

DOCKET NO. 453-04-2764.M2
MDR Tracking No. M2-04-0467-01

—,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
VS.	§	OF
	§	
OLD REPUBLIC INSURANCE	§	
COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

— (Claimant), an injured worker, appealed an independent review organization (IRO) determination that his request for preauthorization of a magnetic resonance imaging (MRI) with contrast was medically unnecessary. Old Republic Insurance Company (Old Republic) had denied the claim. This decision concludes that the MRI is medically necessary because it would help resolve conflicting results from a previous MRI and a previous nerve conduction study; the MRI would help determine how to treat the Claimant; and a designated doctor needs the MRI to properly evaluate the Claimant's condition to determine maximum medical improvement.

I. PROCEDURAL HISTORY

A hearing convened on February 25, 2004, before the undersigned Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH), Austin, Texas. — appeared and was assisted by Texas Workers' Compensation Commission (Commission) Ombudsman Juan Mireles. Old Republic appeared and was represented by its counsel, Julie Tebbets. The hearing closed on February 25, 2004.

As there were no issues concerning notice or jurisdiction, those matters are set forth in the fact findings and legal conclusions without further discussion here.

II. DISCUSSION

1. Background

The Claimant sustained an at-work injury on ____, working as a forklift driver, while moving a dolly. He slipped and fell backwards in water, striking his right hip and back.

He began treatment with Antonious Jackson, D.C., who referred him for an MRI on September 9, 2002.¹ The radiologist's impression was mild facet arthrosis at the L4-L5 and L5-S1 levels of the spine. Based on that result, Dr. Jackson began conservative treatment of the Claimant.

When the Claimant failed to improve,² Dr. Jackson referred him for an EMG/NCV study (EMG or nerve conduction study), which was performed by Loraine Rudder, M.D., on April 16, 2003. Dr. Rudder's impression was electrodiagnostic evidence of "an acute multilevel bilateral lumbar radiculopathy." Dr. Jackson also referred the Claimant to Robert T. Myles, M.D., an orthopedic surgeon. Dr. Myles concluded that the MRI and EMG did not correlate with each other and with the Claimant's "legitimate pain description." As a result, Dr. Myles said a new MRI with contrast was needed. It is that MRI request and subsequent denial that is the basis of the Claimant's appeal.

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, the Claimant has the burden of proof.³

¹ Ex. 1 at 42.

² On April 16, 2003, the Claimant received bilateral facet injections at L4, L5, and S1, from Mark S. Lowe, M.D. (Ex. 1 at 38), but that procedure did not relieve his pain.

³ 1 TEX. ADMIN. CODE (TAC) § 155.41; 28 TAC § 148(h).

2. Expert Opinions

There were several expert opinions to consider in determining the necessity of the MRI. The opinions are described below, with opinions against the MRI stated first.

The IRO doctor, a chiropractor, noted that the Claimant had an MRI that was, “according to the providers’ notes, of minimal value due to poor quality.” He said, however, that the Claimant has received appropriate treatment and even the treating doctor’s records do not show the benefit of an MRI. He noted the only reason for the MRI was that the Claimant’s symptoms do not match previous MRI findings. He agreed with Old Republic’s doctor that the MRI should be denied because there has been no degradation of the Claimant’s condition.⁴

In a May 28, 2003, peer review, Robert Y. Pick, M.D.,⁵ an orthopedic surgeon, pointed out that Dr. Myles did not describe any objective findings on examination. He concluded, “. . . based on the information provided, there is no clinical documentation of objective findings that would warrant a lumbar MRI and consequently a repeat MRI is not medically necessary, especially in light of an MRI done eight months ago that revealed facet arthrosis.”⁶

Old Republic tendered opinions from three doctors who reviewed the MRI preauthorization request on behalf of Sedgwick CMS (Sedgwick), a managed care company. In an April 29, 2003, opinion, a doctor said, “The requested repeat MRI scan is not medically necessary since there has been no change in the claimant’s physical or neurological findings. The treatment plan can progress forward nicely without this scan.”⁷

In a May 29, 2003, opinion, a Sedgwick doctor said, “. . . there is no clinical documentation of objective findings that would warrant a lumbar MRI and consequently a repeat MRI is not

⁴ Ex. 1 at 2.

