

**SOAH DOCKET NO. 453-04-7612.M2
TWCC NO. M2-04-1284-01**

____, Petitioner	§ § § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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DECISION AND ORDER

____. (Claimant) challenges the decision by an Independent Review Organization (IRO) denying her request to preauthorize outpatient surgical services for bilateral facet injections. Texas Mutual Insurance Company (Carrier) denied the request as medically unnecessary and the IRO upheld that decision. The Administrative Law Judge (ALJ) agrees with the IRO and concludes preauthorization for the outpatient surgical services for bilateral facet injections should be and is hereby denied.

I. JURISDICTION, NOTICE, & HEARING

ALJ Penny A. Wilkov convened a hearing in this case on November 15, 2004, at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, 300 West 15th Street, Austin, Texas. The Claimant represented herself, with the assistance of Commission Ombudsman Barton Levy. The Carrier was represented by counsel, Katie Kidd. The parties did not contest notice or jurisdiction. The record closed on November 15, 2004.

II. DISCUSSION

1. Background

Claimant sustained a compensable injury on____, when she struck a wall with her right shoulder and right side of her body while rapidly rounding a corner with a tray full of dishes in her hand. Claimant has been diagnosed with right shoulder and trapezius strain.¹ Claimant describes Symptoms of constant pain radiating from her neck into her right shoulder and arm, with numbness in her right arm, reported as a subjective level of pain varying with activity, from two to six on a scale of one to ten. Claimant's history of treatments have included medications, physical therapy, a Tens Unit, and chiropractic treatments as well as diagnostic tools including an MRI, nerve

¹ Respondent's Exhibit 1, page 7 (Dale A. Funk, M.D.).

conduction tests, and x-rays.²

On December 23, 2003, Norman Dozier, M.D., Claimant's treating physician, requested preauthorization for an outpatient stay at Texas Midwest Surgery Center for bilateral C2-C6 facet injections. Facet joint injections involve the structures in the neck between the cervical vertebrae; the facet joints are between each vertebrae, serving to assist with lubrication and movement in the neck. The injections reduce the inflammation or swelling of tissue which may reduce pain. The request for preauthorization for the outpatient surgical services was subsequently denied by Carrier based on a lack of medical necessity.

2. Applicable Law

Under the workers' compensation system, an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment. TEX. LAB. CODE ANN. § 408.021. "Health care" includes "all reasonable and necessary medical . . . services." TEX. LAB. CODE ANN. § 401.011(19).

Certain healthcare, however, must be preauthorized before it can be provided and such preauthorization will be granted only if there is a prospective showing of medical necessity. TEX. LAB. CODE ANN. § 413.014. Outpatient surgical services are included in the type of treatment which requires preauthorization. 28 TEX. ADMIN. CODE § 134.600(h)(2). Outpatient surgical services include services provided at a hospital to patients who do not require overnight care. 28 TEX. ADMIN. CODE § 134.600(a)(4).

C. Medical Necessity of Outpatient Surgical Services for Bilateral Facet Injections

1. Claimant

Claimant, a college graduate and registered respiratory therapist, was diagnosed with neck strain and nerve root irritation shortly after the injury.³ In September, when her condition failed to improve, she sought chiropractic treatment with Dr. Hal Lewis, D.C., who diagnosed her with a cervical and shoulder sprain. She also consulted with Norman J. Dozier, M.D., a board certified specialist in anaesthesiology and pain management, who prescribed narcotic pain and muscle spasm medication, and with Russell S. Dickerson, M. D., a neurologist. In October 2003, an MRI was performed which confirmed tendinopathy in the supraspinatus tendon.

Claimant argued that outpatient surgical services for the bilateral facet injections are medically necessary to give her long-term relief from her pain. First, she pointed out that the daily medications that she takes are ultimately harmful to her, leading to dependence and possible liver

² Respondent's Exhibit 1, pages 112-116.

