

JOHN A. SAZY, M.D., § BEFORE THE STATE OFFICE
Petitioner §
§
VS. § OF
§
INSURANCE COMPANY OF §
THE STATE OF PENNSYLVANIA, §
Respondent § ADMINISTRATIVE HEARINGS

DECISION AND ORDER

John A. Sazy, M.D. (Provider), challenged the decision of Insurance Company of the State of Pennsylvania (Carrier) denying preauthorization for an EMG (electromyography) and NCS (nerve conduction studies) for ___ (Claimant). In this decision, the Administrative Law Judge (ALJ) finds that Provider met its burden of showing that the requested procedures are reasonable and necessary medical care and should be preauthorized.

The hearing convened and closed on October 27, 2003, before Nancy N. Lynch, Administrative Law Judge (ALJ). Provider appeared and represented himself. Carrier appeared and was represented by Laurie S. Gallagher, attorney.

I. DISCUSSION

1. Background Facts

Claimant sustained a compensable back injury on ___, while working as an assemblyman and welder for ___. He has had considerable back trouble since then and has had both lumbar and cervical surgeries. Neither of the initial surgeries were performed by Dr. Sazy. The lumbar surgery was first done in early 1998 and was revised by Dr. Sazy in June 2001.

Claimant also has had ongoing cervical pain. In June 1999, Claimant underwent a two-level anterior cervical fusion with decompression at C5/6 and C6/7. After some initial relief, the pain returned as well as pain in his left arm and numbness in his left hand. This case relates only to Claimant's cervical pain.¹

Claimant went to Dr. Sazy, an orthopedic surgeon specializing in spinal surgery, complaining of neck symptoms with bilateral numbness in both hands. Dr. Sazy ordered an EMG with nerve conduction studies on September 18, 2002. This study was done by Dr. Donovan, a physical medicine specialist, and was reported as normal. The patient continued to complain of neck symptoms with bilateral numbness in both hands, so a cervical myelogram and CT scan were done by Dr. Sazy on January 29, 2003. That study demonstrated no evidence of pseudoarthrosis, nerve root compression, or herniated disc. It appeared normal except for the successful fusion at C5/6 and C6/7.

¹Claimant also has suffered a compensable injury in ___ involving carpal tunnel syndrome. This case does not involve that injury.

Dr. Sazy's patient note of January 31, 2003, indicated the Claimant continued to complain of neck and shoulder pain. On April 15, 2003, Dr. Sazy requested a bilateral NCV of Claimant's upper extremities. The Carrier denied the request on April 18, 2003, because "there is insufficient documentation of a recent evaluation since 1/31/03 to support the necessity of the request."

On April 24, 2003, Dr. Sazy submitted a second request for an EMG and NCS (nerve conduction study). He explained further that Claimant had a "previous cervical fusion and radiographic work up that demonstrates probable solid C5/6 C6/7 fusion, and adjacent level degenerative disc disease." He wanted to "correlate arm hand symptoms to possible cervical radiculopathy from adjacent level degenerative discs."

On May 22, 2003, the Carrier denied the request as not medically necessary because there was "insufficient documentation of an evaluation since January 31, 2003, to support the necessity of the request." After the second denial, the dispute was referred to an Independent Review Organization (IRO) that agreed with the Carrier's denial by decision dated July 1, 2003. The IRO's decision was based on the following factors:

There are no records that report any change in the patient's physical status, neurological status, or symptoms since the EMG done by Dr. Donovan on September 18, 2002.

- The EMG done in September 2002 by Dr. Donovan was normal.
- Since there was no change in patient's symptoms, physical findings, or neurological findings reported in the records since his prior EMG, the records do not support the need for a repeat study at this time.

B. Applicable Law

An employee who sustains a compensable injury is entitled to all 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 pursuant to the Texas Workers' Compensation Act (Act). TEX. LAB. CODE

Health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services. Act § 401.011(19).

Certain categories of health care identified by the Commission require preauthorization, which is dependant upon a prospective showing of medical necessity under the Act § 413.014 and 28 TEX. ADMIN. CODE (TAC) § 134.600. In this instance, preauthorization is required for the requested EMG with nerve conduction studies. 28 TAC § 134.600(h).

C. Evidence

Carrier's Exhibit 1 consisted of approximately 650 pages of medical records relating to Claimant. Carrier's Exhibit 2 contained the documents submitted to the IRO. Carrier also called two witnesses: the doctor who reviewed the first request for preauthorization, Dr. Villareal, and Tommy Rigmaiden, the adjuster who handled this request for the Carrier. Dr. Sazy testified and presented Provider Exhibit 1, approximately 90 pages of medical records.

D. Petitioner's Position

Dr. Sazy first examined Claimant on August 25, 2000. Dr. Sazy asserts that Claimant is a very complex patient with previous lumbar and cervical spine surgeries.² Dr. Sazy's first goal was to address Claimant's lumbar spine. After he completed the revision surgery on the lumbar area, he turned his attention to the cervical spine.