⁵ Ex. 2 at 21-22.

⁶ Ex. 1 at 38.

⁷ Ex. 2 at 15.

medically necessary, especially in light of the MRI done eight months ago that revealed facet arthrosis.”⁸

In a June 20, 2003, opinion, a Sedgwick doctor said, “No clinical examination findings are presented that would confirm a radiculopathy. Subjective complaints alone do not support radiculopathy and medical necessity for a repeat MRI with or without contrast.”⁹

The first opinion propounding the necessity of the MRI was from Dr. Rudder, in her EMG/NCV study dated April 16, 2003. Her recommendation was to “obtain the original MRI and review the film (report is not consistent with patient’s physical exam, subjective complaints or electrodiagnostic findings) [and] get repeat MRI of lumbar spine.”¹⁰

Dr. Myles said on April 22, 2003,

I am going to get a repeat MRI of the lumbar spine. If this does not show anything, there is not much I can offer this patient. . . .I will see him back after the MRI.¹¹ and on May 14, 2003,

In review of EMG done on April 16, 2003 . . . there is electrodiagnostic evidence of an acute multilevel bilateral lumbar radiculopathy. The MRI completed on September 9, 2002, shows mild facet arthrosis at L4-5 and L5-S1.

Due to MRI and EMG not correlating with each other and the patient [’s] legitimate pain description I feel that a new MRI is indicated.¹²

In an impairment rating given the Claimant on June 12, 2003, Teresa Rousseau, D.C., said, [The Claimant] . . . presented today at the request of [the] Texas Workers’ Compensation Commission for evaluation of Maximum Medical Improvement and

⁸ *Id.* at 17.

⁹ *Id.* at 19.

¹⁰ Ex. 1 at 43.

¹¹ *Id.* at 30.

¹² *Id.* at 25.

determination of Whole Person Impairment. The patient complains of continued pain in his low back. He has had approximately ten months of conservative treatment in addition to two lumbar facet injections. He has had a previous lumbar MRI that revealed facet arthrosis. However, on April 16, 2003, a nerve study was conducted and Dr. Lorraine Rudder revealed bilateral lumbar radiculopathy. Dr. Rudder recommended a repeat MRI of lumbar spine on account of the first MRI report was not consistent with the patient's physical exam, subjective complaints or electrodiagnostic findings. At this point I feel an MRI with contrast of the lumbar spine is both reasonable and medically necessary in order to properly evaluate [the Claimant's] condition.¹³ and . . . the utilization review company denied the [MRI] request because clinical information did not support the request. Therefore, based on clinical findings, the patient is considered stable and static. MMI date is June 12, 2003 and there is 10% whole person impairment relative to this injury.

If in the future there was a determination of a need for surgery, I would be happy to re-evaluate [the Claimant].¹⁴

Dr. Jackson testified he believed the MRI is needed to let him and the other treating doctors know how to proceed. He acknowledged he is not qualified to read an MRI and file a report.

3. Analysis

This proposal concludes the preponderant evidence supports the MRI. The orthopedic surgeon, Dr. Myles, said he needed it to know how to proceed because the earlier MRI and nerve conduction study did not correlate. He said if the new MRI did not "show anything," he would be unable to help the Claimant. His implicit assertion is that he might be able to help the Claimant if the new MRI revealed problems.

¹³ *Id.* at 15.

¹⁴ *Id.* at 12. Dr. Jackson said he and the Claimant disagreed with Dr. Rousseau's ten percent impairment rating.

The designated doctor, Dr. Rousseau, said the MRI was necessary to properly evaluate the Claimant. In its absence, she gave him a ten percent impairment rating because she concluded his condition “is considered ... static.” Significantly, with reference to Dr. Myles, Dr. Rousseau said if there were a future need for surgery, she would be happy to reevaluate the Claimant’s condition.

Dr. Rudder thought there was a need for a new MRI to resolve the contrary findings.

