

AMERICAN HOME ASSURANCE COMPANY, Petitioner	§ § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
V. —, Respondent		

DECISION AND ORDER

American Home Assurance Company (Carrier) challenged a decision by an Independent Review Organization (IRO) granting preauthorization of a lumbar myelogram with CT scan for claimant, ___(Claimant). The IRO found that the requested procedures were medically necessary. This decision finds that, based on the evidence presented during the hearing, the requested procedures should not be preauthorized.

I. NOTICE AND PROCEDURAL HISTORY

Administrative Law Judge (ALJ) Tommy L. Broyles held the hearing on this matter on January 31, 2006. Carrier was represented by Dan Kelley, Attorney. Despite being given proper notice, Claimant did not appear and was not represented at the hearing. After presentation of evidence and argument by Carrier, the hearing was adjourned and the record closed on the same date.

II. DISCUSSION

The evidence reveals that on____, Claimant suffered a compensable injury to her lower back when she lifted a bicycle. Since that time, she has received several forms of treatment ranging from physical therapy, massage, chiropractic care, injections, facet injections and medication for pain. In addition, she has undergone several tests, including an MRI, EMG, and X-rays. When Claimant sought preauthorization for a lumbar myelogram with CT scan, Carrier denied it on the grounds that

the procedure was medically unnecessary. Claimant then sought medical dispute resolution through the Texas Workers' Compensation Commission (Commission). The IRO to which the Commission referred the dispute concluded that preauthorization of the lumbar myelogram with CT scan was appropriate. As its basis for decision, the IRO declared:

This patient had a fall onto her buttocks on ___ and has increasing symptoms of a radicular nature involving the right leg. The EMG/NCS revealed nerve root dysfunction of the L4 nerve root. The MRI revealed a bulging disc at L4-5. The patient has been through 94 physical therapy visits along with chiropractic treatments and medications with only temporary relief. A patient receiving 94 therapy visits and still with discomfort in the low back and right leg should have further diagnostic work-up. A lumbar myelogram with a CT scan should be carried out to further determine the site of the pain generator.

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

III. DISCUSSION

Only Carrier appeared and provided evidence. Dr. Melissa Tonn, M.D., board-certified in occupational medicine, testified on behalf of Carrier that she physically evaluated Claimant on November 4, 2004. Dr. Tonn noted that Claimant's medical records include a number of different diagnoses, but consistent evidence suggesting neurocompressive pathology is not found. In spite of Carrier's denial of the procedure, Claimant had the myelogram with CT scan performed on July 18, 2005. It revealed no evidence of neurocompressive pathology, no compressive fractures, and was essentially a useless study. Dr. Tonn concluded that the lumbar myelogram with CT scan are not medically necessary based on lack of clinical evidence from previous tests and procedures.

The evidence and testimony offered by Carrier is more credible than the IRO decision. The IRO incorrectly described Claimant's injury, stating that Claimant fell on her buttocks when no medical record has any mention of this. Moreover, the IRO failed to address the graduated diagnoses given by various doctors, the deficiencies between symptoms reported by Claimant and test results, and the notes in the medical record about Claimant's poor attitude toward work. Because the weight of the evidence in the record supports Carrier's position, the ALJ concludes that the lumbar myelogram with CT scan is not medically necessary. Accordingly, preauthorization for these procedures is denied.

IV. FINDINGS OF FACT

1. On____, Claimant suffered a compensable injury while lifting a 20-pound bicycle at ____ as a ____.
2. Claimant was first evaluated for her injury on ____, and since that time has seen several doctors and received several forms of treatment including: medication for pain, chiropractic services, trigger point injections, physical therapy, an MRI and two EMG's.
3. When Claimant sought preauthorization for a lumbar myelogram with CT scan, American Home Assurance Company (Carrier), the insurer for Claimant's employer, denied preauthorization on the grounds that the proposed treatment was not medically unnecessary.
4. Claimant made a timely request to the Texas Workers' Compensation Commission (Commission) for medical dispute resolution with respect to the preauthorization.
5. The Independent Review Organization (IRO) to which the Commission referred the dispute issued a decision on July 1, 2005, concluding that Claimant's request for preauthorization should be approved.
6. Claimant had the lumbar myelogram with CT scan performed on July 18, 2005.
7. Carrier timely requested a hearing with the State Office of Administrative Hearings (SOAH).
8. On August 15, 2005, the Commission properly mailed the notice of hearing.
9. A continuance was granted in this matter on September 2, 2005, and all parties were given proper notice of the new hearing date of December 5, 2005.
10. A second continuance was granted on November 14, 2005, and the hearing was rescheduled to January 31, 2005. All parties were properly notified of the continuance.
11. A hearing in this matter was convened on January 31, 2005, at the William P. Clements Building, 300 W. 15th Street, Austin, Texas, before Administrative Law Judge (ALJ) Tommy L. Broyles. Carrier was represented. Claimant did not appear and was not represented at the hearing.
12. Uncertainty as to the nature of Claimant's condition produced a number of different diagnoses, but the records failed to show any evidence of neurocompressive pathology.
13. A lumbar myelogram with CT scan is not medically necessary.

V. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (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 (SOAH) has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. § 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. As Petitioner, Carrier has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.14(a).
5. The evidence established that the requested lumbar myelogram with CT scan is not a medically necessary treatment for Claimant's compensable injury. TEX. LABOR CODE ANN. § 408.021.
6. The requested preauthorization of a lumbar myelogram with CT scan should not be granted. TEX. LABOR CODE ANN. § 413.014 and 28 TEX. ADMIN. CODE § 134.600.

ORDER

IT IS ORDERED that the request submitted by Claimant _____ for preauthorization of a lumbar myelogram with CT scan is denied.

SIGNED March 6, 2006.

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