³ Respondent's Exhibit 1, page 7 (Dale A. Funk, M.D.).

damage. She takes Zanaflex, Ultram, Hydrocodone, and Celebrex on a daily basis as well as other medications for her asthma. These medications are necessary to relieve the symptoms of pain, tenderness, soreness, tingling, and numbness that she has experienced since the injury. Second, she testified that she has taken time off work to go to the chiropractor and since she is a hospital respiratory therapy intern, she has to make-up for the missed time by working longer shifts for each incident. She estimates that she has missed over five months of work altogether due to the pain, impacting her economically. However, with the use of the medications and rehabilitation, she was able to continue to attend school full-time as a respiratory therapist from January to October 2004, at Southwest Texas State University in Abilene, Texas. Third, she has experienced limitations in her work. She is not able to perform the full range of duties of a respiratory therapist, due to the numbness and tingling and has difficulty performing CPR, drawing patient's fluids, and pushing the mechanical ventilation machines and oxygen tanks and cart.⁴ The chiropractic treatments have offered limited benefits since she has experienced, at most, temporary relief of pain. Lastly, the injury has impacted her married life and household chores as she has three children to care for at home.

Claimant submitted her medical records, and, in particular, pointed to letters written by Dr. Lewis and Dr. Dozier, supporting Claimant's position that she is an appropriate candidate for cervical facet injections based on the C7-8 radiculopathy and failure to progress.

2. Carrier

Carrier presented Claimant's medical records and called Page W. Nelson, M.D, as a witness. Dr. Nelson is board-certified in orthopedic surgery and has been in practice in orthopedic surgery since 1965. Dr. Nelson has not examined Claimant but has reviewed all of her medical records and, in his opinion, Dr. Nelson does not believe that the request for Outpatient surgical services for bilateral facet injections is appropriate or medically necessary.

Dr. Nelson's medical opinion is that Claimant has been misdiagnosed with a cervical injury and therefore the bilateral facet injections will not offer relief of her symptoms or serve to promote recovery. He based this opinion on an initial examination performed five days after the injury by Dale A. Funk, M.D, that showed that Claimant had satisfactory range of motion in the cervical spine, spinal muscular tenderness, excellent range of shoulder motion, normal strength, and no signs of cervical nerve compression, referred to as A

Negative Spurling's sign.⁵ He pointed out that one month later, Dr. Funk, on re-examination, noted that Claimant had right shoulder and trapezius strain, with no cervical complaints or radicular symptoms noted.⁶ Dr. Nelson also makes note of an MRI taken two months after the injury which revealed mild degenerative disk changes unrelated to the injury and shoulder tendonopathy, but made no mention of a problem with the facet joints.

⁴ Petitioner's Exhibit 1, pages 4 and 5.

⁵ Respondent's Exhibit 1, page 7 (August 15, 2003).

⁶ Respondent's Exhibit 1, page 8 (September 18, 2003).

Nevertheless, according to Dr. Nelson, a contrary medical diagnosis was made by Claimant's chiropractor, G. Hal Lewis, D.C., who diagnosed Claimant with cervical sublocation, cervical myofascitis, cervical strain, and shoulder strain.⁷ As further evidence of the misdiagnosis, Dr. Nelson pointed out that the eleven months of extensive chiropractic treatment for cervical problems offered little improvement.⁸ In November, Claimant was examined by Norman J. Dozier, M.D., a neurologist, who, by Claimant's subjective complaints of pain, noted mild tenderness over the cervical facet joints from C3 through C7, which Dr. Nelson testified, was in direct contradiction

To the MRI. Dr. Nelson stated that Dr. Lewis's misdiagnosis combined with Dr. Dozier's notation of subjective pain over the cervical joints formed the basis for the request for bilateral facet injections. Dr. Nelson also referred to Carrier's consulting physician, Dr. Neal Blauzvern, D. O., who also concurred that the cervical MRI revealed no indication of cervical spine trauma, and therefore, the facet injections would not treat the shoulder contusion or neck injury.⁹ Rather, Dr. Nelson's opinion is that Claimant shows signs of symptom magnification, noting that a psychological evaluation shows that, prior to the injury, Claimant suffered from anxiety, sleep disorders, and chronic fatigue.¹⁰

