DOCKET NO. 453-03-4129.M2
MDR Tracking No. M2-03-1158-01

AMERICAN HOME ASSURANCE CO.	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
VS.	§	**OF**
	§	
___,	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

American Home Assurance Company (AHAC), appealed an Independent Review Organization (IRO) decision approving preauthorization for Claimant ___ to receive a lumbar diskogram at levels L3-4, L4-5, and L5-S1. The IRO concluded that these tests were medically necessary to determine the source of ___'s low back pain that has persisted for over two years. This decision agrees with the IRO and concludes that the tests are medically reasonable and necessary. Therefore, AHAC's appeal is denied.

I. JURISDICTION & HEARING

There were no challenges to notice or jurisdiction, and those matters are set forth in the findings of fact and conclusions of law without further discussion here. Administrative Law Judge (ALJ) Thomas H. Walston conducted a hearing in this case on October 20, 2003, at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, Austin, Texas. Attorney Dan Kelley appeared on behalf of AHAC. Claimant ___ appeared by telephone and was assisted by Juan Mirales, an Ombudsman with the Texas Workers Compensation Commission (TWCC). The hearing concluded and the record closed the same day.

II. DISCUSSION

1. Background

Claimant ___ is a 40-year-old male who injured himself at work when he slipped in a liquid while stacking pallets and caught himself before falling. The accident occurred on ___. He initially saw a chiropractor for treatment and received physical therapy. A lumbar MRI dated May 31, 2001, showed a disk protrusion at L4-5, without foraminal stenosis. ___ then saw a neurosurgeon and had lumbar facet joint injections, which helped for a time, and then lumbar facet joint nerve rhizotomies from T12 toS1.[1] These also provided some relief, but eventually his back pain returned and became quite severe by late November 2002. Therefore, his treating physician, Dr. B.J. Daneshfar, requested diskograms for L3-4, L4-5, and L5-S1 to determine the cause of ___'s continued low back pain. ___'s medical records are quite lengthy and are summarized below:[2]

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[1] A rhizotomy is a division or transection of a nerve root.

[2] This summary includes most of ____'s doctor visits, but not all of them. Handwritten notes for some office visits are illegible and those office visits are not included in the summary.

April 26, 2001 ___ saw Dr. Neil Veggeberg (M.D.). ___ stated that since his accident he had been having back pain and pain into his feet with numbness. ___ had been taking Lodine, Hydrocodone, and a muscle relaxant. Apparently, ___ had attempted to return to work but could not perform his duties. On physical exam, Dr. Veggeberg noted a "fairly rigid lumbar spine," pain on extension and rotation to either side, negative straight leg raising, and no major neurological deficits. Dr. Veggeberg recommended exercise and physical therapy.

May 10, 2001 Follow-up visit with Dr. Veggeberg. ___ reported that physical therapy helped, but he was also having a stabbing pain in his low back and right leg numbness. On exam, Dr. Veggeberg noted a slight loss of normal lumbar lordosis, pain upon extension and rotation to the right, negative straight leg raising, and no major neurological deficits. Dr. Veggeberg's impression was that ___ had a lumbar disk injury but without radicular symptoms. He recommended continued therapy and prescribed Vioxx. He also stated that he would order an MRI if ___'s symptoms did not improve.

May 25, 2001 Follow-up visit with Dr. Veggeberg. ___ reported that he continued to have problems with his lower back, as well as pain in his mid and upper back. He had continued his physical therapy and was taking Darvocet for pain, although he reported it did not provide much relief. Physical exam was essentially unchanged and Dr. Veggeberg thought ___ was "doing fair." Dr. Veggeberg recommended continued therapy, prescribed Flexeril, and said he would request an MRI of the lumbar spine.

May 31, 2001 Report of lumbar MRI without contrast by Dr. Ronald Dillee (M.D.). The report stated that ___ had a "shallow, mildly compressive broad based subligamentous disk protrusion at the L4-5 level." The report also stated that there was no other significant disk pathology, no canal or foraminal stenosis, and no intradural pathology.