This evidence shows the Claimant’s treating and evaluating doctors believe the MRI is necessary to proceed with his treatment or evaluation.

In addition, the very fact that the studies are inconsistent seems to compel a need for the new MRI. Both reports were initially believed necessary by all concerned. But now with inconclusive results, Old Republic no longer believes the information is needed. On its face, this seems illogical and inconsistent.

The IRO doctor said the MRI is not necessary because there has been no degradation in the Claimant’s condition. The first Sedgwick doctor said the request should be denied because there has been no change in the Claimant’s physical or neurological findings and his treatment plan can progress without the scan. However, it appears that Dr. Myles and Dr. Jackson want the MRI for the very reason that there is no change in the Claimant’s condition and findings. They believe his condition is unsatisfactory and need conclusive information to know how to proceed.

Dr. Pick and the second Sedgwick doctor were careful not to say that the MRI was medically unnecessary *per se*, but that there were no objective findings supporting the request. Similarly, the third Segwick doctor said there were no objective findings that would confirm radiculopathy. However, it appears there were (according to Dr. Rudder and Dr. Myles) findings to support acute multilevel bilateral lumbar radiculopathy in the form of Dr. Rudder’s nerve conduction study. A second MRI appears to be needed to confirm or refute those findings.

Overall, the ALJ concludes the preponderant evidence supports the need for a second MRI.

III. FINDINGS OF FACT

1. The Claimant sustained an at-work injury on ____, working as a forklift driver, while moving a dolly, when he slipped and fell backwards in water, striking his right hip and back.
2. The Claimant began treatment with Antonious Jackson, D.C., who referred the Claimant for an MRI on September 9, 2002.
3. The MRI radiologist's impression was mild facet arthrosis at the L4-L5 and L5-S1 levels of his spine.
4. Based on the MRI reading, Dr. Jackson began conservative treatment of the Claimant.
5. When the Claimant failed to improve, Dr. Jackson referred him for an EMG/NCV study (EMG or nerve conduction study), which was performed by Loraine Rudder, M.D., on April 16, 2003.
6. The EMG showed electrodiagnostic evidence of "an acute multilevel bilateral lumbar radiculopathy."
7. Dr. Jackson also referred the Claimant to Robert T. Myles, M.D., an orthopedic surgeon.
8. Dr. Myles concluded that the MRI and EMG did not correlate with each other and with the Claimant's "legitimate pain description."
9. Dr. Myles said a new MRI with contrast was needed to know how to proceed with the Claimant's injury.
10. It is that MRI request and denial that is the basis of the Claimant's appeal.
11. Old Republic Insurance Company (Old Republic) denied the claim for a new MRI.
12. The Claimant requested medical dispute resolution.
13. An Independent Review Organization (IRO) determined that the MRI was unnecessary.
14. It is undisputed that the Claimant requested a hearing not later than the twentieth day after receiving notice of the IRO decision.
15. Dr. Myles needs a new MRI reading in order to know how to proceed with the Claimant's treatment.
16. Depending on the results of the new MRI, Dr. Myles might be able to help the Claimant.

17. A new MRI is necessary for Dr. Rousseau, a designated doctor who determined the Claimant's maximum medical improvement, to properly evaluate the Claimant.
18. If there is a need for surgery, Dr. Rousseau is willing to reevaluate the Claimant's condition.
19. The new MRI with contrast is reasonably required by the nature of the Claimant's injury.
20. All parties received not less than ten 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.
21. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.

V. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings (SOAH) has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE ANN. §413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. All parties received adequate and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. The Claimant has the burden of proof. 1 TEX. ADMIN. CODE (TAC) §155.41(b); 28 TEX. ADMIN. CODE §148.21(h).
4. The evidence shows a new MRI with contrast is reasonable and necessary. TEX. LAB. CODE ANN. §408.021.
5. Old Republic should cover the costs of a new MRI.

ORDER

IT IS THEREFORE ORDERED that Old Republic provide coverage for a new MRI with contrast to be provided to the Claimant.

SIGNED March 4, 2004.

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