

**SOAH DOCKET NO. 453-05-5251.M2  
TWCC NO. M2-05-0863-01**

<b>PISHARODI CLINIC,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>FEDERATED MUTUAL INSURANCE</b>	§	
<b>COMPANY,</b>	§	<b>ADMINISTRATIVE HEARINGS</b>
<b>Respondent.</b>	§	

**DECISION AND ORDER**

Pisharodi Clinic (Provider) challenged the decision of Federated Mutual Insurance Company (Carrier), denying preauthorization for a lumbar discogram (discogram). The dispute was referred to an Independent Review Organization (IRO), which denied authorization for the procedure. In this decision, the Administrative Law Judge (ALJ) finds that Provider did not meet its burden of proving by a preponderance of the evidence that the requested discogram should have been preauthorized.

The hearing convened and closed on May 11, 2005, before ALJ Steven M. Rivas. Provider failed to appear or submit a request to appear by telephone. Carrier appeared and was represented by William Weldon, attorney.

**I. DISCUSSION**

**A. Background Facts**

Claimant sustained a compensable back injury on\_\_\_\_. Claimant underwent years of physical therapy and diagnostic testing as part of his treatment. Provider requested preauthorization for the discogram and was denied by the Carrier as not medically necessary. The dispute was referred to an IRO, which held the requested discogram was not medically necessary and Provider appealed the IRO decision to the State Office of Administrative Hearings (SOAH).

**B. Applicable Law**

Pursuant to the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. § 408.021 *et seq.*, an employee who sustains a compensable injury is entitled to all health care 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.

Under TEX. LAB. CODE ANN §401.011(19), health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.

Certain categories of health care identified by the Commission require preauthorization, which is dependent upon a prospective showing of medical necessity under §413.014 of the Act and 28 TEX. ADMIN. CODE (TAC) § 134.600. In this instance under the Commission's rules at 28 TAC § 134.600(h)(7), preauthorization is required for the discogram requested by Claimant.

### **C. Evidence and Analysis**

Carrier offered sufficient evidence to support that the discogram should not be preauthorized. Based on the record, Claimant underwent an MRI examination on December 19, 1995, which indicated that Claimant had a herniated disc at the L4-L5 level, but no radiculopathy. Claimant was initially treated with conservative care. In 1996, Claimant was referred to Provider for further treatment. On January 22, 1997, Provider performed back surgery on Claimant at his L4-L5 region. Following this surgery, Claimant continued to be treated by Provider.

In 1999, Claimant was examined by Jose Kuri, M.D., a neurosurgeon, who found Claimant had reached maximum medical improvement on August 27, 1999. Based on his assessment of Claimant, Dr. Kuri prescribed a vocational rehabilitation and work hardening program for Claimant. Claimant refused to participate in the work hardening program, and subsequently obtained employment as a janitor.

In 2003, Claimant again sought treatment from Provider for low back pain. Provider began treating Claimant again with physical therapy modalities. On September 30, 2003, Claimant

underwent an Independent Medical Examination by Jorge E. Loyez, M.D., a Board Certified Neurologist. Dr. Loyez found that Clamant's current symptoms were related to his compensable injury, but that the current treatment was not medically necessary because Claimant had already shown he was able to return to work.

On December 6, 2004, Claimant underwent another MRI examination, which indicated "normal appearance of the disc space between L4-L5." The results of the MRI additionally showed evidence of scar tissue at the L4-L5 region.

Because Provider did not appear at the hearing to provide testimony in support of its position, the ALJ was unable to consider any arguments that controverted the IRO report. The basis of the IRO's decision to deny preauthorization was that the MRI results showed evidence of scar tissue on Claimant's spine at the L4-L5 levels. Additionally, the IRO found the requested discogram would not provide sufficient information concerning the L4-L5 discs because the MRI report was normal, other than the scar tissue noted. Furthermore, the IRO concluded and the ALJ agrees that based on the record, a discogram is not likely to provide any additional information related to any defect at Claimant's L4-L5 region.

Therefore the ALJ concludes the requested discogram should not be preauthorized.

## **II. FINDINGS OF FACT**

1. Claimant sustained a compensable back injury on \_\_\_\_.
2. Madhaven Pisharodi, M.D., of Pisharodi Clinic (Provider) requested Claimant undergo a lumbar discogram, which was denied by Federated Mutual Insurance Company (Carrier) as not medically necessary.
3. Provider sought medical dispute resolution with the Texas Workers' Compensation Commission's Medical Review Division, which referred this matter to an Independent Review Organization (IRO). The IRO agreed with Carrier and held the requested discogram was not medically necessary.

4. Provider timely requested a hearing before the State Office of Administrative Hearings (SOAH).
5. Notice of the hearing in this case was mailed to the parties on April 19, 2005. 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.
6. The hearing convened on May 11, 2005, before Steven M. Rivas, Administrative Law Judge (ALJ). Provider did not appear at the hearing. Carrier appeared and was represented by William E. Weldon, attorney. The hearing was adjourned and the record closed the same day.
7. Claimant suffered from a herniated disc at the L4-L5 region, but no radiculopathy.
8. Provider administered back surgery to Claimant on January 27, 1997.
9. Claimant reached maximum medical improvement on August 27, 1999, and refused to enter into a prescribed work hardening program.
10. Claimant returned to work in 1999 as a janitor.
11. In 2003, Claimant sought further care for his back from Provider.
12. Claimant underwent another MRI examination, which indicated normal disc space at Claimant's L4-L5 region. The MRI results also found evidence of scar tissue at the L4-L5 region.
13. A discogram will not likely provide any further information regarding Claimant's L4-L5 region.

### **III. CONCLUSIONS OF LAW**

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(k) of the Act 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. §§2001.051 and 2001.052.
3. The Provider, as Petitioner, had the burden of proof on appeal by a preponderance of the evidence under § 413.031 of the Act, and 28 TEX. ADMIN. CODE §148.21(h).

4. The requested discogram is not medically necessary to treat Claimant's compensable injury because it will not provide any further information regarding Claimant's compensable injury.

**ORDER**

**IT IS, THEREFORE, ORDERED** that the requested discogram not be preauthorized.

**Signed on June 8, 2005.**

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**STEVEN M. RIVAS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**