June 12-20, 2001 Five visits with Dr. Mark Sherrod (D.C.). ___ reported lumbar spine pain and bilateral lower extremity pain and numbness. Dr. Sherrod examined ___ and performed a number of tests. He noted the pain reported by ___ and some restricted range of motion. Dr. Sherrod diagnosed ___'s condition as unspecified lesions and disk disorder of the lumbar region, and he recommended electro-therapy, ultrasound, mechanical traction, and chiropractic procedures. He also recommended that ___ see Dr. Daneshfar, a pain management specialist.

June 28, 2001 Dr. Kim Muncrief (D.O.), a partner of Dr. Daneshfar, examined ___ upon referral by Dr. Sherrod. ___ reported that he had a constant, burning pain in his low back that radiated down both legs to his ankles. At times, the pain also radiated into his thoracic and cervical areas and caused discomfort and headaches. He reported that chiropractic care gave temporary relief, but pain medications did not help. On physical exam, ___ reported pain and tenderness and had a reduced range of motion in some areas. Spurling and

Valsalva tests were negative. His spine had a slight tilt to the right. Straight leg raising and forward flexion did not produce lower extremity pain. Rotation and extension produced low back pain and palpation of the sacroiliac joints produced radiculopathy into the hips and lower extremities. Dr. Muncrief also noted that plain X-rays dated June 12, 2001, showed decreased disk height at L4-5, but the lordotic curve was preserved and no foraminal stenosis was seen. She diagnosed ___'s condition as "severe lumbar facets syndrome with multiple spinal nerve root neuritis" and recommended lumbar epidural steroid injections to reduce the inflamation. She also prescribed OxyContin for pain, Klonopin for muscle spasms and anxiety, Celebrex and Medrol for inflammation, and Effexor for mood/depression. Dr. Muncrief thought that these medications, steroid injections, and continued chiropractic care gave ___ "a favorable prognosis with an excellent chance for full recovery."

July 6, 2001	Follow-up visit with Dr. Muncrief. ___ wife accompanied him and expressed concern that ___'s medications were making him sleep all the time. ___ reported that for the past few days he had low back pain but no radiating symptoms. Dr. Muncrief noted that lumbar epidural steroid injections had been denied. Her exam and diagnosis remained unchanged, so she adjusted ___'s medications and again recommended epidural steroid injections.
July 26, 2001	Dr. B.J. Daneshfar administered lumbar facet joint injections bilaterally at L1-2, L2-3, L3-4, L4-5, and L5-S1; and bilateral lumbar facet joint nerve blocks of T12, L1, L2, L3, L4, L5, and S1.
August 9, 2001	Follow-up visit with Dr. Muncrief. ___ reported that his condition was improved as a result of the injections, but the pain was slowly returning. He admitted that he had been abusing his medications, but he was then taking only Celebrex and Klonopin. On examination, ___ continued to have a slight spinal tilt to the right and reduced range of motion. Lumbar facets remained somewhat tender but no longer caused radiating pain. Straight leg raising test remained negative. Palpation of the sacroiliac joints showed tenderness and produced radiculopathy into the hips and lower extremities, worse on the right than the left. Dr. Muncrief continued to diagnose ___'s condition as "lumbar facet syndrome with multiple spinal nerve root neuritis." She recommended lumbar facet joint rhizotomies of T12-L1 through L5-S1, explaining that since ___ had some success with the injections that this procedure would totally eliminate his pain.
July 16, 2001	___ had 16 visits with Dr. Sherrod for chiropractic care. By the last visit, September 5, 2001. ___ reported that he was doing much better, was resting, and was able to do his rehab work at home.
September 12, 2001	Dr. Michael Hamby (D.C.) issued a peer review concerning ___'s treatment. The report indicates that Dr. Hamby reviewed ___'s records for the period April 14 through June 12, 2001, but he apparently did not have records from Dr. Muncrief available for his review. Based on his review of records, Dr.

