

**SOAH DOCKET NO. 453-04-7147.M2
M2-04-1212-01**

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| AMERICAN HOME ASSURANCE COMPANY, | · | BEFORE THE STATE OFFICE |
| <i>Petitioner</i> | · | |
| V. | · | |
| | · | OF |
| | · | |
| JACOB ROSENSTEIN, M.D., | · | |
| <i>Respondent</i> | · | ADMINISTRATIVE HEARINGS |

DECISION AND ORDER

The issue in this case is whether a repeat magnetic resonance imaging (MRI) of the Claimant's lumbar spine should be preauthorized. American Home Assurance Company (Petitioner) appeals the decision of the Texas Workers' Compensation Commission's (Commission) designee, an independent review organization (IRO), which granted preauthorization for the repeat MRI. This decision finds that the preauthorization for the repeat MRI should be denied.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction, notice or venue. Therefore, those issues are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing in this matter convened and closed July 26, 2004, at the State Office of Administrative Hearings, 300 W. 15th Street, Austin, Texas, with Administrative Law Judge (ALJ) Bill Zukauckas presiding. The Petitioner was represented by its attorney, Dan C. Kelly. Physician's assistant James Miller spoke on behalf of Respondent Jacob Rosenstein, M.D.

II. DISCUSSION

A. Legal Standards

Petitioner has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE (TAC) ' 148.21(h) and (i); 1 TAC ' 155.41. Pursuant to the Texas Workers' Compensation 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. 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). Health care includes all reasonable and necessary medical services including a medical appliance or supply. TEX. LAB. CODE ANN. ' 401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. ' 401.011(31). Certain types of healthcare, including MRIs, require preauthorization from the carrier. 28 TAC ' 134.600(h).

B. Claimant's Medical History and Summary of Evidence

Claimant ___ sustained an on-the-job knee injury on ___. As the Claimant bent down to pick napkins up off of the floor of a ___ facility, she slipped on a rug, falling on her left knee and her right leg extended to the side, completely bending the right knee. An x-ray of the right knee was performed on June 24, 1999. Initially, the Claimant complained of knee pain and was evaluated by Dr. Shelly Rosenbloom, a company physician, on June 25, 1999. The Claimant then began to complain of pain in her lower back, and an MRI of her lumbar spine was performed on July 21, 1999. Subsequently, the Claimant was examined by Dr. Mike Mycoskie, an orthopedic surgeon, on August 2, 1999. Dr. Mycoskie recommended that the Claimant undergo an arthroscopic evaluation

of her right knee, which was performed on September 1, 1999. The evaluation revealed a degenerative tear of the posterior horn of the medial and lateral meniscus, as well as degenerative arthritis of the right knee. After reviewing the July 21, 1999 MRI, Dr. Mycoskie thought that the Claimant's lumbar spine demonstrated changes of the discs.

Due to the Claimant's continued complaints of back pain and pain and weakness in her right leg, Dr. Mycoskie ordered repeat studies to be performed on the patient's lower back and right leg. An electromyography (EMG) of the claimant's lower extremities was performed on March 13, 2000. The EMG demonstrated no evidence of a lumbosacral radiculopathy, with normal nerve-conduction studies and a normal EMG of the lower extremities. A repeat MRI performed on March 14, 2000, demonstrated degenerative disc disease changes and disc protrusions on multiple levels. The repeat MRI revealed a posterior lateral disc protrusion at L5-S1. L4-5, L3-4, and L2-3 also demonstrated degenerative changes; however, none of these changes resulted in disc herniation.

Dr. George Armstrong examined the Claimant on March 24, 2000. At this time the Claimant was described as being five foot seven inches tall, weighing two hundred and twenty pounds, and walking without the aid of a crutch or a cane. Dr. Armstrong diagnosed the Claimant as having degenerative disc disease of the lumbar spine. However, Dr. Armstrong noted that the Claimant's complaints of back pain and generalized muscle weakness could not be explained by any objective findings. Dr. Armstrong further noted that the Claimant displayed marked evidence of symptom magnification during the examination. Dr. Armstrong recommended that the Claimant undergo neuropsychological testing regarding her marked response to pain and possible neurological testing since her behavior seemed bizarre and could not be fully explained based upon his examination. Dr. Armstrong predicted that the Claimant would reach her maximum medical improvement (MMI) three to six months after the completion of these tests.

The Claimant underwent a third EMG, as well as a computed tomography (CT) scan on August 21, 2000. These tests demonstrated multilevel disc degeneration with a disc protrusion and spondylosis at L5-S1, and disc protrusions at L2-3, L3-4. The tests also indicated disc herniations at L1-2 and T12-L1.

