

\_\_\_\_\_,  
Petitioner

V.

TEXAS MUTUAL INSURANCE  
COMPANY,  
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**DECISION AND ORDER**

\_\_\_\_ (Claimant) challenges the decision by an Independent Review Organization (IRO) denying her request for a Medial Branch Block (MBB). 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 MBB should be denied.

**I. JURISDICTION, NOTICE, & HEARING**

ALJ Penny A. Wilkov convened a hearing in this case on October 19, 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 Luz Loza. The Carrier was represented by counsel, Timothy P. Riley. The parties did not contest notice or jurisdiction. Following post-hearing filings by the parties, the record closed on November 8, 2004.

**II. DISCUSSION**

1. Background

Claimant sustained a compensable injury on \_\_\_\_, when she lifted numerous boxes at work and felt low back pain radiating into her right knee. Claimant has been diagnosed with an L4-L5 disc bulge, low back pain, and right L4 radiculitis.<sup>1</sup> Claimant describes symptoms of persistent severe

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<sup>1</sup> Respondent's Exhibit A, page 95, (Kevin R. Paul, M.D., dated February 2, 2004).

back pain with pain radiating into the right lower extremity, reported as a subjective level of pain of seven on a scale of one to ten. Claimant's history of treatments has included medications, numerous injections, and physical therapy, as well as diagnostic tools including an MRI and x-rays.<sup>2</sup>

## 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, including an MBB, are included in the type of treatment that requires preauthorization. 28 TEX. ADMIN. CODE § 134.600(h)(3). A discogram is also included in the type of treatment requiring preauthorization. 28 TEX. ADMIN. CODE § 134.600(h)(7). Medical Dispute Resolution includes a review of the medical service for which authorization of payment is sought if a health care provider is denied authorization for the service requested. TEX. LAB. CODE ANN. § 413.031.

## 3. Preliminary Issue of the Discogram

A preliminary issue was presented as to whether the preauthorization request filed by Robert M. Sutherland, M.D. (Provider) on April 13, 2004, included a request for a discogram. This issue arose because the IRO decision listed the requested services as a proposed lumbar medial branch

block "and if negative, patient will need lumbar three-level discogram to evaluate for discogenic pain."<sup>3</sup>

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<sup>2</sup> Respondent's Exhibit A, pages 112-116.

<sup>3</sup> The IRO decision issued by Forte on August 4, 2004, states, "I agree with the insurance carrier that the requested medial branch block injection and selective root block as well as pending discogram were not medically

In order to request preauthorization, Provider must supply Carrier with specific information on the requested procedure including the specific health care requested, the number of specific health care treatments, the name of the provider, and the facility name and estimated date of proposed health care.<sup>4</sup> Once this information is received, Carrier then has the responsibility to contact the requestor, within three working days of receipt of a request for preauthorization, with an approval or denial of the preauthorization based on medical necessity.<sup>5</sup> If the Carrier denies preauthorization, Provider may request reconsideration of the denial within 15 working days, and Carrier is obligated to respond to the request for reconsideration within five working days. Upon a further denial, Provider may request medical dispute resolution with the Texas Worker's Compensation Commission.

On April 13, 2004, Provider sent Carrier, by facsimile, a document entitled Pre-Authorization Request with the procedure described as a "Medial Branch Block @ L3-L5 64475 64476 SEL @ 15 Epidural steroid inj. 64483 76005."<sup>6</sup> The procedure was to be performed at the Texas Spine and Joint Hospital. On April 16, 2004, Carrier responded with a denial of the preauthorization for the treatments and services requested which it described as "outpatient stay for medial branch block right L3-5, selective right L 5 epidural steroid injection to be done @ Texas Spine and Joint Hospital 4-19 -04 to 5-19-04." Carrier also denied the request for reconsideration of denial of the requested service, describing it as "outpatient stay for lumbar MBB right L3-L5 to be done @ Texas Spine and Joint Hospital on 5-13-04." No other documents were submitted to the ALJ by Claimant or Carrier regarding preauthorization for a discogram. Carrier argued that there was no request for a discogram in the pre-authorization request, although Claimant had listed the discogram as a disputed service on the TWCC-60 form given to the IRO.<sup>7</sup>

Because the initial request for authorization did not include the request for a discogram, and no other documents were produced by any party to show this service was requested in the

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reasonable and necessary."

