

SOAH DOCKET NO. 453-05-3768.M2  
TWCC MR NO. M2-05-0425-01

AMERICAN HOME ASSURANCE  
COMPANY,  
Petitioner

V.

—,  
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**DECISION AND ORDER**

This is a dispute over a request for preauthorization for a lumbar discogram. The Administrative Law Judge (ALJ) concludes the request should be denied.

**I. HISTORY**

The Claimant, \_\_\_\_, suffered a compensable injury to her back on \_\_\_\_. After more conservative treatment failed, she underwent a laminectomy on July 18, 2002. Although her symptoms initially improved, her back pain eventually returned, and the surgery was unsuccessful in resolving her condition. She remains in pain today.

In April of 2004, the Claimant's treating physician, Ferral Endsley, D.O., referred her to Walter X. Loyola, M.D., a neurosurgeon. Dr. Loyola requested preauthorization for a lumbar discogram. The Carrier, American Home Assurance Company, denied preauthorization on the grounds that the discogram was not medically necessary. The Claimant filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission), which referred the matter to an Independent Review Organization (IRO). The IRO determined the procedure was medically necessary.

The Carrier then requested a hearing before the State Office of Administrative Hearings (SOAH). After proper and timely notice, the hearing was held March 14, 2005, before SOAH ALJ Henry D. Card. The Carrier was represented by its attorney. The Claimant appeared *pro se*, with assistance from the Commission's Ombudsman's Office. The hearing was adjourned, and the record closed, the same day.

## II. DISCUSSION

Under TEX. LAB. CODE ANN. § 408.021(a),

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.

Certain categories of health care identified by the Commission require preauthorization, which is dependent upon a prospective showing of medical necessity. TEX. LAB. CODE ANN. § 413.014; 28 TEX. ADMIN. CODE (TAC) § 134.600. Pursuant to 28 TAC §134.600(h)(7), discograms require preauthorization.

Under 28 TAC § 148.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. § 413.031. Therefore, in this case, the Carrier has the burden of proof.

Melissa Tonn, M.D., testified on the Carrier's behalf that a lumbar discogram may be indicated only if spinal fusion is being considered. In that situation, the discogram may be used to determine the location of the patient's pain and therefore the proper location for the fusion.

In this case, Dr. Tonn testified, there was no evidence of spinal instability that would warrant fusion surgery. In addition, the Claimant's medical records contained no recommendation for surgery and no indication that she was a surgical candidate. Dr. Tonn pointed out that Dr. Endsley stated the Claimant was not a surgical candidate. Therefore, in Dr. Tonn's opinion, the lumbar discogram was not medically necessary.

The Claimant pointed out that neither Dr. Tonn nor Dr. Endsley is a neurosurgeon. Dr. Loyola, who is one, requested the discogram, which implied he believed her to be a surgical candidate. In addition, the IRO reviewer found the discogram to be medically necessary. The Claimant pointed out that other measures had proved unsuccessful in treating her ongoing pain.

It is undisputed that a discogram is indicated only if the patient is a candidate for spinal fusion surgery. As Dr. Tonn pointed out, Dr. Endsley expressly stated, "I do not really think that surgery is going to be the answer . . . ." <sup>1</sup> Dr. Loyola himself did not expressly identify the Claimant as a surgical candidate. His recommendation simply states, "I would like to get a diskogram on this patient." <sup>2</sup> Although that may imply he thinks she is a surgical candidate, he did not say so and did not provide any explanation for the request. Nor do any of the other records suggest the Claimant is a candidate for spinal fusion surgery.

The ALJ find the Claimant is not a candidate for spinal fusion surgery. Therefore, he concludes the Carrier met its burden of proving the proposed lumbar discogram is not medically necessary. The ALJ does not require the Carrier to preauthorize that procedure.

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<sup>1</sup> Carrier Ex. 1, page 191.

<sup>2</sup> Carrier Ex. 1, page 196.

### III. FINDINGS OF FACT

1. The Claimant, \_\_\_\_, suffered a compensable injury to her back on \_\_\_\_.
2. After more conservative treatment failed, the Claimant underwent a laminectomy on July 18, 2002.
3. Although the Claimant's symptoms initially improved, her back pain eventually returned, and the surgery was unsuccessful in resolving her condition.
4. The Claimant remains in pain today.
1. In April of 2004, the Claimant's treating physician, Ferral Endsley, D.O., referred her to Walter X. Loyola, M.D., a neurosurgeon.
2. Dr. Loyola requested preauthorization for a lumbar discogram.
3. The Carrier, American Home Assurance Company, denied preauthorization on the grounds that the discogram was not medically necessary.
4. The Claimant filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission), which referred the matter to an Independent Review Organization (IRO).
5. The IRO determined the procedure was medically necessary.
6. The Carrier requested a hearing before the State Office of Administrative Hearings (SOAH).
7. Notice of the hearing was sent to the parties February 2, 2005.
8. The notice 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.
9. The hearing was held March 14, 2005, before SOAH ALJ Henry D. Card. The Carrier was represented by its attorney. The Claimant appeared *pro se*, with assistance from the Commission's Ombudsman's Office.
10. The hearing was adjourned, and the record closed, March 14, 2005.

11. A discogram is medically indicated only if the patient is a candidate for spinal fusion surgery.
12. The Claimant is not a candidate for spinal fusion surgery.

#### **IV. CONCLUSIONS OF LAW**

1. SOAH 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. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052.
3. Under 28 TAC § 148.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. § 413.031.
4. The Carrier proved the requested procedure was not medically necessary under TEX. LAB. CODE ANN. § 408.021.
5. The request for preauthorization should be denied.

#### **ORDER**

It is, therefore, ordered that the Carrier, American Home Assurance Company, shall not be required to preauthorize a lumbar discogram for Claimant \_\_\_\_

**SIGNED April 13, 2005.**

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**HENRY D. CARD  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**