Claimant's cervical surgery in June 1999 included an anterior cervical fusion with anterior plating and vertebral body screws at C5, C6, and C7.³ After the surgery, Claimant continued to report pain in his neck and upper back, headaches, and pain radiating down his left arm.

Dr. Sazy requested preauthorization for a repeat EMG and nerve conduction studies for the upper extremities because Claimant continued to have pain in the cervical area. After the initial denial, Dr. Sazy submitted a letter giving a further explanation about why he wanted to have the requested procedure. He believed Claimant, who had a solid fusion at C5/6 and C6/7, could have adjacent level degenerative disc disease. Because the fusion was so solid, and the spine where it was fused was no longer flexible, there would be increased wear and tear on adjacent levels that were not fused. Because of that increased wear and tear, the adjacent discs can degenerate rapidly. He requested an EMG with nerve conduction studies to correlate Claimant's arm and hand symptoms to possible cervical radiculopathy from adjacent level degenerative discs.

5. Carrier's Position

Dr. Marcus Villareal, M.D., the Carrier's peer review doctor, was called to testify. He reiterated his opinion that there is no documentation of recent evaluation that indicated any change in Claimant's signs and symptoms after January 31, 2003. The September 2002 EMG performed by Dr. Donovan was "essentially normal," so Carrier argues that without a documented change, there is no medical necessity for a repeat EMG at this time.

On cross-examination, Dr. Sazy questioned Dr. Villareal about the letter he submitted when he asked for reconsideration of the denial. Dr. Villareal had not seen that letter previously because the reconsideration request went to another doctor. He agreed that it was possible that such adjacent disc degeneration could occur. However, Dr. Villareal continued to be of the opinion that there should be some other anatomic reason to explain the abnormalities such as scar tissue around the root, collapse of the disc or a herniation.

Dr. Villareal also conceded that it was possible to have a normal CT myelogram and still have degenerative instability because a CT myelogram is a static snapshot in a supine position as opposed to a dynamic flexion-extension study in an upright position. Dr. Villareal agreed that an EMG might help isolate nerve root pathology secondary to abnormal motion of discs above and below a previously fused segment. He acknowledged that he did not consider that possibility when he first reviewed Dr. Sazy's request. He also conceded that if he had information with respect to the definition of disc degeneration secondary to degenerative instability, he might have changed his

²Dr. Sazy completed a revision surgery on Claimant's lumbar spine in June 2001.

³Carrier's Ex. 1, p. 318.

opinion with respect to approving the requested EMG with nerve conduction studies.

Carrier also suggested that Dr. Sazy's request for reconsideration was inappropriate because it referred to "assessing for cubital tunnel or carpal tunnel syndrome" and Claimant's injury of ___ the one involved in this case-related only to his back. He had a subsequent injury in ___ for carpal tunnel syndrome. Carrier asserted that nothing related to carpal tunnel syndrome should be involved in this case.

F. ALJ's Analysis and Conclusion

The ALJ finds that there is sufficient evidence in the record to support the medical necessity of Dr. Sazy's request for preauthorization for an EMG and nerve conduction studies. The record contains numerous references to Claimant's neck pain radiating down into his shoulders and left arm after the cervical fusion. His complaints increased in intensity over time. Further, although Dr. Donovan characterized the September 2002 EMG and nerve conduction studies as normal, Dr. Marable, Claimant's treating doctor read the results differently. Dr. Marable, board certified in neurology, expressed the opinion that the nerve conduction studies revealed some abnormalities that could be caused by a Aleft median neuropathy or left ulnar neuropathy, or the possibility of a C6-T1 lesion."⁴ In addition, he examined Claimant on March 6, 2003, and wrote a memo in which he noted that Claimant:

complains of neck pain radiating down his right shoulder instead of his left shoulder today. He complains of headaches that start at the base of his neck and go to the top of his head. . . . I have suggested an EMG again because I think he has some abnormalities which are suggestive of a C6-T1 lesion.⁵

Dr. Marable's memorandum documents a change in Claimant's complaints after Dr. Donovan's EMG of September 2002 and also offers another hypothesis that can be tested by an EMG: the possibility that there may be a C6-T1 lesion.

Dr. Sazy knows this patient well and believes he may have developed adjacent degenerative disc disease that could explain some of his neck pain and radiculopathy. As he argued, good medical diagnosis depends on a doctor's training and expertise, but also on a doctor's intuition and knowledge of his patient. The doctors who rejected Dr. Sazy's request never examined Claimant. In addition, Dr. Sazy has extensive training and experience in the area of spinal surgery, including the more specialized field of revision surgery. His opinion, therefore, is persuasive.

