

JOHN A. SAZY, M.D.,  
*Petitioner*

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BEFORE THE STATE OFFICE

VS.

OF

LUMBERMAN'S MUTUAL  
CASUALTY COMPANY,  
*Respondent*

ADMINISTRATIVE HEARINGS

### DECISION AND ORDER

John A. Sazy, M.D. (Provider), challenged the decision of Lumberman's Mutual Casualty Company (Carrier) denying preauthorization for a lumbar discogram for (Claimant). In this decision, the Administrative Law Judge (ALJ) finds that Provider met his burden of showing that the requested procedure is reasonable and necessary medical care and should have been preauthorized. Therefore, the ALJ orders Carrier to authorize the requested procedure.

The hearing convened and closed on September 10, 2003, before Steven M. Rivas, Administrative Law Judge (ALJ). Provider appeared and represented himself. Carrier appeared and was represented by Michael J. Portele, attorney.

#### I. DISCUSSION

##### 1. Background Facts

Claimant sustained a compensable back injury on \_\_\_\_\_. Following his injury, Claimant underwent extensive treatment to relieve his back pain, to no avail. Claimant's treating doctors administered diagnostic examinations, two IDET procedures, and a decompression operation (without fusion) before they referred him to Provider.

On November 8, 2002, Provider recommended Claimant undergo a lumbar discogram at the L4-L5 and L5-S1 levels. Provider's request for preauthorization to administer the lumbar discogram was denied by the Carrier as not medically necessary. The dispute was referred to an Independent Review Organization (IRO), which agreed with Carrier. Provider appealed the IRO decision to the State Office of Administrative Hearings.

##### 2. Applicable Law

Pursuant to the Texas Workers' Compensation Act ("the Act"), TEX. LAB. CODE ANN. § 408.021 *et seq.*, 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.

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 dependant upon a prospective showing of medical necessity under § 413.014 of the Act and 28 TEX. ADMIN. CODE (TAC) §134.600. In this instance under 28 TAC §134.600(h)(7), preauthorization is required for the discogram requested by Provider.

### 3. Evidence and arguments

Provider testified Claimant is a suitable candidate for a fusion operation based on the results of prior diagnostic tests and Claimant's ongoing complaints of pain. However, Provider asserted, before he can perform a fusion operation, Claimant must undergo a lumbar discogram to "precisely identify and confirm the suspected areas of pathology." Once the areas of pathology are determined, if any, Provider contends he will recommend Claimant undergo a fusion operation focusing on those areas.

Provider testified he has a "gut feeling" that the pathology is located in the L4-L5 and L5-S1 regions of Claimant's spine. Provider bases his opinion on the results of a prior MRI and the records gathered from Claimant's ongoing treatment. Even with the results of the MRI and his gut feeling, Provider contends he would not recommend this Claimant undergo a fusion without consulting the results of a lumbar discogram.

Carrier argued the record does not clearly indicate that Claimant is a suitable candidate for a fusion operation, but even so, Provider has already made up his mind to perform a fusion operation. Therefore, the requested discogram is virtually unnecessary because it will offer Provider no additional information to use in determining Claimant's candidacy for a fusion.

According to Provider, the results of the prior MRI are helpful, but not as helpful as the discogram because the MRI provides information on soft tissue only, while a discogram will show how the bony and soft tissue of Claimant's spine may be contributing to Claimant's back pain. Provider added he always recommends an MRI, discogram, and other diagnostic tests for every patient that may possibly undergo a fusion because each test "forms a different piece of the puzzle" regarding appropriate treatment.

### 4. Analysis and Conclusion

Both parties submitted identical documents from Provider's medical records and Carrier's denial letters. Carrier presented no evidence suggesting that a lumbar discogram was not medically necessary at this time. Instead Carrier relied on Provider's own testimony that he had already determined Claimant to be a proper candidate for a fusion operation, arguing that this additional test was merely unnecessary utilization.

Provider testified Claimant was indeed a candidate for fusion; however, a lumbar discogram was necessary here to precisely determine what areas of Claimant's spine should be "fused."

Provider testified on his own behalf and provided testimony regarding the medical necessity of a lumbar discogram in this case. Carrier, on the other hand, did not call any witnesses or offer any reports or peer reviews discrediting or contradicting Provider's position.

Therefore, Provider met his burden of proving, by a preponderance of the evidence, that the requested lumbar discogram is medically necessary and should be preauthorized.

## **II. FINDINGS OF FACTS**

1. (Claimant) sustained a compensable back injury on\_\_\_\_\_.
2. Claimant was treated by several treating doctors and subsequently came under the care of John A. Sazy, M.D. (Provider), who recommended Claimant undergo a lumbar discogram.
3. Provider sought preauthorization from Liberty Mutual Casualty Company (Carrier) and was denied.
4. Provider sought medical dispute resolution with the Texas Workers' Compensation Commission's Medical Review Division, which referred this matter to an Independent Review Organization (IRO). The IRO report concurred with Carrier and denied preauthorization.
5. Provider timely requested a hearing before the State Office of Administrative Hearings (SOAH).
6. Notice of the hearing in this case was mailed to the parties on August 8, 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.
7. The hearing convened and closed on September 10, 2003, before Steven M. Rivas, Administrative Law Judge (ALJ). Provider appeared and represented himself. Carrier was represented by Michael J. Portele, attorney. The hearing was adjourned and the record closed the same day.
8. Claimant had a prior MRI exam and two IDET procedures.
9. Based on the results of Claimant's previous diagnostic tests and procedures, he is a candidate for a fusion operation.
10. A lumbar discogram would allow Provider to determine the precise areas of pathology on Claimant's spine that need to be fused.

## **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(k) 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 appeal by a preponderance of the evidence under § 413.031 of the Act, and 28 TEX. ADMIN. CODE §148.21(h).
5. Under § 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 a lumbar discogram.
7. Provider proved 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 lumbar discogram be granted.

**Signed this 8<sup>th</sup> day of October, 2002.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**STEVEN M. RIVAS**  
**ADMINISTRATIVE LAW JUDGE**