

DOCKET NO. 453-05-7330.M2
MRD NO. M2-05-1552-01

—” Petitioner	§ § § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
v. STATE OFFICE OF RISK MANAGEMENT, Respondent		

DECISION AND ORDER

__(Claimant) requested a hearing on the decision of the Independent Review Organization (IRO)¹ denying preauthorization for bilateral lumbar facet medial nerve block injections. After considering the evidence and arguments presented, the Administrative Law Judge (ALJ) concludes that Claimant has shown by a preponderance of the evidence that the requested treatment is medically necessary to treat her compensable injury. Accordingly, the ALJ finds that the requested treatment should be preauthorized.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

There were no contested issues regarding jurisdiction or notice, and those matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

Claimant worked at the ___and suffered a work-related injury to her back on___, __, while attempting to restrain a client at the school. Claimant began being treated with conservative care, including physical therapy and medication, by Mario Pena, M.D. Dr. Pena referred Claimant to Balkar Sahinler, M.D., who ordered an MRI scan of Claimant’s spine. Based on the results of the MRI scan and the fact that the conservative treatment had not provided sufficient relief, Dr. Sahinler recommended that Claimant be given bilateral lumbar facet medial nerve block injections, and preauthorization was requested for such injections.

¹ The IRO is the statutory designee of the Medical Review Division of the Texas Workers' Compensation Commission (Commission) for purposes of resolving this preauthorization dispute. Effective September 1, 2005, the functions of the Commission were transferred to the newly-created Division of Workers Compensation of the Texas Department of Insurance.

The State Office of Risk Management (SORM) denied the preauthorization request.

Dr. Sahinler requested reconsideration and SORM maintained its denial. Claimant then requested medical dispute resolution through the Commission. The matter was referred to an IRO designated by the Commission for the review process. The IRO determined that the requested treatment was not medically necessary and should not be authorized. Claimant then requested a hearing on the IRO decision, and the matter was transferred to the State Office of Administrative Hearings (SOAH). The hearing convened at SOAH's hearings facility on September 28, 2005, before ALJ Craig R. Bennett. SORM was represented at the hearing by J. Red Tripp, and Claimant appeared by telephone and was assisted by ombudsman Juan Mireles. The record closed that same day.

II. DISCUSSION AND ANALYSIS

The issue in this case is whether bilateral lumbar facet medial nerve block injections are medically necessary to treat Claimant's work-related injury. After considering the evidence presented, the ALJ concludes that Claimant has shown, by a preponderance of the evidence, that the requested treatment is necessary.

Claimant did not present any expert testimony at the hearing, but rather relied on her own testimony and the medical documents in the record. Claimant's testimony consisted of a recitation of the nature and cause of her injury, the treatments she had received to date, her lack of benefit from the treatments received, and a discussion of her interaction with her treating doctors. While her testimony is helpful for understanding her injury and treatment to date, it is insufficient to establish the medical necessity of the requested treatment, because she is not a medical expert.

The medical records presented show that Claimant had an MRI in November 2004 that showed mild disk dessication, moderate disk bulging, and prominent facet hypertrophy. Dr. Sahinler concluded that facet injections would be helpful for treatment of her injury, in light of the MRI findings. The records also show that, on May 4, 2005, Brian Buck, M.D., conducted a required medical examination (RME) of Claimant. At that time, Dr. Buck concluded that Claimant's conservative treatment to date was appropriate and that facet injections would be medically reasonable treatment for Claimant.

SORM also did not present any expert testimony, but rather relied on the medical records in evidence. In particular, it presented two peer review reports it relied on in its preauthorization review. Those reports indicate that there was not a sufficient diagnosis of facet syndrome in Claimant and, therefore, facet injections were not necessary. In finding against preauthorization, the IRO reviewer relied on this same rationale and additionally noted a concern that Claimant's current condition was not necessarily related to the compensable injury event.

It is significant in this case that neither party presented any expert testimony at the hearing. In the absence of questioning, it is difficult for the ALJ to make credibility determinations or assign persuasive weight to certain testimony or evidence. Both SORM and Claimant presented reports from medical experts that have some interest in the matter. Claimant's treating doctors have an interest in favoring her position and SORM's peer reviewers have an interest in favoring SORM's position. If that was all the evidence in the record, Claimant would probably fail to meet her burden of proof.