Hamby rendered the following opinions: ___ suffered a lumbosacral sprain/strain with radiculitis and very mild disk protrusion at L4-5; ___ could return to work with modified duties; his back problems were likely caused by his on-the-job accident; ___ had probably recovered from his work related injury; ___'s current diagnosis and treatment by Dr. Sherrod were inaccurate; ___ was not an appropriate candidate for invasive procedures; ___ had received adequate passive modalities and further passive treatment was not necessary; the one MRI performed on ___ was medically reasonable; and no additional treatment was necessary for ___

September 19, 2001 Dr. Daneshfar performed lumbar facet joint nerves rhizotomies of the right T12, L1, L2, L3, L4, L5, S1, and the L5-S1 facet joint capsule. The left side was to be scheduled for a later date.

September 26, 2001 Dr. Daneshfar performed lumbar facet joint nerves rhizotomies of the left T12, L1, L2, L3, L4, L5, S1, and the L5-S1 facet joint capsule.

October 3, 2001 Follow-up visit with Dr. Muncrief. ___ reported significant low back pain without radiation and he had reduced range of motion and continued to list to the right. She reassured him that he was doing fine and she prescribed medication for pain and inflammation.

November 5, 2001 Follow-up visit with Dr. Muncrief. ___ reported that his lumbar pain had almost completely resolved but pain in his cervical spine had increased. Dr. Muncrief noted that it was common for a patient to start complaining about a new area of pain when the original pain is reduced. She noted that ___ had reduced range of motion in his neck and she diagnosed him as having "cervical facet syndrome with multiple spinal nerve root neuritis." Therefore, she planned to schedule him for cervical facet joint injections. She also recommended that ___ continue with chiropractic care.

November 13, 2001 Dr. Todd Gray (D.C.), who works with Dr. Muncrief and Dr. Daneshfar, performed a functional capacity evaluation on ___ and issued a report stating that ___ had not yet reached maximum medical improvement with regard to his lumbar spine. However, ___'s exam was essentially normal except for complaints of low back pain occasionally radiating to the posterior right leg and slightly limited lumbar range of motion. Dr. Gray's assessment was that ___ continued to have pain and restrictions due to an intravertebral disk disorder. He recommended further chiropractic treatment and said ___ could return to work with restricted duties.

December 19, 2001 Report of a cervical spine MRI by Dr. John Williams (M.D.). The MRI was entirely normal.

December 20, 2001 Follow-up visit with Dr. Muncrief. ___ stated that he had good relief from pain in his low back, but he complained of cervical pain. He had no radiation of this pain and his headaches had resolved. Exam showed some tenderness in the neck and reduced range of motion. Dr. Muncrief assessed ___'s

	condition as cervical facet syndrome with multiple spinal nerve root neuritis. She also stated that he could return to work with restrictions on the amount of weight he could lift and with no twisting, pulling, or pushing.
December 4, 2001- March 29, 2002	___ had 10 visits with Dr. Sherrod for chiropractic treatment. He complained of low back pain, lower extremity pain, neck pain, and headaches. ___ also reported that he had been trying to reduce his medications but also had been exercising less. The chiropractic treatments provided significant relief. By the time of the last visit, ___ had apparently returned to work with limited duties.
January 9, 2002	Kwame Sarpong, a Physician's Assistant (P.A.) at Dr. Daneshfar's office, saw ___, who complained of pain in his neck and shoulders. ___ stated that he had received some relief in his low back from prior injections.
January 28, 2002	Handwritten notes by P.A. Sarpong state that ___ complained of cervical pain and was frustrated that the carrier had denied cervical facet joint injections.
March 8, 2002	Handwritten notes from P.A. Sarpong noted continued complaints of low back pain. Straight leg raising was positive and Sarpong noted that ___ was scheduled for repeat rhizotomies.
March 20, 2002	P.A. Sarpong saw ___ He complained about low back pain and wanted his medications adjusted because Zanaflex made him drowsy. Physical exam remained unchanged. Sarpong reduced ___'s Zanaflex and noted that he was scheduled for rhizotomies.
April 3, 2002	Dr. Daneshfar performed lumbar facet joint nerves rhizotomies of the right T12, L1, L2, L3, L4, L5, S1, and the L5-S1 facet joint capsule. The left side was to be scheduled for a later date.
April 16, 2002	Dr. Daneshfar performed lumbar facet joint nerves rhizotomies of the left T12, L1, L2, L3, L4, L5, S1, and the L5-S1 facet joint capsule.
April 22, 2002	Follow-up visit with Dr. Daneshfar. ___ reported that the rhizotomies relieved some of his pain but he still complained of pain in the sacroiliac joints bilaterally. Examination continued to show a tilt to the right and reduced range of motion. Dr. Daneshfar instructed ___ to continue with his medications and stated that bilateral sacroiliac joint injections would be scheduled.
April 30, 2002	Follow-up visit with Dr. Daneshfar. Sacroiliac joint injections had been denied by the carrier. ___'s back continued to list to the right and he had reduced lumbar range of motion and tenderness to palpation of sacroiliac joints, bilaterally. However, ___ reported that the nerve rhizotomies had completely eliminated the lumbar pain on the right side.