Carrier's argument seems to be that a patient has to get an immediate diagnosis of his symptoms and have a diagnostic test that clearly explains those symptoms. If his symptoms persist, and a diagnostic test is done that fails to reveal the cause of the symptoms, it cannot be done again unless the doctor can first identify some specific physical change in the Claimant. The ALJ does not accept this as the standard for medical necessity in a situation like this, where the simple passage of time is likely to alter Claimant's physical condition as it relates to this injury. But even if that is the

⁴Carrier's Ex. 1, p. 594.

⁵Carrier's Ex. 1, p. 611.

standard, Dr. Marable's examination of Claimant on March 6, 2003, provides such documentation: Claimant complained of pain radiating down his right shoulder instead of his left arm.

Claimant is entitled to examinations, evaluations, and medial services that relieve the effects naturally resulting from his compensable injury. This diagnostic test may give Dr. Sazy additional information about what medical services might relieve Claimant's persistent pain resulting from his compensable injury. He is entitled to no less.

After reviewing the evidentiary record, the ALJ finds that the Provider, as the party appealing the IRO decision, has met its burden of proof. Specifically, Provider has established by a preponderance of the evidence that the requested procedures, the EMG and nerve conduction studies, are medically necessary to further investigate the cause of Claimant's pain and to determine possible further treatments for Claimant's compensable injury.

For the foregoing reasons, the ALJ concludes that the requested procedures are reasonable and necessary medical treatment for Claimant's compensable injury, and should be preauthorized.

II. FINDINGS OF FACT

1. Claimant sustained a compensable injury to his back on ____, while working for ____ as an assemblyman and welder.
2. In July 1995, Charles Marable, M.D., board certified neurologist, took Claimant off work.
3. Dr. Marable obtained cervical and lumbar MRIs that revealed disc protrusions at L4/5, C4/5, C5/6, and C6/7.
4. On March 11, 1998, a L4/5 laminectomy and fusion was performed by Drs. Bernell and Beckley. The fusion did not take.
5. On June 18, 1999, Dr. Cravens performed surgery on the cervical spine from C4 to C7 with plate and screws which failed to improve his symptoms.
6. Claimant continued to have pain after this surgery and subsequently came under the care of John A. Sazy, M.D. (Provider).
7. In June 2001, Dr. Sazy did revision spine surgery to the lumbar spine.
8. On September 18, 2002, Dr. Donovan performed an EMG with nerve conduction studies that was reported as normal.
9. Claimant continued to complain of neck symptoms with bilateral numbness in both hands so a cervical myelogram and CT scan were done by Dr. Sazy on January 29, 2003.
10. This study was reported as normal. The fusion at C5/6 and C6/7 was very solid.

11. On April 24, 2003, Provider sought preauthorization from the Insurance Company of the State of Pennsylvania (Carrier/Respondent) for Claimant to undergo an EMG and nerve conduction studies bilateral upper extremities, to investigate the cause of his upper back and neck pain and radiculopathy.
12. The Carrier denied the request and Provider appealed.
13. Provider sought medical dispute resolution with an Independent Review Organization (IRO), which concurred with Carrier and denied preauthorization in its decision issued January 13, 2003.
14. Provider timely requested a hearing before the State Office of Administrative Hearings (SOAH).
15. Notice of the hearing in this case was mailed to the parties on February 18, 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.
16. The hearing convened and closed on October 27, 2003, before Administrative Law Judge (ALJ) Nancy N. Lynch. Provider appeared and represented himself. Carrier was represented by Laurie S. Gallaher, attorney. The hearing was adjourned and the record closed the same day.
17. Having a normal EMG in September 2002 does not mean that another EMG is not medically necessary.
18. Claimant continues to have cervical pain accompanied by radiculopathy involving his shoulders and arms.
19. Degeneration of Claimant's discs adjacent to the fused cervical discs could be responsible for Claimant's pain. This could have become evident after Claimant's earlier EMG.
20. Claimant could have a left median neuropathy or left ulnar neuropathy or a C6-T1 lesion. This can be tested with a new EMG and nerve conduction studies.
21. The EMG and nerve conduction studies may give Dr. Sazy information that will allow him to consider alternative medical or surgical treatments to alleviate Claimant's cervical pain.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. (the Act).
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(d) of the Act and TEX. GOV'T CODE ANN. ch. 2003.

3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. The Provider, as Petitioner, had the burden of proof on its appeal by a preponderance of the evidence under the Act § 413.031 and 28 TEX. ADMIN. CODE §148.21(h).
5. Under the Act § 408.021(a), 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.
6. Under 28 TAC § 134.600(h)(7), preauthorization is required for the EMG and nerve conduction studies.
7. The requested procedures are medically necessary for treating Claimant's compensable injury.
8. Based on the above Findings of Fact and Conclusions of Law, Provider's request for preauthorization should be granted.

ORDER

IT IS, THEREFORE, ORDERED that preauthorization for the requested EMG and nerve conduction studies is granted.

Signed November 26, 2003.

NANCY N. LYNCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS