

**SOAH DOCKET NO. 453-05-5821.M2
TWCC MR NO. M2-05-0513-01**

—,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
FACILITY INSURANCE	§	
CORPORATION,	§	ADMINISTRATIVE HEARINGS
Respondent	§	

DECISION AND ORDER

Workers' compensation claimant ___ (the Claimant) seeks preauthorization for a thoracic and lumbar myelogram with post CT scan. The Administrative Law Judge (ALJ) concludes the Claimant did not prove the procedure was medically necessary. He therefore does not order preauthorization.

I. DISCUSSION

The Claimant originally suffered a compensable injury to his back on ____. He underwent a series of at least ten back surgeries performed by Eric Sheffey, M.D.¹ The parties agreed those surgeries were failures and have left the Claimant with incomplete fusion of some of his vertebrae, loose hardware in his back, and severe and debilitating pain. His current treating physician, William R. Francis, M.D., has sought permission for additional surgery which he believed could alleviate the Claimant's condition. Preauthorization for surgery was denied.

On October 14, 2004, Dr. Francis requested preauthorization for the thoracic and lumbar myelogram with CT scan that is the subject of this case. The workers' compensation carrier, Facility Insurance Corporation (the Carrier) denied that request and a subsequent request for reconsideration. Dr. Francis filed a timely request for medical dispute resolution with the Texas Workers' Compensation Commission, which referred the request to an Independent Review Organization (IRO). The IRO denied the request. The Claimant filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).

¹ The medical records state Dr. Sheffey performed ten surgeries, but the Claimant testified he had undergone 17 surgeries.

The SOAH hearing was held May 31, 2005, with ALJ Henry D. Card presiding. The Claimant testified on his own behalf and the Carrier presented testimony from Thomas Padgett, M.D. At the ALJ's request, the parties filed additional explanatory information. The record was closed with the receipt of information from the Carrier on June 20, 2005.

This case is troubling because the Claimant clearly has a severe medical problem resulting, at least in part, from the multiple surgeries that have been performed. There is a dispute over whether further surgery by a different doctor would help his condition. The Carrier has denied preauthorization for further surgery, however, and that issue is not before SOAH.

The issue in this case is whether a thoracic and lumbar myelogram with post CT scan is medically necessary. The evidence shows it is not. The Claimant underwent a lumbar myelogram with post CT scan on December 4, 2003.² The evidence does not show any change in the Claimant's condition that would necessitate repeating those diagnostic procedures. Therefore, the Carrier should not be required to preauthorize them.

II. FINDINGS OF FACT

1. Workers' compensation claimant ____ (the Claimant) originally suffered a compensable injury to his back on ____.
2. The Claimant underwent an series of at least ten back surgeries performed by Eric Sheffey, M.D.
3. Those surgeries were failures and have left the Claimant with incomplete fusion of some of his vertebrae, loose hardware in his back, and severe and debilitating pain.
4. The Claimant's current treating physician, William R. Francis, M.D. has sought permission for additional surgery which he believed could alleviate the Claimant's condition. Preauthorization for surgery was denied.
5. On October 14, 2004, Dr. Francis requested preauthorization for the thoracic and lumbar myelogram with CT scan that is the subject of this case.
6. The workers' compensation carrier, Facility Insurance Corporation (the Carrier) denied that request and a subsequent request for reconsideration.

² The Claimant contended that only the myelogram, and not the CT scan, was authorized by the Carrier and performed on that date. The record contains a CT scan report of the lower thoracic and full lumbar spine from T10-T11 through L5-S1 from Joon S. Lee, M.D. for that date, however.

7. Dr. Francis filed a timely request for medical dispute resolution with the Texas Workers' Compensation Commission, which referred the request to an Independent Review Organization (IRO). The IRO denied the request.
8. The Claimant filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).
9. Notice of the hearing was sent to all parties May 9, 2005.
10. 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.
11. The SOAH hearing was held May 31, 2005, with ALJ Henry D. Card presiding. The Claimant testified on his own behalf and the Carrier presented testimony from Thomas Padgett, M.D. At the ALJ's request, the parties filed additional explanatory information. The record was closed with the receipt of information from the Carrier on June 20, 2005.
12. A report of a post myelogram CT scan of the lower thoracic and full lumbar spine from T10-T11 through L5-S1 was prepared by Joon S. Lee, on December 4, 2003
13. The Claimant underwent a lumbar myelogram with post CT scan on December 4, 2003.
14. The evidence does not show any change in the Claimant's condition that would necessitate repeating those diagnostic procedures.
15. The thoracic and lumbar myelogram with CT scan is not medically necessary.

III. 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. The proposed procedure is not medically necessary under TEX. LAB. CODE ANN. §§ 408.021 and 401.011(19).
4. The Carrier should not be required to preauthorize the requested procedure.

ORDER

IT IS THEREFORE, ORDERED THAT Facility Insurance Corporation shall not be required to preauthorize the thoracic and lumbar myelogram with CT scan that is the subject of this dispute.

SIGNED July 18, 2005.

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