

**SOAH DOCKET NO. 453-05-1646.M2  
TWCC MR NO. M2-04-1596-01**

<b>AMERICAN CASUALTY COMPANY OF READING, PA, Petitioner</b>	§ § § § § § § §	<b>BEFORE THE STATE OFFICE    OF   ADMINISTRATIVE HEARINGS</b>
<b>V.</b>		
—,		
<b>Respondent</b>		

**DECISION AND ORDER**

**I. Introduction**

American Casualty Company of Reading, PA (Carrier) has appealed a decision of an independent review organization (IRO) on behalf of the Texas Workers' Compensation Commission (TWCC). The decision concerned Carrier's denial of the request of Jeffrey H. Charnov, M.D. (Dr. Charnov), for pre-authorization of medical services for \_\_\_ (Claimant). The IRO found that the requested repeat MRI of Claimant's thoracic spine with or without contrast was medically necessary to treat his compensable injury.

The only disputed issue is whether the MRI is necessary for that purpose. As set out below, the Administrative Law Judge (ALJ) finds that the MRI is medically necessary and grants the pre-authorization request.

**II. Findings of Fact**

1. On \_\_\_, \_\_\_ (Claimant) sustained a work-related injury to his left shoulder and neck as a result of his work activities (compensable injury).
2. On the date of injury, Claimant's employer was \_\_\_ and its workers' compensation insurance carrier was Broadspire/American Casualty Company of Reading, PA (Carrier).
3. Claimant underwent an anterior cervical fusion at C5-6 and C6-7 on August 30, 1994.
4. On July 25, 1997, Claimant had a permanent intrathecal morphine pump implanted for pain management.
5. On August 29, 2003, the catheter of Claimant's intrathecal morphine pump was surgically removed because of concerns about abnormal tissue in the spinal canal. The intrathecal morphine pump was left in place.
6. Claimant continues to have significant pain that is only marginally controlled with his oral medications.

7. So that Claimant could be referred for neurosurgical evaluation and possible reimplantation of Claimant's intrathecal catheter, Dr. Charnov on May 11, 2004, requested that Carrier authorize a new MRI of the thoracic spine with or without contrast to determine if there was any regrowth of the granulomatous tissue that had resulted in the removal of the morphine pump catheter.
8. Claimant's circumstances are so unusual that gaining as much information as possible about his spinal canal is indicated before another invasive procedure is pursued.
9. On May 13, 2004, Carrier denied Dr. Charnov's pre-authorization request for the repeat MRI.
10. On May 24, 2004, Carrier again denied Dr. Charnov's pre-authorization request.
11. After Carrier twice denied pre-authorization for the MRI, Dr. Charnov filed with the Texas Workers' Compensation Commission (TWCC) a request for medical dispute resolution concerning that pre-authorization request.
12. An independent review organization (IRO) reviewed the medical dispute and found that the repeat MRI should be authorized.
13. After the IRO decision, Carrier asked for a contested-case hearing before a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) concerning the dispute.
14. Notice of a contested-case hearing concerning the dispute was mailed on November 4, 2004, to Claimant and Carrier. The notice informed the parties 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 the matters to be considered.
15. On December 9, 2004, Carol Wood, a SOAH ALJ, held a contested-case hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15<sup>th</sup> Street, Austin, Texas. The hearing concluded and the record closed that day.
16. Carrier appeared at the hearing through its attorney, Shelley D. Gatlin.
17. Claimant appeared at the hearing by telephone and was assisted by TWCC Ombudsman, Luz Loza.

### **III. Conclusions of Law**

1. 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 TEX. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) (West 2004) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2004).
2. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.

3. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed 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. Labor Code § 408.021(a).
4. Based on the above Findings of Fact and Gov't Code § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) § 155.41(b) (2004), and 28 TAC §§ 133.308(v) and 148.21(h) (2004), Carrier has the burden of proof in this case.
5. TWCC must specify by rule which health care treatments and services require express pre-authorization by a carrier. A carrier is not liable for those specified treatments and services unless pre-authorization is sought by the claimant or a health care provider and either obtained from the carrier or ordered by TWCC. Labor Code § 413.014
6. Pre-authorization is required for a repeat MRI. 28 TAC § 134.600(h)(8).
7. Claimant needs the prescribed repeat MRI.
8. The repeat MRI of Claimant's thoracic spine should be authorized at this time.

**ORDER**

**IT IS THEREFORE ORDERED** that American Casualty Company of Reading, PA authorize a new MRI of Claimant's thoracic spine with or without contrast.

**SIGNED January 10, 2005.**

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**CAROL WOOD  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**