However, there is also the report from the RME physician, Dr. Buck. In his report, Dr. Buck makes it clear that he believes the treatment to date has been conservative and reasonably necessary. Further, Dr. Buck supports the use of facet injections as medically necessary for Claimant's compensable injury. Given the fact that Dr. Buck has absolutely no other involvement in the matter and is a disinterested and unbiased physician, the ALJ finds his report to carry the most weight. And, the ALJ concludes that his report is sufficiently persuasive to meet Claimant's burden of proof in this case. Therefore, the ALJ finds that the preponderance of the evidence supports the conclusion that the facet injections are reasonable and necessary and should be preauthorized.

As to SORM's argument that facet injections are not necessary because Claimant has not been diagnosed with facet syndrome, the record fails to adequately establish the basis of this contention. First, without more clear and compelling evidence, the ALJ is unable to make a finding that facet injections are *only* appropriate in situations where a diagnosis of facet syndrome has first been made. The ALJ is not a medical doctor and may not presume that facet injections are only appropriate when a diagnosis of facet syndrome has been made. This must be established by persuasive evidence in the record. Given Dr. Buck's report, it appears that facet injections are

appropriate for Claimant's compensable injury, regardless of whether there has been a specific documented diagnosis of "facet syndrome." Therefore, the ALJ finds SORM's arguments to be unpersuasive and finds that Dr. Buck's report adequately establishes the need for the injections.

III. FINDINGS OF FACT

1. ___ (Claimant) worked at the ___ and suffered a work-related injury to her back on ___, ___, while attempting to restrain a client at the school.
2. At the time of Claimant's compensable injury, Claimant's workers' compensation insurance was administered by the State Office of Risk Management (SORM).
3. Claimant began being treated with conservative care, including physical therapy and medication, by Mario Pena, M.D.
4. Dr. Pena referred Claimant to Balkar Sahinler, M.D., who ordered an MRI scan of Claimant's spine.
5. Claimant had an MRI in November 2004 that showed mild disk dessication, moderate disk bulging, and prominent facet hypertrophy.
6. Based on the results of the MRI scan and the fact that the conservative treatment had not provided sufficient relief, Dr. Sahinler recommended that Claimant be given bilateral lumbar facet medial nerve block injections.
7. Dr. Sahinler requested preauthorization for bilateral lumbar facet medial nerve block injections.
8. SORM denied the preauthorization request.
9. Dr. Sahinler requested reconsideration and SORM maintained its denial.
10. On May 4, 2005, Brian Buck, M.D., conducted a required medical examination of Claimant. At that time, Dr. Buck concluded that Claimant's conservative treatment to date was appropriate and that facet injections would be medically reasonable treatment for Claimant.
11. Claimant requested medical dispute resolution through the Texas Workers' Compensation Commission (Commission). The matter was referred to an Independent Review Organization (IRO) designated by the Commission for the review process. The IRO determined that the requested treatment was not medically necessary and should not be authorized.
12. Claimant then requested a hearing on the IRO decision, and the matter was transferred to the State Office of Administrative Hearings (SOAH).

13. Notice of the hearing was sent on June 28, 2005, and 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.
14. The hearing convened at SOAH's hearings facility on September 28, 2005, before Administrative Law Judge Craig R. Bennett. SORM was represented at the hearing by J. Red Tripp, and Claimant appeared by telephone and was assisted by ombudsman Juan Mireles. The record closed that same day.
15. Bilateral lumbar facet medial nerve block injections are reasonable and necessary medical treatment for Claimant's compensable injury.

IV. CONCLUSIONS OF LAW

1. 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.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Claimant has the burden of proof. 28 TEX. ADMIN. CODE §§ 148.14(a) and 133.308(w).
5. Claimant proved, by a preponderance of the evidence, that the requested bilateral lumbar facet medial nerve block injections are medically necessary treatment for Claimant's compensable injury.
6. The request for preauthorization should be granted.

ORDER

IT IS, THEREFORE, ORDERED that preauthorization for bilateral lumbar facet medial nerve block injections for Claimant is granted.

SIGNED October 20, 2005.

**CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**