May 25, 2002	Three visits to Dr. Sherrod for chiropractic treatments. ___ reported neck, low June 29, 2002 back, and lower extremity pain, as well as headaches. These were improved after the chiropractic treatments. ___ instructed to return as needed.
June 4, 2002	P.A. Kwame Sarpong saw ___ He reaffirmed that pain was gone on the right side but he had pain at the sacroiliac joints bilaterally. ___ had a slight tilt to the right and reduced range of motion. Medication and conservative care were continued.
July 2, 2002	Follow-up visit with Dr. Daneshfar. ___ status was essentially unchanged from April 30, 2002. Dr. Daneshfar recommended physical therapy and refilled pain medications.
July 30, 2002	Follow-up with Dr. Daneshfar. ___ reported that physical therapy had helped lower back pain. However, he complained of burning type pain at L3-4 with radiation into the left lower extremity. Otherwise his condition was unchanged. Dr. Daneshfar ordered continued physical therapy and refilled medications.
August 30, 2002	Follow-up visit at Dr. Daneshfar's office, but apparently ___ was seen by a Physician's Assistant named Simon Cano. Condition essentially the same as July 30, 2002.
September 4, 2002	Eight visits to Dr. Sherrod for chiropractic treatment. Reports were essentially November 26, 2002 the same as in previous visits. Some reports note that ___ was working in a restricted capacity.
November 26, 2002	Follow-up visit at Dr. Daneshfar's office, although it is not clear who ___ actually saw. ___ reported that his low back pain was progressively getting worse on the left side and was radiating into his left leg. Lumbar facet joints were tender to palpation and ___ had positive straight leg raising bilaterally and reduced range of motion. An MRI and diskography of L3-4, L4-5, and L5-S1 were recommended. Medications were refilled.
December 10, 2002	Follow up visit with P.A. Sarpong. ___ reported constant, sharp low back pain radiating into his left leg. He was expecting to receive some type of stimulator device. His examination was essentially the same as November 26, 2002. Medications were refilled and ___ was told to use the stimulator as soon as he received it in order to reduce his drug use.
January 20, 2003	Follow up visit with P.A. Sarpong. ___ reported worsening back pain with radiation into the left leg. He had been taking OxyContin and stated that he stimulator provided some pain relief. Physical exam was essentially the same

as the last visit. It was noted that the MRI had been denied by the carrier, so a firm recommendation was made for a diskogram "for provocation and confirmation of his back pain which will be treated with laser diskectomy." OxyContin was discontinued and methadone was started for pain relief.

February 4, 2003 Dr. Gray issued an MMI and impairment rating. He noted that ___ was working full time but complained of low back pain and radiculopathy. ___ was tender to palpation, had reduced lumbar range of motion, and positive straight leg raising test. Gross neurological exam was normal. Dr. Gray recommended further diagnostic testing such as a needle EMG and diskography to rule out any further disk involvement.

