

SOAH DOCKET NUMBER # 453-04-4453.M2R

Petitioner	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	
	§	OF
TRAVELER'S CASUALTY & SURETY COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

(Petitioner) challenges a decision of an Independent Review Organization (IRO) denying requested preauthorization for bilateral transforminal epidural steroid injections (ESIs) with fluoroscopy. Preauthorization of the treatment was not shown to be medically necessary.

I. DISCUSSION

A. Background

Petitioner is a ___ year-old female who sustained a work related injury on ___, when she fell from a ladder. In 1993, she underwent back surgery and had BAK cages placed in her back. A CT myelogram obtained in 1999 is reported to have shown metallic implant contact at the left L4 nerve root. X-rays of the lumbar spine and sacroiliac joints on September 2, 2003, indicated degenerative-appearing chronic changes, transitional vertebral body, and post surgical changes. An ultrasound report dated October 23, 2003 indicated spasms in the right T7-10 area, spasm in the T12-L3 area on the left, adhesions and myofacitis in the L2 paraspinal on the left, scar tissue in the paraspinal muscles, and spasm and myofascitis in the lumbar parapinals on the right. Diagnoses for Petitioner included lumbar radiculopathy, edema, and unspecified backache. Petitioner has been treated with surgery, aquatic therapy, medications, and ESIs. Petitioner now seeks preauthorization for bilateral transforminal ESI with fluoroscopy.

B. Petitioner

Petitioner participated in the hearing seeking preauthorization for the ESIs. The only documentary evidence she brought to the hearing supporting the need for the procedure was an October 22, 2003, letter from Norman J. Dozier, M.D., who recommended the procedure. That letter gave no real explanation of the purpose of the procedure other than to treat low back pain with bilateral lower extremity radiculopathy.

C. Carrier

The Carrier argued the requested ESIs were unnecessary. It referenced the rationale of its physician advisor, Dr. Robert M. Simpson, M.D., rendered on November 11, 2003. In that opinion Dr. Simpson noted that the last imaging for Petitioner showed her cages were in place and that there had been no more recent diagnostic studies. Dr. Simpson stated there were no EMGs to suggest radiculopathy and Petitioner's physical examination was negative for root irritation. Dr. Simpson also noted that Petitioner was reported as obese with no documentation regarding an attempt at weight loss or physical therapy. He believed the ESIs were not medically necessary.

Michael McHenry, M.D., another physician advisor for Carrier, stated in a report dated January 16, 2004, that Petitioner's medical documentation did not support the medical necessity of the ESIs, noting that the clinical exam did not show any evidence of radiculopathy. He noted that he attempted to contact Dr. Dozier three times to discuss the procedure at the contact number he had given, but was unable to get a return call from him.

D. ALJ's Analysis

The only evidence in the record supports the Carrier's position that the ESIs are not medically necessary.

II. FINDINGS OF FACT

1. Petitioner, ____, sustained a compensable work-related injury on ____, when she fell from a ladder.
2. In 1993, she underwent back surgery and had BAK cages placed.
3. A CT myelogram obtained in 1999 is reported to have shown metallic implant contact at the left L4 nerve root.
4. X-rays of the lumbar spine and sacroiliac joints on September 2, 2003, indicated degenerative appearing chronic changes, transitional vertebral body, and post surgical changes. An ultrasound report dated October 23, 2003 indicated spasms in the right T7-10 area, spasm in the T12-L3 area on the left, adhesions and myofascitis in the L2 paraspinal on the left, scar tissue in the paraspinal muscles, and spasm and myofascitis in the lumbar paraspinals on the right.
5. Petitioner has been diagnosed with lumbar radiculopathy, edema, and unspecified backache.
6. Petitioner has been treated with surgery, aquatic therapy, medications, and epidural steroid injections (ESIs) for her back pain.

7. On October 22, 2003, Petitioner's treating doctor, Norman J. Dozier, M.D., recommended Petitioner seek approval for a bilateral L4-5 transforminal ESIs under fluoroscopic guidance.
8. Based on Dr. Dozier's recommendation, Petitioner sought preauthorization for bilateral transforminal ESIs with fluoroscopy from Traveler's Casualty & Surety Company (Carrier).
9. Carrier denied the request for preauthorization.
10. Petitioner requested medical dispute resolution of the Carrier's denial.
11. Upon requesting medical dispute resolution from an Independent Review Organization (IRO) appointed by the Texas Workers' Compensation Commission's Medical Review Division and receiving the IRO's decision denying the ESI preauthorization request, Petitioner timely filed a request for hearing before the State Office of Administrative Hearings.
12. Notice of the hearing was sent to the parties on April 1, 2004.
13. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
14. The hearing at the State Office of Administrative Hearings was held on April 28, 2004.
15. Carrier presented credible evidence that the last imagining of Petitioner showed her cages to be in place and that there had been no recent diagnostic studies. Carrier also showed there were no EMGs to suggest radiculopathy and Petitioner's physical examination was negative for root irritation. Carrier further was able to show that Petitioner was still over-weight, and that the medical efficacy of any ESIs would likely be limited without a showing of weight loss.
16. Petitioner did not provide any real medical documentation of why the requested ESIs might be medically necessary.
17. Based on Finding of Fact Nos. 15 and 16, Petitioner was unable to show the medical necessity of the requested ESIs.

III. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act (the Act), TEX. LABOR CODE ANN. §413.031.
2. 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 §413.031(D) of the Act and TEX. CODE ANN. ch. 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE (TAC) §§133.305.
4. Petitioner has the burden of proof in this matter. 28 TAC §148.21(h).
5. Petitioner failed to meet her burden of proof that she is entitled to preauthorization for a bilateral L4-5 transforminal ESIs under fluoroscopic guidance.

ORDER

IT IS ORDERED that Petitioner, ____, is not entitled to preauthorization for a bilateral L4-5 transforminal ESIs under fluoroscopic guidance from Carrier, Travelers Casualty and Surety Company.

SIGNED June 8, 2004.

BILL ZUKAUCKAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS