

JAIRO PUENTES, M.D.,
Petitioner

V.

TEXAS MUTUAL INSURANCE
COMPANY,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Jairo Puentes, M.D., contested an independent review organization (IRO) decision, issued on behalf of the Texas Workers' Compensation Commission (Commission), concluding that a magnetic resonance imaging (MRI) performed on an injured worker (Claimant) was medically unnecessary. Texas Mutual Insurance Company (Texas Mutual) had denied payment for the MRI. The Administrative Law Judge (ALJ) concludes that Dr. Puentes did not carry his burden of proving that the MRI was medically necessary and therefore orders that Dr. Puentes' claim be denied.

I. PROCEDURAL HISTORY

A hearing convened in this case on July 19, 2005, before the undersigned ALJ at the State Office of Administrative Hearings (SOAH), Austin, Texas. Texas Mutual appeared and was represented by Bryan W. Jones, Attorney, and Timothy P. Riley, Attorney. Dr. Puentes appeared by telephone and represented himself. The hearing record closed on July 19, 2005.

On several bases, Dr. Puentes contended that the IRO decision was invalid. He pointed out that it was issued eighty-six days after the IRO received the dispute, which was more than the thirty-day limit stated in 28 TEX. ADMIN. CODE (TAC) § 133.308(o) and (p)(2), and that it was made by a chiropractor, who is not the same type of doctor he is.¹ He contended the decision also does not

¹ Dr. Puentes is a medical doctor.

comply with 28 TAC § 133.308(p)(2), requiring a description of the qualifications of the reviewing physician, because the reviewer's name and his/her qualifications are not shown. He maintained, because the IRO decision is based on a review by a person not licensed by the Texas State Board of Medical Examiners to state an opinion on the need for an MRI provided and read by medical doctors, it violates a Commission policy to avoid superceding professional licensing board restrictions.

The ALJ concludes that Dr. Puentes waived any complaints about the IRO decision, at least to the extent of any possible defects affecting the validity of a SOAH decision, because, when asked whether he wanted the decision to be vacated and remanded to the Commission medical review division (MRD), he said he did not, that he wanted the hearing to go forward and the claim to be resolved at SOAH. On the same basis, the ALJ also concludes that Dr. Puentes waived any possible argument that he does not have the burden of proof in the SOAH proceeding.²

II. DISCUSSION

A. Factual and Legal Background

The Claimant suffered a work-related lower back injury on _____, while pulling a motor off a gas tank. He presented at first to Charles Votzmeyer, D.C., who referred him to Dr. Puentes. Dr. Puentes saw him on June 2, 2004, and prescribed Lortab and Skelax for pain relief and muscle relaxation. On June 9, 2004, after the Claimant's pain had not subsided, Dr. Puentes prescribed an MRI, which was performed on that day by Stephen Pomeranz, M.D.

When Texas Mutual denied the claim for the MRI, Dr. Puentes requested medical dispute resolution. The IRO issued its decision on December 10, 2004.³ The reviewing doctor concluded that the MRI should have been performed no earlier than four to six weeks post-injury and that it should have been preceded by plain x-rays.⁴

² Under 1 TAC § 155.41 and 28 TAC § 148(h), the losing party before MRD bears the burden of proof at a SOAH hearing. Dr. Puentes did not argue he does not have the burden of proof.

³ Ex. 4.A at 4-5.

⁴ Texas Mutual did not argue that x-rays should have been done before an MRI. The ALJ was persuaded by Dr.

Employees have a right to necessary health care under TEX. LABOR CODE ANN. §§ 408.021 and 401.011. Section 408.021(a) provides, "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. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment." Section 401.011(19) of the Labor Code provides that health care includes "all reasonable and necessary medical . . . services."

B. Decision

Based on a combination of three factors, the ALJ concludes that Dr. Puentes' claim should be denied. First, the evidentiary record reflects a difference of opinion between two doctors on the issue of how much time should lapse after an injury before an MRI is appropriate. The record reflects that both doctors are qualified experts and both of their opinions carried weight.