<sup>4</sup> 28 TEX. ADMIN. CODE § 134.600(h)(7).

<sup>5</sup> 28 TEX. ADMIN. CODE § 134.600(g).

<sup>6</sup> CPT Codes 64475, 64476, and 64483 are listed in the *Medical Fee Guidelines* as surgical services pertaining to Extracranial Nerves, Peripheral Nerves, and Autonomic Nervous System, and Injection of Anesthetic Agent (Nerve Block), Diagnostic or Therapeutic. CPT Code 76005 is described as Fluoroscopy related to spinal injection.

<sup>7</sup> The TWCC-60 form states, "Requesting lumbar medial branch block injections to rule out facet-mediated low back pain. If negative; patient will need lumbar 3-level discogram to evaluate for discogenic pain."

preauthorization request, the ALJ concludes that the evidence does not support that the requested services included a discogram. Therefore, the ALJ will not address the discogram as part of the disputed services included in this decision.

D. Medical Necessity of the Medial Branch Block

1. Claimant

Claimant called Kevin Paul, M.D., who has been her treating physician since February 2004, for her work-related injury. Dr. Paul testified that Claimant has been diagnosed with low back pain, lower extremity radiculitis, and a L4-5 disc bulge. The requested service, an MBB, is a diagnostic tool that involves blocking the nerve branches that connect the lumbar facet joints by administering an injection and then observing whether the pain or spasms improve. Dr. Paul noted that Claimant had already had facet joint injections with short-term relief and, therefore, the MBB of the nerves surrounding the facet joints would serve to pinpoint the origin of the pain. He testified that the MBB is the least risky of the procedures and should be tried initially to rule out the facet joints as the source of the pain, particularly since a discogram involves a greater risk of infection or paralysis. Then, if the MBB is negative, a discogram would be appropriate. Claimant is having ongoing back pain and, although the MRI was normal and did not show herniation, Dr. Paul would like to get to the source of the pain so that Claimant can stop taking the narcotic medication.

Claimant testified that she was injured lifting heavy boxes and has experienced severe pain everyday since the accident. She has been on medication for pain, high blood pressure, and depression. She was terminated from her job due to excessive time-off, and because she has a two-hour standing and five-pound lifting restriction, she feels that she has limited employability. She testified that she would like both procedures, the MBB and discogram, performed to alleviate her pain. She thought that the discogram and the MBB would be performed at the same time.

Lastly, the medical records submitted by Claimant showed that Dr. Paul administered injections at the right L4-5 and L5-S1 facets joints, as well as the right sacroiliac joint, on February

13, 2004.<sup>8</sup> A follow-up visit on February 20, 2004, showed that Claimant indicates an “approximately 40% additional relief with these injections.”<sup>9</sup>

## 2. Carrier

Carrier presented Claimant’s medical records and called Clark Watts, M. D., as a witness. Dr. Watts is board-certified in Neurological Surgery and has been in practice in neurosurgery since 1970. Dr. Watts has not examined Claimant but has reviewed all of her medical records and, in his opinion, the request for an MBB procedure is not appropriate or medically necessary. Dr. Watts indicated that a MBB is generally used to produce anesthesia in the region of the facet joints to diagnose if that is the pain-generating area. Dr. Watts pointed out that a facet injection was tried in February, 2004, with a minimum loss of pain, and this should indicate to the physician that the cause of the pain is not the facet joints. Rather, Dr. Watt's opinion is that Claimant has a soft tissue injury that can be treated by a pain management program to assist Claimant with dealing with persistent pain.

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 asserted that the MBB is not a medically necessary procedure because previous injections of the facet joint, which is the terminal end of the medial branch block of the nerves, failed to identify this joint as the pain-generator. The results of the previous injections showed that Claimant had insignificant relief of pain and, therefore, the MBB as a diagnostic procedure would have limited value. Dr. Joyner also testified that the MRI and x-ray tests did not show any abnormality that would justify a MBB.

