

SECURITY INSURANCE COMPANY	§	BEFORE THE STATE OFFICE
OF HARTFORD,	§	
Petitioner	§	
	§	
VS.	§	OF
	§	
MEGA REHAB,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Security Insurance Company of Hartford (Security) appealed a Texas Workers Compensation Commission (Commission) Medical Review Division (MRD) order adopting an Independent Review Organization (IRO) determination that a right facet joint injection into an injured worker (Claimant)'s spine was medically necessary. Security argued that the procedure was not medically necessary based on a peer review and other opinions. Mega Rehab (Mega) contended the procedure was indicated under certain treatment guidelines and no opinion expressly said the injection was medically unnecessary. This decision agrees with Mega that the injection was medically necessary.

I. PROCEDURAL HISTORY

A hearing in this matter convened and concluded before the undersigned Administrative Law Judge (ALJ) on October 23, 2003, at the State Office of Administrative Hearings, Austin, Texas. Attorney Tommy W. Lueders represented Security. Stephen Dudas, D.C., represented Mega. Because there are no notice and jurisdiction issues, those matters are addressed in the fact findings and legal conclusions without further discussion here.

II. DISCUSSION

2. Background

The Claimant was injured in a work-related accident on ____, when she slipped and fell forward, striking her right shoulder and head and rendering her temporarily unconscious. An intensive conservative treatment program followed, which included active rehabilitation, injections, manipulation, and other procedures. Diagnostic testing was performed, as were epidural steroid injections and surgery. The Claimant had right a C6-C7 facet joint injection under fluoroscopy on July 12, 2002. Security denied Mega's claim for that procedure.

Employees have a right to necessary health treatment under TEX. LABOR CODE ANN. §§ 408.021 and 401.011. Section 408.021(a) provides, "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 compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment." Section 401.011(19) of the Labor Code provides that health care includes "all reasonable and necessary medical . . . services."

As Appellant, Security had the burden of proof.¹

3. Parties' Evidence and Argument

1. Security

Security cited a June 17, 2002, peer review from Phillip Osborne, M.D., which concluded,

[I] really do not think that there is much left to offer the patient. In my opinion, she needs only maintenance follow-up and medication management. She follows-up with her physician once a month, and I think that is a little more than she needs. I feel that once a quarter is adequate. I do not believe she is a surgical candidate. I am not impressed with the MRI findings in the neck at all. There is nothing but degenerative bulging from C4 to C7 and some osteophytic spurring. There is absolutely no evidence of disc herniation or spinal stenosis, and there is no foraminal stenosis.

[I] do not think that further physical therapy or chiropractic intervention would be reasonable or necessary. The literature shows that these are not likely to have any beneficial effect after this period of time.

You asked me to recommend a treatment plan. In my opinion, she needs to follow-up with her physician on a maintenance only type program²

Security argued Dr. Osborne's opinion says that procedures such as a facet joint injection are not medically justifiable, but does not say that all future care is inappropriate.

Security cited the following conclusion from an April 26, 2002, designated doctor examination by Ingrid Zasterova, M.D.:

She is to continue her physical therapy at home as advised. She also had a sprain of her neck, I suspect facet arthropathy on the right side of her neck. I put her on MMI at 3/28/02, which is statutory and she will have range of motion on her neck and right shoulder.³

Security cited an earlier statement from Dr. Osborne, on February 14, 2001, which said,

In consideration of the patient's opinion of surgery and the results of these tests, I do not believe that further conservative care will give any response in this case.

[I] have reviewed the MRI of the neck and I really do not see anything except some minimal multi-level disc degeneration with some mild spurring. This is all comparable to the patient's chronological age. . . .

¹ 28 TEX. ADMIN. CODE § 148(h).

² Ex. 1 at 18-19.

³ Ex. 1 at 31. She received a five percent impairment rating. Ex. 1 at 28.

[I] believe this is a soft tissue problem and better rated as such. . . .

There were no sensory or strength deficits in any dermatomes of the upper extremities. . . .⁴

Security contended this evidence showed that further intervention such as a facet joint injection will not be useful and thus not reasonable or medically necessary.

2. Mega

Dr. Dudas agreed with and cited the following language from the IRO decision:

After reviewing all records provided, the patient was unresponsive to non-invasive treatment. She had undergone ESI's that addressed the disc involvement. The results of the diagnostic testing and failure and unresponsiveness of prior treatments led the treating doctor to surmise the pain generator, in this instance, the facet joints. This is evident due to the fact that the patient received significant relief of her symptoms and increase in range of motion after the injection.

Cervical facet injection was performed due to the fact that the patient had cervical spondylosis, with myelopathy. She was also experiencing cervicalgia and suspected facet syndrome. After the facet injection, she received 30% decrease in her symptomatology, which supported the diagnosis of facet arthropathy or facet syndrome. National treatment guidelines, and Medicare treatment guidelines, include cervical spondylosis without myelopathy, cervicalgia, and facet arthropathy as supporting diagnoses for cervical facet injections. Per the Texas Guidelines, injections are required to be with fluoroscopic guidance, which was done in this case.

In further support of his position, Dr. Dudas compared the Claimant's condition with a news brief setting forth Medicare guidelines for facet joint nerve block injections.⁵

- Under a section describing the ICD-9-CM codes that Medicare says support medical necessity, the following diagnosis codes and diagnoses or clinical suspicions were identified: 721, cervical spondylosis without myelopathy; 721.3, facet arthropathy; and 723.1, cervicalgia.⁶
In relation to cervical spondylosis without myelopathy,⁷ Dr. Dudas cited Dr. Osborne's statements that the Claimant had minimal multi-level disc degeneration

⁴ Ex. 1 at 16.