Dr. Puentes has many years of experience. He is board-certified in physical and rehabilitative medicine, electrodiagnostic medicine, and pain management. He testified it would have been malpractice not to order an MRI when the Claimant's pain did not subside because it was necessary to see whether he had serious problems. He asserted there is no standard of care that MRIs should not be performed before four weeks post-injury. He contended the first thing to do in treating an injury is to have a good diagnosis and the MRI in this case was necessary to achieve that purpose. He said the MRI showed instability in the Claimant's lumbar spine and this finding was significant in deciding to discontinue spinal manipulations. He asserted that the MRI was necessary to provide proper medical care, to which a patient is entitled to under the Labor Code.

Dr. Puentes cited SOAH Docket No. 453-03-2262.M5 to show a SOAH judge's decision that an MRI provided a short time after injury was appropriate.

Texas Mutual called Nick Tsourmas, M.D., as its witness. Like Dr. Puentes, Dr. Tsourmas is well-qualified. He is board certified in orthopaedics and is chair of the St. David's Hospital

Puentes' testimony that it is not a requirement to perform x-rays before MRIs because MRIs can show soft-tissue injuries that are not revealed by x-rays.

Orthopaedics Department in Austin, Texas. In Dr. Tsourmas' opinion, there are two circumstances in which an MRI should be performed prior to six weeks post-injury. The first is for Cauda Equina Syndrome (CES), which is a special neurological circumstance requiring emergency attention. The other is when a patient has a progressive neurological deficit, such as increasing dysfunction of a body part. He said there was no indication of CES or of a progressive neurological deficit in this case. In his opinion, pain is not an indicator for an MRI because pain accompanies every injury.

Dr. Tsourmas contended that an MRI would not have altered treatment or medications the Claimant received during the acute phase of treatment. He said herniated discs also need conservative care. He acknowledged that a herniated disc could cause CES and that a tear in the annulus fibrosis of the disc could lead to a herniated disc, but said he has seen only two instances of CES in his entire career.

Dr. Tsourmas agreed that spinal manipulations can lead to a ruptured disc, but noted that the Claimant's treating doctor, Dr. Votzmeyer, continued spinal manipulations even after the MRI.⁵

The second factor in deciding the claim should be denied is that treatment guidelines from two nationally-recognized organizations, the North American Spine Society (NASS) and American Academy of Orthopaedic Surgery (AAOS), support Dr. Tsourmas' position. Dr. Tsourmas said the guidelines are developed as a consensus statement by leaders in the field.⁶ Texas Mutual introduced into evidence an article, "Persistent Low Back Pain," by Eugene J. Carragee, M.D., published in the May 5, 2005, *New England Journal of Medicine*, that said MRIs or radiography early in a low-back-pain episode do not improve clinical outcomes or reduce costs. The article also said, "Appropriate candidates for MRI include patients with low back pain who have associated neurologic symptoms or signs; associated systematic symptoms; risk factors for cancer, infection, or occult fractures; or persistent pain in the absence of neurologic signs or symptoms after four to eight weeks."⁷

⁵ Ex. 4.A. at 42-43.

⁶ Dr. Tsourmas also testified that the Commission-adopted Spine Treatment Guidelines, at former 28 TAC § 134.1001, indicate an MRI is an appropriate diagnostic treatment only after six weeks post-injury. He acknowledged, however, that these guidelines have been abolished by the legislature.

⁷ Ex. 3.D. at 2.

The third significant factor is that Dr. Puentes bears the burden of proof, which means the preponderant evidence must support his position. In view of Dr. Tsourmas' contravening expert testimony and recognized, national guidelines indicating the MRI was premature, the preponderant evidence did not support a finding that the MRI was necessary ten days post-injury.

