

INSURANCE COMPANY OF NORTH § BEFORE THE STATE OFFICE
AMERICAN §
§
V. § OF
§
HOWARD J. HASSELL, M.D § ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. INTRODUCTION

Insurance Company of North America (Carrier) appealed an independent review organization’s (IRO) determination that it should pre-authorize Howard J. Hassell, M.D. (Provider) to perform a discogram on Claimant. Carrier denied the pre-authorization, contending the discogram was not medically necessary to treat Claimant’s compensable injury. The IRO found that it was medically necessary.

Carrier has the burden of proof. As set out below, the Administrative Law Judge (ALJ) finds that the discogram is not medically necessary and denies the request for pre-authorization.

II. DISCUSSION

The hearing was convened at 1:30 p.m. on April 5, 2004. Carrier appeared through its representative, John D. Pringle. Provider did not appear at the hearing and did not file a request for continuance.

On February 10, 2004, Carrier sent the following requests for admission to Provider asking him to admit:

- X that on [sic] Claimant¹ is undergoing individual psychotherapy.
- X that Claimant has an underlying psychological condition.
- X that it is more probable than not that a discogram of Claimant would be unreliable.
- X that if lumbar surgery on Claimant is unnecessary then the diskogram [sic] is unnecessary.
- X that the prior objective diagnostic tests of Claimant’s lumbar spine show surgery at any lumbar level is unnecessary.
- X that if the IDET procedure is not reasonable for the treatment of Claimant’s_____, date of injury then the disputed discogram is not reasonable for the treatment of Claimant’s_____.

¹The requests for admission actually name Claimant. For reasons of confidentiality, the ALJ has replaced the individual’s name with “Claimant.”

date of injury.²

- X that if the IDET procedure is not medically necessary for the treatment of Claimant's _____, date of injury then the disputed discogram is not medically necessary for the treatment of Claimant's November 23, 1993, date of injury.
- X that medical studies have not shown the efficacy of the IDET procedure.
- X that some patients who undergo the IDET procedure may not experience relief of their pain.
- X that some patients who undergo the IDET procedure may have a recurrence of their pain symptomology.
- X that some patients with contained or non-contained disc herniations are not good candidates for the IDET procedure.

Provider never responded to these requests. A requested admission is admitted without necessity of an order of the judge unless the party to whom the request is directed timely serves upon the party requesting the admission a written answer or objection to the request, signed by the party or the party's attorney. 1 TEX. ADMIN. CODE § 155.31(d)(2)(A). Based on that rule, Provider has admitted that the discogram is not medically necessary.

Based on the above, the ALJ finds the request for pre-authorization should be denied.

III. FINDINGS OF FACT

1. Claimant sustained a work-related injury on ____.
2. At the time of Claimant's work-related injury, Insurance Company of North America (Carrier) was the workers' compensation insurer for Claimant's employer.
3. Howard J. Hassell, M.D. (Provider) asked Carrier for pre-authorization to perform a discogram on Claimant.
4. Carrier denied the requested pre-authorization.
5. Provider filed a request for medical dispute resolution with the Texas Workers' Compensation Commission, which referred it to an independent review organization (IRO).
6. The IRO reviewed the medical dispute and found that the discogram was medically necessary.
7. After the IRO decision was issued, Carrier asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).
8. Notice of an April 5, 2004, hearing on this dispute was faxed to Provider and Carrier on December 18, 2003. The notice included the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

²IDET is Intradiscal Electrothermal Annuloplasty.

9. On April 5, 2004, Tommy L. Broyles, an ALJ with SOAH held a hearing on this case at the William P. Clements, Jr. Building, 300 W. 15th Street, 4th Floor, Austin, Texas. The hearing concluded, and the record closed on that same day.
10. Carrier appeared at the hearing through its attorney.
11. Provider did not appear at the hearing.
12. The discogram sought by Provider is not medically necessary to treat Claimant for the work-related injury of November 23, 1993.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) (West 2003) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2003).
2. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
3. Based on Gov't Code § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) § 155.41(b) (2003), and 28 TAC §§ 133.308(v) and 148.21(h) (2002), the Carrier has the burden of proof in this case.
4. 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. Labor Code § 408.021(a).
5. Pre-authorization is required for the discogram. 28 TAC § 134.600(h).
6. Based on the above Findings of Fact and Conclusions of Law, the discogram is not medically necessary and the request for pre-authorization should be denied.

ORDER

IT IS ORDERED THAT Provider's request for pre-authorization for the discogram is denied.

SIGNED April 9, 2004.

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