On October 10, 2001, the Claimant was examined by the Respondent, neurosurgeon Dr. Jacob Rosenstein. In Respondent's examination and review of the Claimant's medical records he noted the L5-S1 disc protrusion with spondylosis, as well as extensive cartilage damage to the right knee. The Respondent commented that the Claimants's complaints and physical findings were very bizarre and more consistent with psychophysiological overlay. The Respondent concluded that the Claimant's impairment rating was 13%, she had reached MMI on June 21, 2001, and that she was not a surgical candidate. The Claimant was evaluated by Dr. Sterling Walton on May 28, 2002. Dr. Walton assigned a five percent whole person impairment rating to the claimant based on her lumbar spine, and a fifteen percent whole person impairment rating overall. Dr. Walton determined that the date of the Claimant ' s MMI was August 30, 2001.

On August 25, 2002, the Claimant underwent a complete arthroplasty on her right knee. The surgery was performed by Dr. Mycoskie. Following the surgery the Claimant repeatedly stated that her lack of mobility was primarily due to back pain.

Dr. Bruce Beavers examined the Claimant on August 18, 2003. The Claimant arrived at the examination in a wheelchair and stated that she could not stand. Dr. Beavers' examination was limited to the Claimant's knee.

The Claimant was examined by Dr. Melissa Tonn on April 27, 2004. The Claimant arrived at the examination in a wheelchair and carrying a walker. Dr. Tonn estimated that at this time the Claimant's weight exceeded two hundred and eighty pounds. After her examination and review of

the Claimant's medical history, Dr. Tonn determined that there was no objective evidence of any progress towards recovery with the Claimant. Furthermore, Dr. Tonn found that there was no basis to assume that the Claimant had sustained any injury to her cervical spine as a result of the ___ injury. As a result of these findings, in addition to the fact that the Claimant had undergone three prior lumbar MRI studies and a CT scan showing no neural compressive pathology or correctable lesions, Dr. Tonn concluded that there was no justification for ongoing evaluations, additional diagnostic testing, or continued prescription medications.

A repeat MRI was ordered by the Respondent and denied by the Petitioner. An IRO, Envoy Medical Systems, L.P., determined that the repeat MRI was medically necessary. The Petitioner appeals the IRO's decision and order.

C. Analysis

The ALJ concludes that the weight of credible evidence preponderates in favor of the Petitioner's position that the repeat MRI is not medically necessary. Multiple medical professionals have documented the Claimant's inconsistent effort, determined that she is not a surgical candidate, and noted that psychological rather than physiological factors may be hindering her recovery. Also, the Claimant's persistent back pain may be attributed to the natural progression of degenerative disc disease and her obesity. The Claimant's medical history reveals at least three MRIs, two EMGs, a CT scan, and various other diagnostic tests. Under these facts, a repeat MRI is duplicative and unnecessary.

III. FINDINGS OF FACT

1. A worker (Claimant) sustained a compensable injury on ___, when she fell while bending down to pick napkins up off of the floor.
2. At the time of the injury, American Home Assurance Company (Petitioner) was responsible for the Claimant's workers' compensation insurance coverage.

3. The Claimant has undergone extensive diagnostic testing and imaging, including three magnetic resonance imagings (MRIs), two electromyographs (EMGs), and a computed tomography scans (CT scan). The Claimant was found to be at maximum medical improvement (MMI) on August 30, 2001, and was given a fifteen percent whole person impairment rating by the TWCC appointed designated doctor, Sterling Walton, M.D.
4. Dr. Jacob Rosenstein (Respondent) made a preauthorization request for a repeat MRI.
5. Petitioner denied the Respondent's request for a repeat MRI.
6. After the Petitioner denied preauthorization as medically unnecessary, the Respondent requested medical dispute resolution from the Texas Workers' Compensation Commission (Commission). Pursuant to 28 TEX. ADMIN. CODE (TAC) ' 133.308, an independent review organization (IRO) selected by the Commission to render a decision on the medical review dispute.
7. The IRO approved the repeat MRI request.
8. Petitioner timely appealed the IRO decision.
9. Pursuant to a notice of hearing sent by Commission staff, the Petitioner and the Respondent appeared and were represented at the hearing held in this matter on July 26, 2004.
10. A repeat MRI would be duplicative of earlier treatment and is medically unnecessary.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (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. GOVT CODE ANN. ch. 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOVT CODE ANN. ch. 2001 and the Commission's rules, 28 TEX. ADMIN. CODE (TAC) ' 133.305(g) and 133.308.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOVT CODE

ANN. ' ' 2001.051 and 2001.052.

5. Petitioner had the burden of proof in this proceeding. 28 TAC ' ' 148.21(h) and (i); 1 TAC ' 155.41.
6. 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. 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).
7. Health care includes all reasonable and necessary medical services. TEX. LAB. CODE ANN. ' 401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. ' 401.011(31).
8. For a carrier to be liable for reimbursement, it must preauthorize a claimant's request for a repeat MRI. 28 TAC ' 134.600(h).
9. The Petitioner met its burden of proof, showing that a repeat MRI is unreasonable and medically unnecessary.
10. The Respondent's request that the Claimant undergo a repeat MRI should not be preauthorized.

ORDER

It is ORDERED that Dr. Jacob Rosenstein's request for preauthorization of a repeat MRI for the Claimant is denied.

SIGNED August 9 2004.

**BILL ZUKAUCKAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**