

**SOAH DOCKET NO. 453-05-5464.M2
TWCC NO. M2-05-0903-01**

NATIONAL FIRE INSURANCE COMPANY OF HARTFORD, Petitioner	§ § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
VS.	§ § §	
MADHAVAN PISHARODI, M.D., Respondent.	§	

DECISION AND ORDER

National Fire Insurance Company of Hartford (Carrier) denied preauthorization for a lumbar discogram requested by Madhavan Pisharodi, M.D. (Provider) for Claimant. The dispute was referred to an Independent Review Organization (IRO), which authorized the procedure. In this decision, the Administrative Law Judge (ALJ) finds that Carrier proved by a preponderance of the evidence that the requested discogram should not have been preauthorized.

The hearing convened and closed on May 19, 2005, before ALJ Steven M. Rivas. Carrier appeared and was represented by Doug Pruett, attorney. Provider failed to appear at the hearing.

I. DISCUSSION

1. Background Facts

Claimant sustained a compensable back injury on_____, and underwent physical therapy and diagnostic testing with Provider as part of his treatment. Provider requested preauthorization for the discogram, which Carrier initially denied on the basis that it was not medically necessary. The dispute was referred to an IRO, which held the requested discogram was medically necessary in its report dated March 28, 2005. Carrier appealed the IRO decision to the State Office of Administrative Hearings (SOAH).

2. 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 dependant 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 Provider.

3. Evidence and Analysis

Carrier offered sufficient evidence to support its contention that the discogram should not have been preauthorized. According to Carrier's expert, Michael Albrecht, M.D., a discogram is usually administered to patients who have previously been deemed surgical candidates, and Claimant did not suffer from a condition that required surgery. According to Dr. Albrecht, the results of Claimant's X-rays and MRI examination did not show that Claimant suffered from a fracture or spinal instability. Dr. Albrecht admitted Claimant did have evidence of subligamentis disc herniations in his L4-L5 and L5-S1 regions of his spine, but contended this condition was not unusual in patients of the same age as Claimant. Furthermore, Dr. Albrecht testified that a subligamentis herniation does not signal the presence of a protruding disc, nerve compression, or the narrowing of canals that house nerve roots. Dr. Albrecht additionally noted that Claimant underwent a nerve conduction study that revealed normal results and showed Claimant had no nerve root compression.

Carrier additionally pointed out two errors in the IRO report. First, the IRO mentioned the results of a "cervical" MRI examination performed on Claimant. Carrier asserted Claimant had never undergone such a procedure. Additionally, the IRO concluded that Claimant had suffered from

back pain as a result of his injury for “over a year.” However, a year had not passed from the date of Claimant’s injury to the date of the IRO report or the date of the hearing.

Carrier had the burden of proof in this matter, and presented persuasive evidence regarding why the requested discogram should not have been preauthorized. Based on the record, Claimant continues to complain of back pain; however, the ALJ found insufficient evidence that Claimant was a candidate for surgery. The ALJ found Dr. Albrecht’s testimony persuasive in that Claimant did not suffer from any instability or fracture that could be corrected by surgery. Because Claimant is not a surgical candidate, the ALJ finds that the requested discogram would not be beneficial in treating Claimant’s compensable injury.

II. FINDINGS OF FACT

1. Claimant sustained a compensable back injury on _____.
2. Madhavan Pisharodi, M.D. (Provider), requested Claimant undergo a lumbar discogram, which was denied by National Fire Insurance Company of Hartford (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 disagreed with Carrier and held the requested discogram was medically necessary in its report dated March 28, 2005.
4. Carrier 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 May 2, 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 and closed on May 19, 2005, before Steven M. Rivas, Administrative Law Judge (ALJ). Carrier appeared and was represented by Doug Pruett, attorney. Provider failed to appear at the hearing. The hearing was adjourned and the record closed the same day.
7. A discogram is administered to patients who are surgical candidates.

8. The results of Claimant's MRI examination revealed subligamentis disc herniations in the L4-L5 and L5-S1 regions of his spine.
9. Claimant's subligamentis herniations did not signal the presence of a protruding disc, nerve compression, or the narrowing of canals that house nerve roots.
10. Claimant did not suffer from any instability or fractures to his spine that could have been treated with surgery.
11. The requested discogram is not medically necessary to treat Claimant's compensable injury because Claimant is not a candidate for surgical intervention.

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 Carrier, 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. Based on the Findings of Fact, the requested discogram is not medically necessary to treat Claimant's compensable injury pursuant to TEX. LAB. CODE ANN. § 408.021.

ORDER

IT IS, THEREFORE, ORDERED that the Provider receive no authorization for the requested lumbar discogram.

Signed on June 14, 2005.

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