

**SOAH DOCKET NO. 453-04-2216.M2  
TWCC MR NO. M2-04-0336-01**

—,	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
V.	§	<b>OF</b>
	§	
<b>AMERICAN HOME ASSURANCE</b>	§	
<b>COMPANY,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

— (Petitioner) requested a hearing before the State Office of Administrative Hearings following a Decision of the Texas Workers' Compensation Commission (Commission) acting through MAXIMUS, an Independent Review Organization (IRO). The Commission's Order denied Petitioner's preauthorization request for a lumbar myelogram with CT scan. The Commission determined that the lumbar myelogram with CT scan was not medically necessary within the meaning of Sections 408.021 and 401.011(19) of the Texas Workers' Compensation Act, TEX. LABOR CODE ANN. § 401 et. seq. (the Act).

This decision grants the requested preauthorization for a lumbar myelogram with CT scan.

A hearing convened on April 13, 2004. Petitioner appeared by telephone and was assisted by Commission Ombudsman Luz Loza, who appeared in person. Rhett Robinson represented American Home Assurance Company (Respondent). There were no contested issues of notice or jurisdiction. The record closed upon adjournment of the hearing on April 13, 2004.

Petitioner sustained a work-related injury on \_\_\_\_, when she slipped and fell on a wet floor while at work. Petitioner experiences pain in her low back and her right leg. Petitioner also experiences occasional numbness in her right leg and arm. Petitioner underwent an MRI followed by conservative treatment including physical therapy and a lumbar steroid injection. The physical therapy causes Petitioner's leg to become numb and the lumbar steroid injection was not effective. Petitioner's prescription medication is somewhat helpful but also causes Petitioner to become ill. Petitioner's treating physician, Robert H. LeGrand, Jr., M.D., recommended a lumbar myelogram with CT scan to assist in diagnosing Petitioner's disorder and to help devise a medical management plan for Petitioner.

On October 27, 2003, Donald L. Wehmeyer, M.D., a Commission designated doctor, examined Petitioner. Dr. Wehmeyer's November 3, 2003 report found that Petitioner's continuing back pain needed further evaluation and that Petitioner had not reached maximum medical improvement. Dr. Wehmeyer, a neutral evaluator, concluded that the lumbar myelogram with CT

scan was appropriate and that further evaluation of Petitioner could be accomplished within a short period of time.

Respondent's preauthorization review and internal appeal process determined that the procedure was not medically necessary. By letter dated November 24, 2003, the IRO concluded that a lumbar myelogram with CT scan was not medically necessary for the treatment of Petitioner's condition.<sup>1</sup>

The requested procedure is a diagnostic tool and not a therapeutic procedure.

Petitioner had the burden of proof in this proceeding. Pursuant to the Act, an employee who has sustained a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Under the Act, the employee is specifically entitled to 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.

In this instance, Petitioner did put forth evidence as to why a lumbar myelogram with CT scan is medically necessary for the treatment. It is undisputed that Petitioner suffered an injury and that Petitioner's pain and numbness have not resolved. Conservative treatment and medications have been unsuccessful. The record does not present any other diagnostic options. The ALJ finds the record supports preauthorization for the requested lumbar myelogram with CT scan as medically necessary.

## **II. FINDINGS OF FACT**

1. \_\_\_\_ (Petitioner) sustained a work-related injury on \_\_\_\_.
2. Petitioner experiences pain in her low back and her right leg and occasional numbness in her right leg and arm.
3. Petitioner underwent an MRI followed by conservative treatment including physical therapy and a lumbar steroid injection.
4. Physical therapy causes Petitioner's leg to become numb and the lumbar steroid injection was not effective.
5. Petitioner's prescription medication causes Petitioner to become ill.
6. Petitioner's treating physician, Robert H. LeGrand, Jr., M.D., recommended a lumbar myelogram with CT scan to assist in diagnosing Petitioner's disorder and to help devise a medical management plan for Petitioner.

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<sup>1</sup> Inexplicably, the IRO verified that a copy of its decision was mailed to the parties and the Commission on November 21, 2003, three days prior to the date of the decision.

7. On October 27, 2003, Donald L. Wehmeyer, M.D., a Commission designated doctor, examined Petitioner.
8. Dr. Wehmeyer, a neutral evaluator, concluded that Petitioner's continuing back pain needed further evaluation and that the lumbar myelogram with CT scan was an appropriate diagnostic procedure.
9. American Home Assurance Company's (Respondent) preauthorization review and internal appeal process determined that the diagnostic procedure was not medically necessary.
10. By letter dated November 24, 2003, MAXIMUS, an Independent Review Organization (IRO), concluded that a lumbar myelogram with CT scan was not medically necessary for treatment of Petitioner's condition.
11. The requested procedure is a diagnostic tool and not a therapeutic procedure.
12. No other diagnostic options exist in this case.
13. Petitioner requested a hearing before the State Office of Administrative Hearings (SOAH).
14. By letter dated January 15, 2004, the Texas Workers' Compensation Commission (Commission) issued a notice of hearing.
15. Respondent requested a continuance and the request was granted.
16. A hearing was convened by Administrative Law Judge Howard S. Seitzman on April 13, 2004, in the hearing rooms of SOAH.
17. Petitioner appeared by telephone and was assisted by Commission Ombudsman Luz Loza. Rhett Robinson represented Respondent.
18. There were no contested issues of notice or jurisdiction.
19. The record closed upon adjournment of the hearing on April 13, 2004.

### **III. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 413.031.
2. The IRO decision is deemed a Decision and Order of the Commission.
3. 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. LAB. CODE ANN. § 413.031(d) and TEX. GOV'T. CODE ANN. ch. 2003.

4. Petitioner timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 102.7 and 148.3.
5. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. ch. 2001.
6. Petitioner had the burden of proof in this matter, which was the preponderance of evidence standard. 28 TAC §§ 148.21(h) and (i).
7. An employee who has sustained 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 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. TEX. LAB. CODE ANN. § 408.021(a).
8. Pursuant to TEX. LAB. CODE ANN. § 413.014, for a carrier to be liable for certain services and supplies, the service must be preauthorized by the carrier or by order of the Commission.
9. The requested lumbar myelogram with CT scan is medically necessary.

### **ORDER**

**THEREFORE IT IS ORDERED** that Petitioner \_\_\_\_.'s request for lumbar myelogram with CT scan is **GRANTED**.

**SIGNED April 19, 2004.**

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**HOWARD S. SEITZMAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**