

**SOAH DOCKET NO. 453-04-2313.M2
TWCC MR NO. M2-04-0424-01**

JOHN A. SAZY, M.D.,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	
	§	OF
TEXAS ASSOCIATION OF SCHOOL	§	
BOARDS RISK MANAGEMENT	§	
FUND,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. INTRODUCTION

John A. Sazy, M.D., (Provider) has appealed a decision of an independent review organization (IRO) on behalf of the Texas Workers' Compensation Commission (TWCC). The decision concerned the Texas Association of School Boards Risk Management Fund's (Carrier's) denial of the Provider's request for pre-authorization of medical services for ___ (Claimant). The IRO found that the requested discogram with computed tomography (CT) of Claimant's L3-L4, L4-L5, and L5-S1 vertebral discs was not reasonably medically necessary to treat the Claimant's compensable injury.

The only disputed issue is whether the discogram is necessary for that purpose. As set out below, the Administrative Law Judge (ALJ) cannot find that it is at this time and denies the pre-authorization request.

II. FINDINGS OF FACT

1. On ___, the Claimant sustained a work-related injury to her lower back and right leg as a result of her work activities.
2. On the date of injury, the Claimant's employer was the Carroll Independent School District, and the Carrier was its workers' compensation insurance carrier.
3. For at least eight months prior to her injury, the Claimant had left-buttock and right-thigh pain.
4. Since her injury, the Claimant has complained of severe pain in her left buttock, lower back, and right thigh and numbness and weakness in her right leg.
5. The Claimant is five feet and ten inches tall, weighs 240 pounds, and until recently weighed 410 pounds.

6. An electromyogram (EMG) and magnetic resonance images (MRI) confirm that the Claimant has deterioration in her L3-4 and L4-5 spinal discs, including a posterior annular tear at L4-L5 with left bulge herniated pulposus and L5 root displacement.
7. The Claimant's disc problem as shown on the EMG and MRI would cause pain on her left side but not her right where she has complained of pain since her injury.
8. Most if not all of the Claimant's pain stems from her deteriorated spine and not from her injury.
9. Since her injury, the Claimant has taken prescribed medication, received several epidural steroid injections, received extensive passive physical therapy, and been offered but declined active physical therapy to reduce her back pain.
10. On August 25, 2003, the Provider first examined the Claimant when she was referred to him for a surgical evaluation.
11. On August 25, 2003, the Provider prescribed the following for the Claimant:
 - a. A discogram with computed tomography (CT) of Claimant's L3-L4, L4-L5, and L5-S1 spinal discs;
 - b. A Minnesota multiphasic personality inventory (MMPI); and
 - c. If the MMPI was "okay," a possible transforaminal lumbar interbody fusion (TLIF) at L4-L5 and a possible posterior spinal fusion from her L4 to her S1 vertebrae.
12. Spinal-fusion surgery to relieve disc pain is controversial in the medical community, and many physicians do not believe that it is effective for that purpose.
13. On August 29, 2003, the Provider asked the Carrier to pre-authorize a discogram with computed tomography (CT) of Claimant's L3-L4, L4-L5, and L5-S1 spinal discs.
14. A discogram is a procedure to test a patient's spinal disc to help to determine whether the patient's pain originates from the disc and to predict which surgical treatment would most successfully address the claimant's condition.
15. Discograms are controversial in the medical community, and many physicians do not believe that they are reliable.
16. The Claimant does not need a discogram to confirm that her pain, at least in part, originates from her deteriorated L4-L5 disc.
17. On July 29, 2003, the Claimant displayed five out of five Waddell's signs when tested and displayed other behavior that indicated that she was exaggerating her symptoms, overreacting to pain, and overly emotional about her condition.

18. On February 25, 2003, the Claimant indicated that she did not wish to be prescribed active physical therapy, which might have lessened her pain.
19. On March 19, 2003, the Claimant complained of too much pain and chose not to engage in aquatic therapy, a form of active physical therapy, that might have helped to reduce her pain.
20. The Claimant tends to exaggerate her pain and avoid activity that might reduce her pain.
21. Due to her pain-exaggeration behavior, spinal-fusion surgery may not address the Claimant's pain complaints.
22. The Claimant does not need a discogram, which is a prelude to spinal-fusion surgery, if she is not a candidate for spinal-fusion surgery.
23. An MMPI is a psychological survey that a patient completes and which could confirm whether or not the Claimant is a psychologically appropriate candidate for spine-fusion surgery to address her pain complaints.
24. Due to her tendency to exaggerate her pain, the Claimant would not be a candidate for spinal-fusion surgery to reduce her pain unless an MMPI or similar evaluation shows that she is a psychologically appropriate candidate.
25. There is no evidence that the Claimant has completed an MMPI or similar evaluation to support the pre-authorization request or that pre-authorization from the Carrier has been sought for an MMPI.
26. On September 4, 2003, the Carrier denied the pre-authorization request for the discogram.
27. On October 3, 2003, the Provider asked the Carrier to reconsider its denial of the pre-authorization request for the discogram.
28. On October 15, 2003, the Carrier again denied the pre-authorization request for the discogram.
29. After the Carrier twice denied pre-authorization for the discogram, the Provider filed with TWCC a request for medical dispute resolution concerning that pre-authorization request.
30. An independent review organization (IRO) reviewed the medical dispute and found that the discogram should not be pre-authorized.
31. After the IRO decision was issued, the Provider asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) concerning the dispute.
32. The required notice of the contested-case hearing was given to the Provider and the Carrier.
33. The Provider twice asked that the hearing be moved to a later date and it was.

34. On May 17, 2004, SOAH ALJ William G. Newchurch held a contested-case hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded and the record closed on that same day.
35. The Carrier appeared at the hearing through its attorney, Jane Lipscomb Stone.
36. The Provider appeared at the hearing by telephone.

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 2004) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2004).
2. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
3. Based on the above Findings of Fact and Gov't Code § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) § 155.41(b) (2004), and 28 TAC §§ 133.308(v) and 148.21(h) (2004), the Provider 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 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. Labor Code § 408.021 (a).
5. TWCC must specify by rule which health care treatments and services require express pre-authorization by a carrier. A carrier is not liable for those specified treatments and services unless pre-authorization is sought by the claimant or a health care provider and either obtained from the carrier or ordered by TWCC. Labor Code §413.014
6. Pre-authorization is required for a discogram. 28 TAC § 134.600(h)(7).
7. The evidence does not show that the Claimant needs the prescribed discogram at this time.
8. The discogram should not be pre-authorized at this time.

ORDER

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

SIGNED June 1 , 2004.

**WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**