. Petitioner recommend a discogram of the lumbar spine with post discogram CT scan of the L3-L4, L4-L5, and L5-S1 levels to rule out concordant pain and to assess the annular tear.
8. A discogram is the best diagnostic procedure to determine if an annular tear is causing discogenic pain.
9. The standard of care requires the use of discogram to precisely identify the source of pain prior to planning surgical intervention.
10. The medical records submitted adequately documented medical necessity of the requested services.
11. The Carrier denied Petitioner's request for preauthorization of a discogram with CT scan.
12. The Petitioner requested dispute resolution services from the Texas Workers' Compensation Commission's Medical Review Division.
13. On June 10, 2003, Independent Review Incorporated, an independent review organization certified by the Texas Department of Insurance, issued its decision denying preauthorization because the medical records did not contain significant information concerning the pattern or severity of the Claimant's pain, or what exacerbates or relieves the pain.
14. Petitioner filed a request for hearing to contest the denial of preauthorization of the requested services.
15. The Commission sent notice of the hearing to the parties on July 11, 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.
16. The hearing on the merits convened on August 13, 2003, before Michael J. Borkland, Administrative Law Judge. Petitioner appeared *pro se*. Respondent appeared through Dan Flanagan, TWCC Austin Representative.

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 (TAC) § 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 TAC § 148.4(b).
5. Petitioner had the burden of proving the case by a preponderance of the evidence, pursuant to 28 TAC § 148.21(h) and (i), and 1 TAC §155.41.
6. As provided by TEX. LAB. CODE ANN. § 413.014 and 28 TAC § 134.600(h), preauthorization is required.
7. Based on Findings of Fact Nos. 3 - 10, the requested medical procedure is medically necessary.
8. Based on Findings of Fact Nos. 3 - 10, and Conclusions of Law Nos. 5 and 7, Claimant is entitled to preauthorization for the medically necessary treatment.

ORDER

IT IS, THEREFORE, ORDERED that Respondent, Travelers Indemnity Company of Connecticut, pay the reasonable and necessary cost of providing the Claimant the requested discogram with CT scan.

SIGNED this 10th day of September, 2003.

MICHAEL J. BORKLAND
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS