

**SOAH DOCKET NO. 453-05-6899.M2
TWCC MR NO. M2-05-1318-01**

—, Petitioner	§ § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
V. INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, Respondent		

DECISION AND ORDER

Ms. ___ (“Petitioner”), an injured claimant, has challenged the decision of an independent review organization (“IRO”) acting on behalf of the Texas Workers’ Compensation Commission (“Commission”) in a dispute regarding preauthorization for a lumbar myelogram with CT scan. The IRO found that the proposed procedure was not medically necessary and that the Insurance Company of the State of Pennsylvania (“Respondent”) had properly denied preauthorization for it.

This decision agrees with that of the IRO, finding that preauthorization of the disputed services should not be approved.

I JURISDICTION AND NOTICE

The Commission has jurisdiction over this matter pursuant to § 413.031 of the Act. The State Office of Administrative Hearings (“SOAH”) has jurisdiction over matters related to the hearing in 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. No party challenged jurisdiction or sufficiency of notice.

II. STATEMENT OF THE CASE

The hearing in this docket was convened on July 5, 2005, at SOAH facilities in the William P. Clements Building, 300 W. 15th St., Austin, Texas. Administrative Law Judge (“ALJ”) Mike Rogan presided. Petitioner represented herself and appeared by telephone, with assistance from the Commission’s Ombudsman. Respondent was represented by Steve Tipton, Attorney. After presentation of evidence and argument, the hearing was adjourned on that same date.¹

The record revealed that on ____, Petitioner suffered an injury to her lower back, which later necessitated an L4-5 laminectomy. However, she continues to suffer chronic pain in the lumbar area and the left leg. At the recommendation of her current treating physician (C. Michel Oliva, M.D.), Petitioner has sought preauthorization for a myelography with post-myelogram CT scan, in order to allow assessment of whether she needs additional treatment. Respondent denied the requested services on grounds that they were not medically necessary. Petitioner then sought medical dispute resolution through the Commission.

The IRO to which the Commission referred the dispute issued a decision on May 5, 2005, concluding that preauthorization of the disputed services was not appropriate. As its basis for decision, the IRO declared:

The primary indication for myelography with post-myelogram CT scan rather than MRI is the presence of metal prostheses in proximity to the central nervous system. Neither is necessary as a routine measure in the absence of significant changes in the quality or location of the symptoms or significant changes in physical or neurological sign.

Petitioner subsequently made a timely request for review of the IRO decision before SOAH.

III. THE PARTIES’ EVIDENCE AND ARGUMENTS

¹The staff of the Commission formally elected not to participate in this proceeding, although it filed a general “Statement of Matters Asserted” with the notice of the hearing.

A. Petitioner

Petitioner testified that she suffers frequent severe pain across her hips and in her left leg, particularly when she attempts to sit for more than a short time. She stated that the pain has increased since her lumbar surgery in 1999 and that she has increased her dosage of pain medication (especially at night) during the past two years. Since her injury in 1995, she has not been able to work.

Petitioner submitted into evidence reports on two examination procedures she underwent in 2004 - an MRI in February and an EMG (nerve conduction study) in September. The MRI report included fairly detailed findings and concluded with the following "impression":

1. Previous left L4-5 disk surgery.
2. Minimal focal right posterolateral focal L4-5 disk protrusion without significant findings demonstrated.
3. Otherwise negative MR lumbar spine.

The EMG study concluded as follows:

IMPRESSION: Electrodiagnostic studies suggest a mild right S1 radiculopathy. There appears to be some conduction block in that nerve root, but no actual loss of axons. The right L4 and L5 nerve roots appear to be intact.

In addition, Petitioner submitted another IRO decision, dated November 22, 2004, which denied a request on her behalf for a discogram. That decision declared, in part:

The indications for a discogram are clinical signs of radiculopathy with inconsistent negative or equivocal CT, MR, or myelogram findings before a posterior discectomy.

Petitioner argued that this reasoning by the IRO provides logical support for the position that a myelogram should be authorized in an case where the more elaborate or intrusive discogram has been deemed inappropriate.

The most recent evidence offered by Petitioner was a letter from Dr. Oliva, dated June 21, 2005, which stated, "I have continued to treat this patient for low back pain with failed back

surgical syndrome and we have wanted to send this patient to a neurosurgeon and my recommendation would be to obtain a CT scan with a myelogram so that she can be better evaluated by a neurosurgeon.”

In response to the IRO’s observation that the presence of metal prostheses represents a primary basis for obtaining myelography, Petitioner confirmed that she has no metal in her back.

Citing the other basis for myelography identified by the IRO, however, Petitioner argued that she recently has experienced “significant changes” in her symptoms or physical condition, thus warranting the requested examination procedure.

B. Respondent

Respondent presented no testimony but argued that Petitioner has exhibited no new symptoms or significant change in condition since she underwent MRI and EMG examinations last year. A different type of examination procedure might be appropriate now, Respondent conceded, if those earlier tests had been invalid or inconclusive, but the reports indicate that they provided satisfactory results.

Most fundamentally, contended Respondent, the record contains no explanation of *why* Dr. Oliva has concluded that myelography is needed to evaluate the patient at this time.

IV. ANALYSIS

Petitioner bears the burden of proving those deficiencies that she contends should invalidate the IRO’s decision in this case. In the ALJ’s view, she has not discharged that burden.

The evidence and testimony offered by Petitioner certainly establishes that she continues to suffer significant pain. Unfortunately, it provides very little to demonstrate that the disputed procedures would contribute to overcoming that pain.

In reviewing the evidence, the ALJ can find no explanation of why Dr. Oliva or any other physicians need myelography to further the assessment of Petitioner’s case. While the IRO decisions suggest that myelography would be somewhat duplicative of previous MRI and EMG

testing, Petitioner has offered no countering evidence that myelography would offer any specific refinements in analysis or differences in perspective that would assist in Petitioner's diagnosis.

The ALJ also cannot perceive that the patient has exhibited new symptoms or conditions that justify the additional testing sought. The May 5 IRO decision appears to address this contention effectively in the following statement:

The claimant has back and leg pain that has been essentially constant in quality and location with the expected fluctuations in intensity for many years. She has not developed any new neurological deficits or other findings that would suggest the new development of spinal pathology in the past 14 months.

Petitioner asserted that her MRI and EMG tests in 2004 reflected significant new symptoms or conditions. The ALJ cannot interpret the tests in that manner. The MRI report mentioned a small (and not surprising) protrusion at the site of the patient's previous surgery. It did not indicate whether that bulge had developed at the time of the 1999 surgery or subsequently, but it did summarize the condition as "without significant findings demonstrated." The EMG study noted "mild" radiculopathy but provided no information as to how long it had been manifested.

Because the weight of the evidence in the record supports Respondent's position, the ALJ concludes that the IRO's decision should be confirmed.

V. CONCLUSION

The ALJ finds that, under the record provided in this case, the medical services at issue have not been shown to be medically necessary. Accordingly, preauthorization for these services should be denied, in accordance with the prior decision by the IRO.

VI. FINDINGS OF FACT

1. On____,____ ("Petitioner") suffered an injury to her lower back that was compensable under the Texas Worker's Compensation Act ("the Act"), TEX. LABOR CODE ANN. § 401.001 *et seq.*
2. In 1999, Petitioner underwent surgery (an L4-5 laminectomy) to address the injury. However, she continues to suffer chronic pain from the injury in her lower back and left leg.

3. When Petitioner sought preauthorization for myelography with post-myelogram CT scan - which Petitioner's treating physician recommended as an element of assessing further treatment options - the Insurance Company of the State of Pennsylvania ("Respondent"), the insurer for claimant's employer, denied preauthorization on the grounds that the proposed medical procedure was medically unnecessary.
4. Petitioner made a timely request to the Texas Workers' Compensation Commission ("Commission") for medical dispute resolution with respect to the requested preauthorization.
5. The independent review organization ("IRO") to which the Commission referred the dispute issued a decision on May 5, 2005, concluding that Respondent's request for preauthorization should be denied because the requested services were not medically necessary. As its basis for decision, the IRO declared:

The primary indication for myelography with post-myelogram CT scan rather than MRI is the presence of metal prostheses in proximity to the central nervous system. Neither is necessary as a routine measure in the absence of significant changes in the quality or location of the symptoms or significant changes in physical or neurological sign.
6. Petitioner does not have any metal in her body in proximity to the central nervous system.
7. Petitioner underwent an MRI examination in February of 2004 and an EMG (nerve conduction study) in September of 2004.
8. Neither the examinations noted in Finding of Fact No. 7 nor any other evidence in the record indicates that Petitioner has undergone recent significant changes in the quality or location of her symptoms or other significant changes in her physical or neurological condition.
9. Petitioner requested in timely manner a hearing with the State Office of Administrative Hearings ("SOAH"), seeking review and reversal of the IRO decision regarding preauthorization.
10. The Commission mailed notice of the scheduling of a hearing in this matter to the parties at their addresses on June 7, 2005.
11. A hearing in this matter was convened on July 5, 2005, at the William P. Clements Building, 300 W. 15th St., Austin, Texas, before Mike Rogan, an Administrative Law Judge with SOAH. Petitioner and Respondent appeared and presented evidence and argument. The record in the case closed on the same date.
12. Neither Petitioner nor Petitioner's physicians have provided documentation or other evidence to explain why the procedure noted in Finding of Fact No. 3 is needed for the further assessment of Petitioner's case.

VII. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act ("the Act"), TEX. LABOR CODE ANN. § 413.031.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in 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.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TEX. ADMINISTRATIVE CODE ("TAC") § 133.305(g) and §§ 148.001-148.028.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Petitioner, the party seeking relief, bore the burden of proof in this case, pursuant to 28 TAC § 148.21(h).
6. Based upon the foregoing Findings of Fact, the requested medical procedure for the claimant, as noted in Finding of Fact No. 3, does not represent an element of health care medically necessary under § 408.021 of the Act.
7. Based upon the foregoing Findings of Fact and Conclusions of Law, the findings and decision of the IRO in this matter issued on May 5, 2005, were correct; preauthorization for the requested medical procedure, as noted in Finding of Fact No. 3, should be denied.

ORDER

IT IS THEREFORE, ORDERED that the request of ___ *i.e.*, that the Insurance Company of the State of Pennsylvania be required to preauthorize myelography with post-myelogram CT scan B is denied, consistent with the findings and decision of the independent review organization in this matter, issued on May 5, 2005.

SIGNED July 11, 2005.

**MIKE ROGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**