Carrier also presented the testimony of Robert W. Joyner, M. D., who is board-certified in anesthesiology and pain management, who did not examine Claimant but reviewed her medical records. Dr. Joyner asserts that the outpatient surgical services for bilateral facet injections are not medically necessary. First, the initial injury was to the shoulder and upper extremity resulting in an initial diagnosis of a shoulder strain. There is no indication that she injured her neck but even if she had, the expected recovery from a neck strain is four to six weeks. Second, Dr. Joyner pointed out that the cervical MRI would have shown enlargement, swelling, or inflammation of the facet area, none of which were present. Here, the cervical MRI showed mild degenerative changes but no facet area changes or nerve root impingement, while the shoulder MRI scan revealed some inflammation of the shoulder tendons. Third, according to Dr. Joyner, the initial examination by Dr. Funk showed a negative test for Spurling's sign, a diagnostic test for nerve compression indicative of facet joint problem associated with neck pain which is consistent with Dr. Funk's examination, shortly after the injury, showing that there was normal range of motion in the neck. Lastly, Dr. Joyner takes issue with Dr. Dozier's diagnosis of a facet problem because this is contradicted by the initial medical exam and the MRI. He pointed to another key piece of evidence, the x-ray, which again, according to Dr. Joyner, did not demonstrate any problem with the facet area.

3. Analysis

Based on the evidence and testimony, the ALJ concludes that the requested outpatient surgical services are not medically necessary since the necessity of the underlying procedure, the

⁷ Respondent's Exhibit 1, page 15 (October 27, 2003).

⁸ Dr. Lewis's treatments were rendered from September 16, 2003 until July 21, 2004.

⁹ Respondent's Exhibit 1, page 22.

¹⁰ Respondent's Exhibit 1, pages 12-14 (Examination by Samuel D. Brinkman, Ph.D.).

bilateral cervical facet injections, was not supported by the evidence. The medical testimony and medical records, particularly immediately after the accident, show that the initial injury was to the shoulder and upper extremity on the right side. The treating physician, Dale A. Funk, M.D., shortly after the injury, noted satisfactory range of motion of the cervical spine and no evidence of cervical nerve compression. A cervical MRI, as pointed out by Dr. Joyner's testimony, did not reveal any enlargement, swelling, or inflammation of the facet areas that would have signaled an underlying problem, nor did the x-rays of the same area. Further, the medical records also show that there was a negative test for Spurling's sign, a diagnostic test for nerve compression indicative of facet joint problem associated with neck pain. This is consistent with Dr. Funk's examination, five days after the injury, that there was normal range of motion in the neck.

As noted by Page W. Nelson, M.D., an orthopedic surgeon, the first diagnosis of a cervical-related injury was made by Claimant's treating chiropractor, G. Hal Lewis, D.C. Dr. Lewis's diagnosis of a cervical injury is not supported by the MRI, or by the initial examination, or even by eleven months of cervical-injury directed chiropractic treatment, which failed to relieve Claimant's pain. Instead, the request for the bilateral facet injections by Norman J. Dozier, M.D., who did not testify at the hearing, may have been heavily influenced by Dr. Lewis's chiropractic treatment for cervical sublocation, cervical myofascitis, cervical strain, and shoulder strain. The chiropractic treatment, and not the initial injury, may account for the tenderness expressed by Claimant when Dr. Dozier palpitated over the cervical facet joints from C3-C7. Without Dr. Dozier's testimony, the ALJ cannot ascertain the basis for the request, particularly in light of the MRI, x-ray, and initial examination which reveals that there was no initial injury to the cervical spine. Nonetheless, the medical testimony and records do not support that the bilateral facet injections will relieve the effects naturally resulting from the injury; promote recovery; or enhance the Claimant's ability to return to or retain employment.

