

**SOAH DOCKET NO. 453-04-5730.M2
TWCC MR NO. M2-04-1033-01**

—, Petitioner	:	BEFORE THE STATE OFFICE
	:	
	:	
V.	:	OF
	:	
AMERICAN HOME ASSURANCE COMPANY,	:	
Respondent	:	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Petitioner ____, the workers' compensation claimant (the Claimant), seeks preauthorization for a repeat MRI. The Administrative Law Judge (ALJ) denies the request.

I. HISTORY AND ISSUES

The Claimant, who was employed as a stocker at ____, injured her back ____. She began treatment with Richard Taylor, D.C., that month, and continued treatment with Dr. Taylor into September, 2003. Her pain improved, then became worse again, and has not resolved. Although she returned to her previous employment, she eventually found less physically demanding employment as a gas station attendant at ____. She moved from ____, Texas, to the Houston area to take the new job. Her present treating physician is Ian Reynolds, M.D.

On September 27, 2001, while under Dr. Taylor's care, the Claimant underwent an MRI. The MRI report states the test showed no significant abnormalities.

After the Claimant's move, Dr. Reynolds requested a repeat MRI to determine the cause of her continuing pain. The workers' compensation carrier, American Home Assurance Company (the Carrier), denied that request as medically unnecessary. The Claimant filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (TWCC or the Commission).

The Commission's Medical Review Division referred the matter to an Independent Review Organization, which ruled in the Carrier's favor. The Claimant filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH) on that decision.

After proper and timely notice, the hearing was held August 24, 2004, before ALJ Henry D. Card. The Claimant appeared, assisted by the TWCC Ombudsman. The Carrier also appeared through its attorney. The hearing was adjourned and the record closed the same day.

Under 28 TEX. ADMIN. CODE (TAC) ' 148.21(h), the petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. ' 413.031.

II. ANALYSIS

Dr. Reynolds testified that the MRI is necessary to determine the cause of the Claimant's pain, which has persisted well beyond the time one would expect for a simple back strain or sprain. He believed that either the original MRI had been performed or read improperly, or that the Claimant's condition had worsened since the MRI was conducted. The test was conducted approximately three and a half months after her injury. Dr. Reynolds had not viewed the actual film of the September 27, 2001, MRI. Although the Claimant has procured her medical records from Dr. Taylor's office, neither she nor Dr. Reynolds has specifically sought or received the original MRI film.

The Carrier responded that an additional MRI was not necessary-that a review of the original film should suffice to show the extent of the Claimant's compensable injury. Any additional damage after that date, it argued, would be unrelated to the compensable injury. The Claimant objected to the latter argument because the Carrier raised the issue of medical necessity as its only reason for denying the repeat MRI.

The Claimant is correct that carriers are precluded from raising new reasons for denial of claims at hearings before SOAH. This situation is unusual, however, because the possibility of additional deterioration in the Claimant's condition was also raised for the first time at the SOAH hearing. The ALJ need not reach that issue, however. Although Dr. Reynolds preferred a new MRI, he testified that the previous MRI might have been misread and that the film of that MRI could assist in his diagnosis and treatment. Because that review has not occurred, the ALJ concludes the Claimant did not prove the medical need for a new MRI.

III. FINDINGS OF FACT

1. Petitioner ____ (the Claimant), who was employed as a stocker at ____, injured her back ____.
2. The Claimant began treatment with Richard Taylor, D.C., in June of 2001 and continued treatment with Dr. Taylor into September, 2003.
3. During the course of her treatment, the Claimant's pain improved, then became worse again, and has not resolved.
4. On September 27, 2001, while under Dr. Taylor's care, the Claimant underwent an MRI.
5. The report on the September 27, 2001, MRI states the test showed no significant abnormalities.
6. Although the Claimant returned to her previous employment, she eventually found less physically demanding employment as a gas station attendant at ____.
7. The Claimant moved from ____, Texas, to the Houston area to take the new job.
8. The Claimant ' s present treating physician is Ian Reynolds, M.D.
9. Dr. Reynolds requested a repeat MRI to determine the cause of her continuing pain.
10. The workers ' compensation carrier, American Home Assurance Company (the Carrier), denied Dr. Reynolds ' MRI request as medically unnecessary.
11. The Claimant filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (TWCC or the Commission).
12. The Commission's Medical Review Division referred the matter to an Independent Review Organization, which ruled in the Carrier's favor.

13. The Claimant filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH) on that decision.
14. Notice of the hearing was sent to the parties May 14, 2004.
15. The notice 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.
16. After proper and timely notice, the hearing was held August 24, 2004, before Administrative Law Judge (ALJ) Henry D. Card. The Claimant appeared, assisted by the TWCC Ombudsman. The Carrier also appeared through its attorney. The hearing was adjourned and the record closed the same day.
17. Dr. Reynolds has not viewed the actual film of the September 27, 2001, MRI.
18. Although the Claimant has procured her medical records from Dr. Taylor ' s office, neither she nor Dr. Reynolds has specifically sought or received the original MRI film.
19. The film of the September 27, 2001, MRI could assist in Dr. Reynolds ' diagnosis.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. ' 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
3. Under 28 TEX. ADMIN. CODE (TAC) ' 148.21(h), the petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. ' 413.031.
4. The Claimant did not prove that a repeat MRI is medically necessary under TEX. LAB. CODE ANN. ' 408.021.
5. The request for preauthorization should be denied.

ORDER

It is, therefore, ordered that the Carrier, American Home Assurance Company, shall not be required to preauthorize a repeat MRI for the Claimant, ____

SIGNED September 2, 2004.

**HENRY D. CARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**