February 5, 2003 A peer review of medical records by Dr. Stanley J. Bigos (M.D.) to determine whether diskography was medically necessary. Dr. Bigos reviewed records from April 26, 2001, through November 26, 2002. He emphasized that there were no reports of nerve root irritation for nearly 19 months, until November 2002, and he did not believe there was any reliable data to indicate either neurological or structural compromise to suggest a correctable lesion related to the on-the-job accident. Further, Dr. Bigos did not think diskograms were reliable or accurate. He also pointed out that diskograms are frequently used prior to surgery for spinal fusions, but there is no indication that ___ has even been evaluated for a fusion and there is no mention of fusion in his records. Therefore, Dr. Bigos recommended against preauthorizing a diskogram for ___

February 12, 2003 Follow up visit with P.A. Sarpong. ___ reported worsening back pain with radiculopathy and his examination was essentially unchanged from February 4, 2003. Pain medications were refilled.

February 14, 2003- Five visits to Dr. Sherrod for chiropractic treatment. Reports were essentially April 4, 2003 the same as in previous visits, although ___ initially reported increased back pain with radiculopathy.

April 25, 2003 Follow-up visit with Dr. Daneshfar. ___ continued to have severe low back pain with radiculopathy, and Dr. Daneshfar suggested that ___ had a herniated disk at L4-5. ___ had some restricted range of motion. This report also contains complaints about the carrier denying certain treatments and states that ___ was very upset and agitated. Dr. Daneshfar once again requested preauthorization for lumbar spinal nerve root injections.

May 9, 2003 ___ was seen by Dr. Daneshfar and reported that his low back pain and radiculopathy had worsened in the past few months. Physical exam was essentially unchanged from prior visit.

July 21, 2003 Follow up visit with P.A. Sarpong. ___ reported constant, worsening, low back pain. ___ wore special shoes to reduce pain and was working full time. Exam showed tenderness to palpation, reduced range of motion, and positive

straight leg raising. Noted that a diskogram had been denied by the carrier and the plan for ___ was to manage pain with medication.

B. Denial of Preauthorization and IRO Decision.

GENEX acted for AHAC in reviewing Dr. Daneshfar's request for preauthorization of a lumbar diskogram for ___ It denied the request on January 22, 2003, with the following explanation:

> There was an unremarkable lumbar MRI with age-related changes provided. There is a predominance of leg symptoms. There are motivational, psychosocial, and situational issues documented as present. The request for subjective, invasive, controversial study with an inherent risk of disk injury for purpose of justifying a 360 fusion or IDET is not supported by extensive medical evidence.

Dr. Daneshfar asked for reconsideration of his request, but GENEX again denied preauthorization on February 3, 2003, with the following explanation:

> The claimant has pain relief with oral medications and nerve stimulator use. The pain radiates into the left leg. There are no neural deficits documented. Claimant has been in PT but has not been "faithful." The supplied MRI has "L4-L5 protrusion" yet the request is for L3 to S1 diskography. I suggest strengthening and conditioning rather than surgical approach.

Dr. Daneshfar again appealed the denial and the ___ IRO approved his preauthorization request. The IRO physician stated his rationale as follows:

> This patient has had multiple diagnoses given including facet joint pain, sacroillitis, and discogenic pain. The MRI shows protruded disc at L4-5 yet there is a question as to whether this is the source of the patient's pain. He continues to have pain more than two years after the initial injury despite trying multiple medication, including opiates, physical therapy (42 visits), neuromuscular stimulation, and injections.
>
> This patient meets the criteria for discogram according to the Guidelines from the North American Spine Society (phase III - Unremitting Low Back Pain):
>
> "Discography is indicated in the evaluation of patients with unremitting spinal pain, with or without extremity pain, of greater than four months duration, when the pain has been unresponsive to all appropriate methods of conservative therapy. . . ."
> One of the most important uses of discography according to the International Spinal Injection Society (ISIS) is for discovering the pain source in patients with persistent prolonged back pain, as is the case with this patient. Another indication met in this case is "when selecting patients for nucleotomy or laser" e.g. to establish a contained disc. In this case the pathology is at L4-5. Therefore, it is determined that the proposed discogram for levels L3-L4, L4-L5, and L5-S1 is medically necessary.

AHAC timely appealed the IRO's decision.

C. Carrier's Evidence and Arguments

AHAC did not call any witnesses but instead relied on the medical records summarized above. It notes that diskograms are typically used prior to spinal fusion surgery, but ___ is not a surgical or fusion candidate. AHAC also questions whether ___'s current problems with his low back are related to his compensable injury. Counsel for AHAC pointed out that the MRI performed on ___ showed only a protrusion at L3-4 but no herniated disk or lesion. Further, most of the early records showed negative straight leg raising test results, which tends to confirm a lack of disk herniation or nerve root impingement. AHAC agrees that in late 2002, when Dr. Daneshfar requested a diskogram, ___'s condition seemed to get worse. But the peer review performed at that time confirmed that ___ still was not a surgical candidate and suggested that the new back problems appeared unrelated to ___'s original compensable injury. Therefore, AHAC argues that the proposed diskogram is not medically reasonable or necessary and should not be preauthorized.

D. ___'s Evidence and Arguments

___ also relied on his medical records and called Dr. Daneshfar as a witness. Dr. Daneshfar is an M.D. who graduated from the University of Missouri Medical School in 1983 and completed general surgery and anesthesiology residencies in 1986. He served in the Air Force for four years and then entered private practice in Amarillo in 1990. His practice is primarily the treatment of chronic pain and he is ___'s treating doctor. Dr. Daneshfar stated that ___'s initial diagnosis in 2001 was facet syndrome, degenerative disk syndrome, and spinal nerve root neuritis. His partner, Dr. Muncrief, initially treated ___ with steroid injections, facet nerve root injections and rhizotomies, as well as other conservative treatment such as physical therapy, a nerve stimulator, and medication. But these treatments have not provided complete relief for ___, and Dr. Daneshfar stated that the next step is nerve root blocks or disk procedures, such as a laser diskectomy.

Dr. Daneshfar believes that ___ has a herniated disk, and he explained that added weight is put on the facet joints when a disk fails, causing inflammation and pain. Dr. Daneshfar testified that a diskogram is needed to get a definitive diagnosis on ___. He noted that many asymptomatic people show herniated disks on MRI and undergo unnecessary surgery. However, a diskogram includes a provocative testing element that requests the patient to report the type of pain he feels when a disk is injected with dye. If the pain is the same as the pain he has previously been experiencing, then the test helps confirm that the disk is causing the patient's problems, which presumably can be corrected by disk surgery. In Dr. Daneshfar's view, this is superior to an MRI, which merely provides a picture without relating the results to the patient's symptoms. If, however, the diskogram does not replicate the patient's pain, then unnecessary disk surgery can be avoided. Dr. Daneshfar stated that surgery should always be a last resort and that diskograms help avoid unnecessary surgeries. On cross examination, Dr. Daneshfar agreed that injecting a disk with a dye can cause some asymptomatic patients to report pain and can cause false positive test results.

In argument, ___ states that the conservative care he has received to date has provided some relief but has not resolved his problems. And the IRO agreed that he needs a diskogram due to the unrelenting low back pain that is documented in the records. ___ also emphasizes that his treating physician testified that a diskogram is medically reasonable and necessary to provide proper treatment for ___, but AHAC did not call any witnesses.

E. ALJ's Analysis and Decision

Under the workers' compensation system, an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury. 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. Based on the evidence presented at hearing, the ALJ concludes that ___'s request for a diskogram at L3-4, L4-5, and L5-S1 should be approved.

This is a close case. The records summarized above show that ___ has undergone extensive conservative care for over two years based almost exclusively on subjective complaints of pain. The only objective finding was an MRI report dated May 31, 2001, which stated that ___ had a "shallow, mildly compressive broad based subligamentous disk protrusion at the L4-5 level." But that report did not suggest any nerve root compression or irritation. In late November 2002, however, ___ began to complain about progressive, worsening, severe low back pain that radiated into his left leg. He also reported pain on his straight leg raising tests, which tends to confirm the subjective complaints of radiculopathy, and which suggests possible sciatic nerve root impingement. The complaints of severe pain and the positive straight leg raising tests have continued throughout ___'s office visits since late November 2002. Dr. Daneshfar now states that he needs a diskogram to determine whether these complaints are related to a disk pathology that might require surgery.