The ALJ does not find Dr. Puentes' assertion persuasive that the MRI helped change the course of the Claimant's treatment by causing the cessation of spinal manipulations. The evidence indicates the manipulations actually continued. Moreover, the evidence was not persuasive that spinal manipulations were ever (even before the MRI) a proper course of treatment for the Claimant.

The ALJ does not find the decision in Docket No. 453-03-2262.M5 persuasive in this case. The ALJ found the Claimant's numbness and paresthesia constituted an exception to the general rule in the Commission-adopted Spine Treatment Guideline that an MRI should not be done until six-weeks post injury. As shown by Dr. Tsourmas' testimony, the documentary record in this case does not show a need for an MRI under the above-described AAOS and NASS guidelines.

III. FINDINGS OF FACT

1. An injured worker (Claimant) suffered a work-related lower back injury on _____, while pulling a motor off a gas tank.
2. The Claimant first presented to Charles Votzmeyer, D.C., who referred him to Jairo Puentes, M.D.
3. Dr. Puentes saw the Claimant on June 2, 2004, at which time he prescribed Lortab and Skelax for pain relief and muscle relaxation.
4. On June 9, 2004, after the Claimant's pain did not subside, Dr. Puentes prescribed a magnetic resonance imaging (MRI), which was performed on that day on the Claimant by Stephen Pomeranz, M.D.
5. Texas Mutual Insurance Company, the Claimant's employer's workers' compensation insurance carrier, denied payment for the MRI.
6. Dr. Puentes requested medical dispute resolution.
7. An IRO issued a decision on December 10, 2004, in which the reviewing doctor concluded that the MRI should have been performed no earlier than four to six weeks post-injury and that it should have been preceded by plain x-rays.

8. It is undisputed that Dr. Puentes requested a hearing not less than 20 days after receiving notice of the independent review organization determination.
9. All 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.
10. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.
11. On several bases, Dr. Puentes complained that the IRO decision was invalid; however, he said he wanted the hearing to go forward and the claim to be decided at the State Office of Administrative Hearings (SOAH).
12. There are two primary circumstances in which an MRI should be performed prior to four to six weeks post-injury.
 - a. The first is for Cauda Equina Syndrome (CES), which is a special neurological circumstance requiring emergency attention.
 - b. The second is when a patient has a progressive neurological deficit.
13. There was no indication the Claimant had CES or a progressive neurological deficit.
14. Other factors that could justify an MRI prior to four to six weeks post-injury include patients with low-back pain who have associated neurologic symptoms or signs; associated systematic symptoms; or risk factors for cancer, infection, or occult fractures.
15. The Claimant was not shown to have any of the factors described in Finding of Fact No. 14.
16. An MRI would not have altered treatment or medications the Claimant received during the acute phase of treatment.
17. MRIs or radiography early in the course of an episode of low back pain do not ordinarily improve clinical outcomes or reduce costs.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over matters related to the hearing in 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. Notice of the hearing was proper and timely. TEX. GOV'T. CODE ANN. §§ 2001.051 and 2001.052.

3. Dr. Puentes waived any assertion that, by virtue of an allegedly improper IRO decision, SOAH is not authorized to render a decision in this case.
4. Dr. Puentes had the burden of proving that the MRI performed on the Claimant on June 9, 2004, was reasonably required by the nature of the Claimant's injury. 1 TEX. ADMIN. CODE (TAC) § 155.41; 28 TAC § 148(h).
5. Dr. Puentes did not prove that the MRI performed on the Claimant on June 9, 2004, was reasonably required by the nature of the Claimant's injury.
6. Dr. Puentes' claim should be denied.

ORDER

IT IS THEREFORE ORDERED that the claim of Jairo Puentes, M.D., against Texas Mutual Insurance Company for payment of an MRI performed on the Claimant on June 9, 2004, be, and the same is hereby, denied.

SIGNED August 1, 2005

**JAMES W. NORMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**