

DOCKET NO. 453-03-3880.M2
MDR TRACKING NO. M2-03-1210-01

AMERICAN HOME ASSURANCE CO.,	§	BEFORE THE STATE OFFICE
	§	
Petitioner	§	
	§	
VS.	§	OF
	§	
JAMES A. GUESS, MD.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

American Home Assurance Co. (Carrier) appealed an Independent Review Organization (IRO) decision granting preauthorization of a lumbar CT discogram for an injured worker's lumbar spine on the basis that it was not medically necessary. This decision concludes that the CT discogram is medically necessary and should be authorized.

I. JURISDICTION AND HEARING

As there were no challenges to notice or jurisdiction, those matters are set forth in the findings of fact and conclusions of law without further discussion here.

The hearing was held on August 14, 2003 and October 6, 2003, before Tommy L. Broyles, Administrative Law Judge (ALJ), at the State Office of Administrative Hearings (SOAH), Fourth Floor, William P. Clements Building, 300 West Fifteenth Street, Austin, Texas. Dr. Guess appeared on behalf of himself. Carrier appeared and was represented by Peter Macaulay, attorney. The Texas Workers' Compensation Commission did not appear. The record closed on October 6, 2003.

II. DISCUSSION

A. Background

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: (1) cures or relieves the effects naturally resulting from the injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment. TEX. LABOR CODE ANN. § 408.021. "Health care" includes "all reasonable and necessary medical . . . services." TEX. LABOR CODE § 401.011(19).

____ (Claimant) is a 50-year-old female who was injured at work on ____ when she fell off a ladder. She has received extensive treatment, including physical therapy, since that time. Dr. Guess saw Claimant on March 19, 2003, and requested preauthorization for a CT discogram of her lumbar spine. The request was denied by Carrier as not medically necessary. Carrier's decision was overturned by an IRO which found the procedure to be medically necessary.

B. Medical Necessity of the Procedure

1. Dr. Guess's Evidence and Arguments

Dr. Guess maintained that a discogram is the appropriate procedure to determine whether Claimant's discs are the source of her pain and to assess whether surgery is an option. Dr. Guess explained that there is no other way to determine whether there is a surgical lesion. He further testified that the procedure falls under the spine treatment guidelines, is routinely performed to develop a complete picture on patients like Claimant, and is needed before any care for Claimant can resume.

Because there was no MRI taken prior to the compensable injury, Dr. Guess stated on cross-examination that he could not agree with the conclusions of Phillip Osborne, M.D. who performed a medical examination and concluded that Claimant's injury was a strain/sprain. Dr. Guess agreed with Carrier that the MRI performed after the injury revealed a developmentally narrow canal and degenerative changes to Claimant's spine. He also admitted that the degenerative changes could have been present before the injury but noted that Claimant was not having pain before the injury. Therefore, Dr. Guess opined that the question remains as to whether there is a tear or lesion within the degenerative disc that has occurred as a result of Claimant's compensable injury. Dr. Guess stated that he could not base an opinion regarding surgery on the MRI alone.

2. Carrier's Evidence and Arguments

Melissa Tonn, M.D., testified on behalf of Carrier. She stated that a lumbar discogram was not medically necessary because there is no documentation to support Claimant as a surgical candidate. Dr. Tonn noted that Claimant's records contain no detail as to what the plan would be if the discogram were positive. She stated that before a decision is made to have a discogram, a determination is needed as to whether Claimant is a surgical candidate for spinal fusion. She opined that discography is not to be used as the sole justification for spinal fusion and that prior to authorization of a discogram, patients should be "worked up" with findings indicating surgical lesions or lumbar instability before giving consideration to the procedure. Dr. Tonn failed to find such indication in Claimant's records.

Additionally, Carrier noted that Dr. Osborne performed an independent medical review and determined that Claimant had a lumbar sprain. As a part of his examination, Dr. Osborne had Claimant perform a functional capacity evaluation (FCE) which he believed was invalidated by Claimant's pain magnification. During the FCE, Claimant stated she experienced pain of 10 out of 10 (equivalent to giving birth without anaesthesia) although her peak heart rate reached only 84 beats per minute, her respirations remained normal, and there was no evidence of sweating. In Dr. Osborne's opinion, this information invalidated Claimant's FCE and did not show physiological parameters that would substantiate her level of complaints. Dr. Osborne concluded that a discogram was not medically necessary and that instead, Claimant needs to return to gainful employment and gradually increase her activity level.

3. Analysis

The ALJ concludes that Dr. Guess's requests for CT discogram testing should be authorized. This decision is based primarily on the nature of the request, a diagnostic test to determine whether Claimant's discs are her pain generator.¹ The record shows much controversy over the need for diagnostic testing in this circumstance, with strong opinions on both sides of the issue. Both Dr. Guess and Dr. Tonn were credible witnesses, and they clearly disagree on the appropriate usage of a discogram, a debate that is far larger than the context of this hearing.

Ultimately, Dr. Guess's plea for testing to determine the exact nature of Claimant's problem, or at least rule out one basis, was persuasive. Carrier had the burden of proving that the discogram was not medically necessary. Although there is some doubt on the issue, the preponderant evidence suggests the testing is reasonably required by the nature of the Claimant's injury in view of the significant prior treatment and therapy, the continuation of pain, and need for the procedure to determine the pain generator.

III. FINDINGS OF FACT

1. ____ (Claimant) suffered a compensable injury on ____, when she fell off a ladder while at work.
2. After significant treatment, Claimant presented to James A. Guess, M.D., an orthopedic surgeon who last saw her in March 2003.
3. In March 2003, Dr. Guess requested that a CT discogram be preauthorized for Claimant.
4. American Home Assurance Co. (Carrier) denied Dr. Guess's request.
5. Dr. Guess requested medical dispute resolution.
6. An independent review organization report granted Dr. Guess's request for preauthorization.
7. Carrier requested a hearing before the State Office of Administrative Hearings, seeking a denial of preauthorization of the CT discogram.
8. The CT discogram will provide Dr. Guess with a better idea of the nature of the Claimant's current condition and how to proceed with her treatment.
9. The CT discogram is reasonably required by the nature of the Claimant's injury.
10. A hearing was conducted on August 14, 2003 and October 6, 2003.

¹Although pain determination is highly subjective, the ALJ notes that Claimant has demonstrated pain magnification. However, the evidence suggests Claimant is experiencing some pain, and the ALJ does not find her pain magnification precludes a determination that a diagnostic test is medically necessary to diagnose the pain generator.

11. Dr. Guess and the Carrier both appeared at the hearing.
12. All parties received not less than 10 days notice of the time, place, and nature of the hearing; 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.
13. All parties were allowed to respond and present evidence and argument on each issue involved in the case.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing, including the authority to issue a decision and order. TEX. LABOR CODE ANN. § 413.031(k).
2. The request for hearing was timely made pursuant to 28 TEX ADMIN. CODE § 148.3.
3. All parties received proper and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. The CT discogram is medically necessary treatment for Claimant's compensable injury. TEX. LABOR CODE ANN. §§ 401.011(19) and 408.021.
5. The request for preauthorization should be granted.

ORDER

IT IS, THEREFORE, ORDERED that the CT discogram requested by James A. Guess, M.D., on behalf of the Claimant is authorized.

SIGNED October 30, 2003.

**TOMMY L. BROYLES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**