## E. Analysis

Based on the evidence and testimony, the ALJ concludes that the requested MBB procedure is not medically necessary. Although all physicians concur that the MBB procedure can be used to rule out the facet joint as the main pain-generator and the procedure is the least risky of the diagnostic procedures, it does not appear appropriate in this case. The medical testimony presented, including testimony from Claimant's doctor, indicates that a facet injection was previously used and Claimant

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<sup>8</sup> Petitioner’s Exhibit 1, pages 31-32.

<sup>9</sup> Petitioner’s Exhibit 1, page 14.

experienced only a temporary reduction in pain. The IRO doctor concurred with these opinions, stating, "Facet injection indicated a 40% improvement for an unspecified period of time. (A 40%

response is considered to be negative)." <sup>10</sup> Based on these findings, the IRO doctor ultimately concluded that the clinical findings do not support an MBB procedure. The ALJ agrees that the evidence does not support the use of the MBB as a diagnostic tool, particularly when an interrelated procedure of facet joint injections has already been tried in the past with limited results. The MBB procedure is not a therapeutic procedure but rather a diagnostic procedure and the medical testimony and evidence has established that, based on the earlier facet joint injections, very limited diagnostic information that can be generated from this procedure. Therefore, the ALJ concludes that the proposed MBB procedure is not medically necessary and should not be preauthorized.

### **III. FINDINGS OF FACT**

1. \_\_\_\_ (Claimant) sustained a compensable injury on \_\_\_\_, when she lifted numerous boxes and felt low back pain radiating into her right knee.
2. Claimant has been diagnosed with an L4-L5 disc bulge, low back pain, and right L4 radiculitis.
3. Claimant describes symptoms of persistent severe back pain with pain radiating into the right lower extremity, reported as a subjective level of pain of seven on a scale of one to ten.
4. Claimant's treating physician, Robert M. Sutherland, M.D., (Provider) requested preauthorization for Claimant to undergo a lumbar medial branch block (MBB).
5. An MBB is a diagnostic tool that involves blocking the nerve branches that connect the lumbar facet joints by administering an injection and then observing whether the pain or spasms improve.
6. Provider did not request preauthorization for Claimant to undergo a discogram.
7. Texas Mutual Insurance Company (Carrier) denied Provider's request for an MBB as not medically necessary.
8. Claimant requested medical dispute resolution.
9. The Independent Review Organization (IRO) denied Claimant's request for preauthorization for an MBB.

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<sup>10</sup> Petitioner's Exhibit 1, page 2.

10. In response to the IRO decision, Claimant requested a hearing before the State Office of Administrative Hearings.
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; 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 a hearing on October 19, 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 Luz Loza. The Carrier was represented by counsel, Timothy P. Riley. Following post-hearing filings by the parties, the record closed on November 8, 2004.
13. Claimant had injections at the right L4-5 and L5-S1 facets joints, as well as the right sacroiliac joint, on February 13, 2004. The purpose of the injections was to block the facet joints of the spine that transmit pain.
14. On February 20, 2004, Provider examined Claimant and noted a temporary 40% reduction in pain with the facet injections.
15. A temporary 40% reduction in pain with the facet injections is regarded as a negative result.
16. The injections of the facet joint, which is the terminal end of the medial branch block of the nerves, failed to identify this joint as the pain-generator and would have no value as a diagnostic tool.
17. An MRI and x-ray tests previously performed on Claimant did not show any abnormality that would justify a MBB.
18. An MBB is not medically reasonable or necessary.

#### **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 an MBB is medically reasonable or necessary. TEX. LABOR CODE ANN. §§401.011(19) and 408.021.
5. An MBB is not medically necessary and should not be preauthorized.

**ORDER**

**IT IS, THEREFORE, ORDERED** that preauthorization is hereby **DENIED** for an MBB as requested for Claimant.

**SIGNED December 1, 2004.**

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