⁵ Ex. 2 at 84-89.

⁶ Ex. 2 at 86.

⁷ Cervical spondylosis is defined as degenerative joint disease affecting the cervical vertebrae, intervertebral discs, and surrounding ligaments and connective tissue, sometimes with pain or paresthesia radiating down the arms as a result of pressure on the nerve roots. *Dorland's Illustrated Medical Dictionary* (28th ed. 1994).

and degenerative bulging at C4 and C7 with some osteophytic spurring.⁸ He argued that degenerative spurring is an indication for the injection.

In relation to facet arthropathy, Dr. Dudas cited a February 17, 2003, letter from Alan Hurschman, M.D., a physical medicine and rehabilitation specialist, saying he diagnosed the Claimant with C6-7 facet arthropathy⁹ and a statement by Dr. Zasterova that she suspected facet arthropathy.¹⁰

Dr. Dudas said cervicgia simply means neck pain and the Claimant's impairment rating shows she has neck pain.

- Under a section entitled conditions of coverage and/or medical necessity, the guidelines say, "[I]f the patient fails traditional aggressive analgesic therapy, or the etiology of the pain is uncertain, nerve block¹¹ may play a pivotal role both diagnostically and therapeutically."¹² Dr. Dudas pointed out that the Claimant had failed traditional treatment and the source of her pain was uncertain.
- Under the conditions-of-coverage section, the guidelines say "[S]uspicion of facet joint pain."¹³ Dr. Dudas cited the above-described statements from Dr. Hurschman and Dr. Zasterova indicating facet arthropathy.
- A section on limitations of coverage says radiculopathy should be ruled out by physical/electrophysiologic examination.¹⁴ Dr. Dudas cited an opinion from Dr. Hurschman saying there is no electrodiagnostic evidence of cervical radiculopathy.¹⁵

Dr. Dudas cited the Claimant's own statement in a patient intake interview with Dr. Osborne, saying Dr. Zasterova recommended facet injections in her neck.¹⁶

In response to Dr. Osborne's statement that the Claimant should not receive any more conservative care, Dr. Dudas presented evidence that a facet joint injection is a surgical procedure¹⁷ and argued surgical procedures do not constitute conservative care.

⁸ Ex. 1 at 16 and 18.

⁹ Ex. 2 at 74.

¹⁰ Ex. 1 at 31.

¹¹ It is undisputed that a facet injection is a nerve block.

¹² Ex. 2 at 85.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Ex. 2 at 12.

¹⁶ Ex. 2 at 71.

¹⁷ Ex. 4.

Dr. Dudas said he agreed with Dr. Osborne's opinion that additional physical therapy and chiropractic care was not necessary. That was his reason for recommending a facet injection, which is more intensive care.

Dr. Dudas maintained that nowhere do Dr. Osborne's opinions expressly say a facet injection is medically unnecessary. He argued Dr. Osborne never considered the necessity of that procedure.

As further evidence that the procedure was medically necessary, Dr. Dudas cited the fact that the Claimant got a 30 percent decrease in symptomatology after the injection.

3. Analysis

The ALJ concludes Dr. Dudas' arguments were persuasive. Facet joint injection is found to be medically necessary for the following reasons: the Claimant was unresponsive to non-invasive treatment; the source of her pain was uncertain; she suffered from cervical spondylosis without myelopathy, facet arthropathy, and cervicogenic headache; she has disc degeneration; she received significant pain relief from the procedure; and after the injection, she had significant increased range of motion.

IV. FINDINGS OF FACT

1. The Claimant was injured in a work-related accident on ___ she slipped and fell forward, striking her right shoulder and head, and rendering her unconscious for a time.
2. An intensive conservative treatment program followed, which included active rehabilitation, injections, manipulation, and other procedures.
3. Diagnostic testing was performed on the Claimant, as were epidural steroid injections and surgery.
4. The Claimant has continued to suffer pain from her injury.
5. The Claimant had right a C6-C7 facet joint injection under fluoroscopy on July 12, 2002.
6. The Claimant's provider, Mega Rehab, requested reimbursement from the workers' compensation carrier providing coverage, Security Insurance Company of Hartford (Security), for the July 12, 2002, facet joint injection.
7. Security denied the claim.
8. The Texas Workers' Compensation Commission Medical Review Division (MRD) ordered Security to pay the claim.
9. Security requested a hearing not later than the twentieth day after it received notice of the MRD decision.
10. 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;

the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

11. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.
12. The Claimant was unresponsive to non-invasive treatment.
13. The source of the Claimant's pain was uncertain.
14. The Claimant suffered from facet arthropathy, cervicalgia, and cervical spondylosis without myelopathy.
15. The Claimant has cervical spine disc degeneration.
16. The Claimant received significant pain relief from the July 12, 2002, facet joint injection.
17. After the injection, the Claimant had significant increased range of motion from the July 12, 2002, facet joint injection.
18. The July 12, 2002, facet joint injection was reasonably required by the nature of the Claimant's injury.

V. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE ANN. §413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
2. All parties received adequate and timely notice of the hearing. TEX. GOV'T CODE ANN. §2001.052.
3. Security has the burden of proof in this matter. 28 TEX. ADMIN. CODE § 148.21(h).
4. The facet joint injection was medically necessary. TEX. LAB. CODE ANN. §§ 401.011 and 408.021.
5. Mega Rehab should be reimbursed for the July 12, 2002, facet joint injection. TEX. LAB. CODE ANN. §§ 401.011 and 408.021.

ORDER

IT IS, THEREFORE, ORDERED that Security Insurance Company of Hartford pay Mega Rehab for the July 12, 2002, facet joint injection provided to the Claimant.

SIGNED November 6, 2003.

**JAMES W. NORMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**