

CONTINENTAL CASUALTY CO.,
PETITIONER

V.

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RESPONDENT

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Continental Casualty Co. (Carrier) filed this petition, challenging the decision of an Independent Review Organization (IRO) which granted preauthorization of a lumbar myelogram for workers' compensation insurance claimant, ____(Claimant). The IRO found that the requested procedure was medically necessary. This decision finds that, based on the evidence presented during the hearing, the requested procedure should be preauthorized.

I. NOTICE AND PROCEDURAL HISTORY

Administrative Law Judge (ALJ) Tommy L. Broyles held the hearing on this matter on September 14, 2005. Both Carrier and Claimant were represented at the hearing. Proper notice of the hearing was provided as set out in the findings of fact and conclusions of law.

II. DISCUSSION

The evidence reveals that, in___, Claimant suffered a compensable injury to his back. He was provided with conservative care including epidural steroids, analgesics, and a work conditioning program but did not receive relief from his pain. In 1997, Claimant underwent a laminectomy with limited pain relief for six months. Presently, he complains of lumbar pain that has occurred primarily on his right side but recently became worse on his left side. Previous imaging includes MRIs in 1995 and 1996 and two myelograms with post CT scans in 2000 and 2002. The requested procedure would be used to assess whether and where spinal surgery should be performed.

Testifying on behalf of Claimant, Jacob Rosenstein, M.D., opined that the lumbar myelogram is medically necessary. He has treated Claimant since June 2000 with conservative treatment. The 2002 myelogram revealed a 2-mm bulging disc in Claimant's low back and some compression of the L5 nerve root at the L4-L5 level. Dr. Rosenstein noted that Claimant's spinal canal is relatively small which makes him more prone to pain from bulging discs, even if the bulge is relatively minor. He explained that because there is less room to accommodate the bulge in the canal, it is more likely the bulge will pressure canal nerves.

The second concern noted by Dr. Rosenstein is two PARS defects (cracks in the pars of the vertebrae) which could be congenital or caused by trauma from the compensable injury. After five years of what Dr. Rosenstein described as "every kind of treatment other than surgery," Dr. Rosenstein believes surgery is warranted. He does not want to perform surgery on Claimant based on the three-year-old myelogram, so he believes that another myelogram is medically necessary.

Carrier relies on the medical opinion of Melissa D. Tonn, M.D., who found the requested procedure to be unreasonable, because Claimant has had multiple prior spinal imaging studies with no further injury-generated pathology identified. Carrier also argues that the injury described by Dr. Rosenstein has progressed to a point where the treatment sought is for a condition other than the compensable injury. Further, Carrier does not believe that the injury date is valid for the treatment requested. Carrier is concerned that the requested treatment relates to an incident in 1995, rather than the compensable injury of _____. Because of this discrepancy and the opinions of Dr. Tonn, Carrier argues the requested procedure is not medically necessary.

III. ALJ's DECISION

Based on a review of the record, the ALJ concludes that Carrier failed to prove an additional myelogram is not medically necessary. Carrier bases its position on Dr. Tonn's conclusory opinion, one sentence in length, with no supporting explanations. Dr. Tonn was not called as a witness and did not testify during the evidentiary hearing. On the other hand, Dr. Rosenstein appeared and

testified regarding the medical need for the requested treatment. Dr. Tonn's cursory evaluation is

also rebutted by the board certified physician in neurological surgery who reviewed this case for the IRO. In his decision allowing the myelogram, the IRO doctor stated that the treatment was medically necessary because Claimant's pain had become more severe and had changed in location.

Carrier also challenged whether the requested imaging is medically necessary to treat the particular compensable injury. In this regard, the best evidence is an October 2004 report from James Hood, M.D., who found that the compensable injury is not resolved. Dr. Hood apparently provided a peer review, recommending an MRI be performed. Ultimately, the ALJ finds Dr. Rosenstein's testimony to be credible and concludes that the requested treatment is medically necessary for Claimant's compensable injury.

IV. FINDINGS OF FACT

1. On ____ (Claimant) suffered a compensable injury to his lower back.
2. At the time of Claimant's injury, his employer had workers' compensation insurance through Continental Casualty Co., (Carrier.)
3. Claimant seeks preauthorization for a lumbar myelogram.
4. Carrier denied the request for preauthorization.
5. Claimant requested medical dispute resolution at the Texas Workers' Compensation Commission, which referred the matter to an Independent Review Organization (IRO).
6. The IRO found that the lumbar myelogram should be preauthorized.
7. Carrier timely requested a hearing before the State Office of Administrative Hearings (SOAH).
8. Notice of the SOAH hearing was sent to the parties on August 12, 2005. The notice informed the parties of the date, time, and location of the hearing; the matters to be considered; the legal authority under which the hearing would be held; and the statutory provisions applicable to the matters to be considered.
9. The SOAH hearing convened and closed on September 14, 2005. Claimant and Carrier appeared and participated in the hearing.

10. Claimant has undergone extensive conservative care, epidural steroid injections, and a laminectomy, all without lasting pain relief.
11. Conservative care has failed.
12. A 2002 myelogram revealed a 2-mm bulging disc in Claimant's low back and some compression of the L-5 nerve root at the L-4 to L-5 level.
13. Claimant's spinal canal is relatively small, making him more prone to pain from bulging discs, even if the bulge is relatively minor.
14. Claimant suffers from two PARS defects that could be caused by trauma from the compensable injury.
15. A lumbar myelogram would provide additional information regarding Claimant's condition and aid the treating physician in determining whether and where to operate.
16. A lumbar myelogram is medically necessary treatment for Claimant's compensable injury.

V. 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. §§2001.051 and 2001.052.
3. As the Petitioner, Carrier has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.14(a).
4. Claimant established that the myelogram is medically necessary treatment for his compensable injury. TEX. LAB. CODE ANN. § 408.021.
5. The requested preauthorization of a myelogram of the lumbar spine should be granted. TEX. LAB. CODE ANN. § 408.021.

ORDER

IT IS ORDERED that the request submitted by Claimant __ for preauthorization of a lumbar myelogram is authorized.

Signed this 6th day of October 2005.

**TOMMY L. BROYLES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**