In February 2003 Dr. Bigos performed a peer review on behalf of the carrier and concluded that a diskogram was not needed because ___ was not a candidate for a spinal fusion. He also questioned whether ___'s recent complaints of low back pain were genuine due to lack of any prior evidence of nerve root irritation. However, it appears that Dr. Bigos did not review any records after November 26, 2003, and he was not aware of ___'s continued complaints of severe, radiating low back pain. Further, as Dr. Daneshfar explained, a diskogram is not used exclusively to determine whether a fusion is appropriate. Instead, it can also be used to determine whether a patient has disk pathology that might require a diskectomy or other types of surgery. And if the diskogram is negative, it can rule out the need for surgery.

Both Dr. Daneshfar and the IRO doctor concluded that a diskogram is medically reasonable and necessary for ___ Dr. Bigos concluded that the procedure is not necessary, but he has not examined ___ nor has he reviewed the more recent medical records. ___ has received a tremendous amount of conservative care from a relatively minor accident, based almost entirely on subjective complaints of pain, and the ALJ is concerned that ___ has over-utilized the medical care available to him under the workers' compensation system. Nevertheless, the evidence established that in late November 2002 ___'s condition deteriorated significantly and that a diskogram can assist in the diagnosis of his condition and the planning of his future care. It is a close call, but the testimony of Dr. Daneshfar and the report of the IRO physician support a diskogram for ___ Therefore, the ALJ denies AHAC's appeal and upholds the IRO decision to preauthorize a lumbar diskogram for ___

III. FINDINGS OF FACT

1. Claimant ___ suffered a compensable injury on____, when he slipped in a liquid and caught himself before falling at his work place.

2. Since June 2001, ___ has received extensive conservative treatment for his low back from

Dr. Kim Muncrief and Dr. B.J. Daneshfar of Amarillo, Texas. They diagnosed ___'s condition as "severe lumbar facet syndrome with multiple spinal nerve root neuritis" and their treatment has included medications, physical therapy, referral for chiropractic treatments, a nerve stimulator device, bilateral lumbar facet joint injections, and repeated bilateral lumbar facet joint nerve rhizotomies.

3. A report concerning a lumbar MRI performed on ___ on May 31, 2001, stated that ___ had a "shallow, mildly compressive broad based subligamentous disk protrusion at the L4-5 level." The report also stated that there was no other significant disk pathology, no canal or foraminal stenosis, and no intradural pathology.

4. In late November 2002, ___'s condition deteriorated and he began to complain of severe low back pain radiating into his left leg, and on examination he had positive straight leg raising tests.

5. In late November 2002, Dr. Daneshfar requested preauthorization for a lumbar diskogram for ___ at L3-4, L4-5, and L5-S1.

6. American Home Assurance Company (AHAC), the Carrier, denied Dr. Daneshfar's request.

7. Dr. Daneshfar requested medical dispute resolution.

8. The Independent Review Organization granted Dr. Daneshfar's appeal and preauthorized the requested lumbar diskogram.

9. AHAC requested a hearing before the State Office of Administrative Hearings, seeking to reverse the IRO's preauthorization of a lumbar diskogram for ___

10. A lumbar diskogram at L3-4, L4-5, and L5-S1 is reasonably required at this time to assist in the diagnosis of ___'s condition and to plan for his future treatment.

11. A hearing was conducted October 20, 2003, and the record closed the same day.

12. ___ and the AHAC attended the hearing.

13. 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.

14. 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. All parties received proper and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

3. AHAC has the burden of proof by a preponderance of the evidence.

4. A lumbar diskogram at L3-4, L4-5, and L5-S1 is medically necessary for the proper diagnosis and treatment of ___ TEX. LABOR CODE ANN. §§ 401.011(19) and 408.021.

5. AHAC's appeal is denied and AHAC required to pay for a lumbar diskogram at L3-4, L4-5, and L5-S1 for ___

ORDER

IT IS, THEREFORE, ORDERED that AHAC's appeal is hereby denied and preauthorization if granted for a lumbar diskogram at L3-4, L4-5, and L5-S1 for ___, as requested by Dr. B.J. Daneshfar.

SIGNED December 11, 2003.

THOMAS H. WALSTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS