

**SOAH DOCKET NO. 453-05-3171.M2
TWCC MR NO. M2-05-0245-01**

<p>_____, Petitioner</p> <p>V.</p> <p>AMERICAN HOME ASSURANCE CO., Respondent</p>	§ § § § § § § § § §	<p>BEFORE THE STATE OFFICE</p> <p>OF</p> <p>ADMINISTRATIVE HEARINGS</p>
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DECISION AND ORDER

____ (Claimant) appealed an Independent Review Organization (IRO) decision that recommended denial of pre-authorization of a lumbar CT/discogram at L3-4, L4-5, and L5-S1. The IRO concluded the injections were not medically necessary. This decision agrees with the IRO and concludes that the requested treatment is not medically reasonable and necessary to treat Claimant's compensable condition. Therefore, Claimant's appeal is denied.

I. JURISDICTION AND PROCEDURAL HISTORY

There were no challenges to notice or jurisdiction, and those matters are set forth below in the findings of fact and conclusions of law without further discussion here.

Administrative Law Judge (ALJ) Sharon Cloninger conducted a hearing in this case on August 2, 2005, at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, Austin, Texas. Claimant appeared *pro se* via telephone. Attorney Dan C. Kelley appeared on behalf of Carrier. The hearing concluded and the record closed that same day.

II. EVIDENCE

Claimant testified on his own behalf and offered no documentary evidence. Carrier called no witnesses, and offered the decision of the independent review organization (IRO) that Claimant's requested treatment should be denied because it is not medically necessary and because conservative measures of treatment have not been exhausted. Carrier also offered its discovery requests. Neither

party introduced Claimant's medical records. The following Findings of Fact and Conclusions of Law set out the facts and reason for the ALJ's decision.

III. FINDINGS OF FACT

1. _____ (Claimant) suffered a compensable injury on _____, when he lifted a case of produce and twisted his back while attempting to set the box on a shelf.
2. Claimant received chiropractic care for low back pain resulting from his compensable injury, prior to his referral to an orthopedic surgeon for fusion.
3. A lumbar spine series performed on the date of the injury was normal.
4. An MRI scan report dated March 22, 2004, states Claimant has a desiccated disc and a central herniation at L4-5 with congenital stenosis, and that the lateral flexion/extension views show no instability.
5. There are no contrast studies indicating significant neural compromise at any lumbar level.
6. Claimant exhibits a normal neurologic examination.
7. Claimant does not suffer instability at any motion segment of the lumbar spine.
8. Generally, surgery is indicated following exhaustion of conservative measures of treatment, which has not occurred in Claimant's case.
9. Claimant requested pre-authorization of a lumbar CT/discogram at L3-4, L4-5, and L5-S1 to treat his compensable injury.
10. American Home Assurance Company (Carrier) denied Claimant's pre-authorization request on August 19, 2004.
11. Claimant appealed Carrier's denial on August 31, 2004.
12. The Texas Workers' Compensation Commission (the Commission) referred Claimant's appeal to an independent review organization (IRO), which issued a decision on November 10, 2004, that the requested pre-authorization should be denied because the submitted documentation did not support the medical necessity of the procedure, and conservative measures of treatment had not been exhausted.
13. The requested lumbar CT/discogram is not medically necessary.
14. On November 16, 2004, Claimant requested a hearing before the State Office of Administrative Hearings to contest the IRO decision.
15. The Commission issued the notice of hearing on January 14, 2005, to all parties. The notice contained information regarding 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.

16. SOAH ALJ Sharon Cloninger conducted the hearing in this matter on August 2, 2005. Claimant appeared *pro se* via telephone. Carrier was represented by Dan C. Kelley, Attorney. The hearing concluded and the record closed that same day.

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. All parties received proper and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. Claimant, as the appealing party, has the burden of proof by a preponderance of the evidence. 28 TEX. ADMIN. CODE § 148.21(h).
4. The requested lumbar CT/discogram is not medically reasonable or necessary for the proper treatment of Claimant's compensable injury. TEX. LABOR CODE ANN. §§ 401.011(19) and 408.021.
5. Based on the above Findings of Fact and Conclusions of Law, Claimant's appeal is denied, and Carrier's denial of the requested treatment is affirmed.

ORDER

IT IS, THEREFORE, ORDERED that Claimant's's appeal is denied, and pre-authorization is denied for the lumbar CT/discogram requested by Claimant.

SIGNED August 25, 2005.

**SHARON CLONINGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**