Therefore, the ALJ concludes that the proposed outpatient surgical services for bilateral facet injections is not medically necessary and should not be preauthorized.

III. FINDINGS OF FACT

1. ____ (Claimant) sustained a compensable injury on____, when she struck a wall with her right shoulder and right side of her body while rapidly rounding a corner with a tray full of dishes in her hand.
2. Claimant has been diagnosed with right shoulder and trapezius strain.
3. Claimant describes symptoms of constant pain radiating from her neck into her right shoulder and arm, with numbness in her right arm, reported as a subjective level of pain varying with activity, from two to six on a scale of one to ten.
4. Claimant's history of treatments have included medications, physical therapy, a Tens Unit, and chiropractic treatments as well as diagnostic tools including an MRI, nerve conduction tests, and x-rays.

5. On December 23, 2003, Norman Dozier, M.D., Claimant's treating physician, requested preauthorization for an outpatient stay at Texas Midwest Surgery Center for bilateral C2-C6 facet injections.
6. Facet joint injections involve the structures in the neck between the cervical vertebrae; the facet joints are between each vertebrae, serving to assist with lubrication and movement in the neck. The injections reduce the inflammation or swelling of tissue which may reduce pain.
7. Texas Mutual Insurance Company (Carrier) denied Provider's request for outpatient surgical services for bilateral facet injections as not medically necessary.
8. Claimant requested medical dispute resolution.
9. The Independent Review Organization (IRO) denied Claimant's request for preauthorization for outpatient surgical services for bilateral facet injections.
10. Claimant requested a hearing before the State Office of Administrative Hearings and requested approval of preauthorization for outpatient surgical services for bilateral facet injections.
11. The parties received not less than 10 days notice of the time, place, and nature of the hearing; 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.
12. Administrative Law Judge Penny A. Wilkov convened and closed a hearing in this case on November 15, 2004, at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, 300 West 15th Street, Austin, Texas. The Claimant represented herself, with the assistance of Commission Ombudsman Barton Levy. The Carrier was represented by counsel, Katie Kidd.
13. Claimant's initial injury was to the shoulder and upper extremity on the right side.
14. On __, five days after the injury, there was satisfactory range of motion of the cervical spine, no evidence of cervical nerve compression, and normal range of motion in the neck
15. A cervical MRI did not reveal any enlargement, swelling, or inflammation of the facet areas that would have signaled an underlying problem, nor did the x-rays of the same area.
16. There was a negative test for Spurling's sign, a diagnostic test for nerve compression indicative of facet joint problem associated with neck pain.
17. The first diagnosis of a cervical-related injury was made by Claimant's treating chiropractor, G. Hal Lewis, D.C., which was not supported by the MRI, or by the initial examination, or

even by eleven months of cervical-injury directed chiropractic treatment that failed to relieve Claimant's pain.

18. The bilateral facet injections will not offer relief of Claimant's symptoms or serve to promote recovery or enhance her ability to retain employment.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing, including the authority to issue a decision and order. TEX. LABOR CODE ANN. §413.031(k).
2. Both parties received proper and timely notice of the hearing. TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
3. Claimant has the burden of proof by a preponderance of the evidence.
4. Claimant did not establish by a preponderance of the evidence that outpatient surgical services for bilateral facet injections are medically reasonable or necessary. TEX. LABOR CODE ANN. §§401.011(19) and 408.021.
5. A Preauthorization of outpatient surgical services for bilateral facet injections are not medically necessary and should not be preauthorized.

ORDER

IT IS, THEREFORE, ORDERED that preauthorization is hereby **DENIED** for outpatient surgical services for bilateral facet injections as requested by Claimant.

SIGNED December 6, 2004.

**PENNY A. WILKOV
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**