

SOAH DOCKET NO. 453-05-1027.M2
MR NO. M2-04-1834-01

HIDALGO COUNTY,
Petitioner

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BEFORE THE STATE OFFICE

OF

SHAHID RASHID, M.D.,
Respondent

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Shahid Rashid, M.D., seeks review of a decision by the Texas Workers' Compensation Commission (Commission), acting through an independent review organization (IRO), preauthorizing Bilateral Cervical Medial Branch Block injections to a workers' compensation claimant. This decision finds that Hidalgo County (Carrier) failed to show that the disputed services are not medically necessary and, accordingly, preauthorizes those services.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

There are no contested issues of notice or jurisdiction in this proceeding. Those matters are addressed in the findings of fact and conclusions of law. The hearing convened and closed on December 16, 2004, before Administrative Law Judge Kerry D. Sullivan. The Carrier was represented by Dean Pappas. Dr. Rashid was represented by his office manager, Margarita E. Olivarez.

II. BASIS FOR DECISION

The Claimant is a sixty-year old male employed as a road maintenance worker with Hidalgo County. He suffered a compensable injury to his neck and shoulder on ____, as a result of a fight in which he was attacked by a co-worker. The injury was diagnosed as a cervical sprain/strain, and a CT-Scan of the Claimant indicated a disc protrusion at C-5/6. As addressed below, there is a dispute as to whether the disc protrusion was caused by the injury or degenerative changes.

The Claimant underwent conservative treatment including physical therapy and pain management. Dr. Rashid is the Claimant's pain management physician, and he recommends the disputed injections. The procedure would entail the doctor inserting a needle into the joints at issue and injecting anesthesia and possibly a steroid solution. It would be performed under fluoroscopic control.

The IRO found the requested injections to be reasonable and necessary. It acknowledged that the Claimant had degenerative changes, but determined that his present pain and stiffness resulted from the work-related trauma, which exacerbated that condition. In addition to the IRO

decision, the record in this proceeding consists of the Claimant's medical records and the testimony of Dr. Gregory Goldsmith, an orthopedic surgeon who testified on behalf of the Carrier.

The ALJ finds that the Carrier has not shown by a preponderance of the credible evidence that the disputed injections are not necessary to treat the Claimant's compensable injury. While Dr. Goldsmith believed the Claimant's pain is more likely attributable to degenerative changes in the aging process than to the compensable injury, he acknowledged that the disc protrusion reflected in a CT-scan of the Claimant could also be the result of a traumatic injury. Additionally, Dr. Goldsmith and the Petitioner relied fairly heavily on the assumption that the Claimant had been released to return to heavy duty work without restrictions and with minimal problems. The record, however, does not appear to support this assertion. The Claimant initially returned to work with Hidalgo County on May 10, 2004, in a new position offered as an accommodation to meet the Claimant's work restrictions. The medical records appear to indicate the restrictions were removed on July 26, 2004, but the Claimant continued to miss work due to his compensable injury. This outcome is consistent with the IRO finding that the Claimant suffered "continued stiffness and pain."

It is a given in this proceeding that the Claimant suffered a compensable injury. While he also plainly suffers from degenerative disc disease, the IRO reasonably concluded that the compensable injury aggravated the underlying condition and is the cause of the Claimant's current pain and stiffness. This condition persists after physical therapy. Under these circumstances, the ALJ concurs with the IRO that the requested injections are appropriate to relieve the Claimant's pain and to further diagnose the Claimant's condition.

III. FINDINGS OF FACT

1. The Claimant is a sixty-year old male employed as a road maintenance worker with Hidalgo County.
2. The Claimant suffered a compensable injury to his neck and shoulder on ____, as a result of a fight at work.
3. At the time of the accident, Hidalgo County (the Carrier) was self-insured for workers' compensation claims.
4. The Claimant's injury was diagnosed as a cervical sprain/strain with a disc protrusion at C-5/6. He has been treated with physical therapy and pain management.
5. The Claimant's treating doctor, Shahid Rashid, M.D. (Provider), requests preauthorization for Bilateral Cervical Medial Branch Block injections to relieve the Claimant's pain and further diagnose his condition.
6. The Carrier timely denied the preauthorization request, and the Provider requested medical dispute resolution.

7. In a decision issued September 9, 2004, the Independent Review Organization reviewer (IRO) determined that the requested injections are medically necessary to treat the Claimant's compensable injury and should be preauthorized.
8. The Carrier timely requested a hearing on the IRO decision, which the Texas Workers' Compensation Commission (Commission) had adopted.
9. The Commission sent notice of the hearing to all parties on October 14, 2004.
10. 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.
11. The hearing was continued to December 16, 2004, at the agreement of the parties. The hearing was conducted on that date.
12. The Claimant continues to suffer stiffness and pain from the compensable injury, and there has been no improvement through conservative care.
13. The requested Bilateral Cervical Medial Branch Block injections have not been shown to be medically unnecessary to treat the Claimant's compensable injury. To the contrary, the requested injections appear to be appropriate to relieve the Claimant's pain and to further diagnose the Claimant's condition.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings 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. The Carrier timely requested a hearing, as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
3. Proper and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052, and 28 TAC § 148.4.
4. The Carrier had the burden of proof in this matter pursuant to 28 TAC § 148.21(h).
5. The Carrier did not establish that the requested Bilateral Cervical Medial Branch Block injections would not cure or relieve the effects naturally resulting from the Claimant's injury, promote his recovery, or enhance his ability to return to or retain employment.
6. The Carrier did not establish that the requested Bilateral Cervical Medial Branch Block injections are not medically necessary to treat the Claimant's injury.

7. Based on the foregoing Findings of Fact and Conclusions of Law, preauthorization for the requested Bilateral Cervical Medial Branch Block injections should be approved, pursuant to TEX. LAB. CODE ANN. § 413.014 and 28 TAC § 134.600.

ORDER

It is ORDERED that Bilateral Cervical Medial Branch Block injections, to be administered by Shahid Rashid, M.D., are preauthorized for the Claimant. All other pending motions or requests for relief, if any, not specifically granted herein are denied for want of merit.

Signed January 6, 2005.

**KERRY D. SULLIVAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**