

**DOCKET NO. 453-05-9435.M2
MRD NO. M2-05-1865-01**

**AMERICAN HOME ASSURANCE
COMPANY,**

Petitioner

v.

— ,

Respondent

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§**

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

American Home Assurance Company (Carrier) requested a hearing on the decision of the Independent Review Organization (IRO)¹ granting preauthorization for a lumbar discogram and post-discogram CT scan. After considering the evidence and arguments presented, the Administrative Law Judge (ALJ) concludes that Carrier has shown by a preponderance of the evidence that the requested procedures are not medically necessary to treat the compensable injury of claimant ___. (Claimant). Accordingly, the ALJ orders that the requested procedures are not 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 Wal-Mart and suffered a work-related injury on ___, while lifting items on her job. Claimant had pain in her lower back and began receiving treatment from Trenton Weeks, D.C., and John Milani, M.D. Claimant received physical therapy and, in October 2004, had an NCV/EMG diagnostic study performed. On December 1, 2004, the Commission issued a decision

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.

and order finding that Claimant's compensable injury consisted of a lumbar sprain/strain. January 2005, Claimant was placed at maximum medical improvement with a 5% whole person impairment. In February 2005, a CT scan was performed on Claimant, with the findings reflecting no significant disc herniations or bulges. Moreover, the findings were unremarkable except for the determination that Claimant had a "congenitally narrowed lumbar spine central canal due to shorter pedicles."² Being a congenital condition, this was unrelated to the compensable injury. Claimant underwent an MRI in March 2005, which showed some disc bulging at the L4-L5 and L5-S1 levels, and some disc dehydration. After reviewing the MRI and available x-rays, Dr. Milani noted that Claimant had degenerative L5-S1 facet joints and an annular tear at the L5-S1 level. At that time, Dr. Milani recommended that a lumbar discogram and post-discogram CT scan be performed to verify the cause of Claimant's back pain. The preauthorization request for these procedures was submitted to Carrier.

Carrier denied the preauthorization request. Dr. Milani requested reconsideration and Carrier 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 procedures were medically necessary and should be authorized. Carrier 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 October 5, 2005, before ALJ Craig R. Bennett. Carrier was represented at the hearing by attorney Dan Kelley, and Claimant appeared by telephone and represented herself, with the assistance of Dr. Trenton Weeks. The record closed that same day.

II. Discussion and Analysis

The issue in this case is whether a lumbar discogram and post-discogram CT scan are medically necessary to treat Claimant's work-related injury, a lumbar sprain/strain. After considering the evidence presented, the ALJ concludes that Carrier has shown that the requested

² Pet. Ex. 1, at 136.

procedures are not necessary.

At the hearing, Carrier presented medical records and the testimony of Melissa Tonn, M.D. As noted above, the medical records reflect that Claimant's compensable injury was solely a lumbar sprain/strain. Claimant received significant conservative care and was placed at maximum medical improvement in January 2005. Based on the scope of injury, Dr. Tonn opined that a discogram and post-discogram CT scan would not be appropriate because Claimant's condition did not involve a correctable pathology for which a discogram would serve as a useful tool for further treatment. Essentially, Dr. Tonn indicated that a discogram is not an appropriate diagnostic tool necessary as a precursor for any proper treatment that might be needed for a lumbar sprain/strain. Further, Dr. Tonn opined that a discogram was a controversial procedure with a high false positive rate, and that it was not a beneficial procedure even as a predicate to surgical intervention.

Although they appeared, neither Claimant nor Dr. Weeks offered any testimony. Rather, Claimant offered medical records into evidence and Dr. Weeks provided a brief closing argument indicating that he felt the records established the requested procedures were necessary to treat Claimant's injury. Of particular relevance, although not helpful to Claimant's case, is a page contained in the medical records offered by her. In a report dated April 14, 2005, Dr. Milani notes that "on April 6, 2005, Horizon Blue Cross-Blue Shield of New Jersey finalized approval of an artificial disc replacement, stating that the patient 'must have degenerative disc disease confirmed by patient history and radiographic studies, i.e., MRI imaging and provocative discography.'"

To the extent that Dr. Milani believes that Claimant has degenerative disc disease, then perhaps a discogram is appropriate as a diagnostic tool to determine the propriety of surgical intervention. However, degenerative disc disease is not a part of Claimant's compensable injury, which has been finally and conclusively determined to be only a lumbar sprain/strain. The ALJ agrees with Dr. Tonn's reasoned medical opinion that the requested procedures are simply not necessary nor beneficial in treating a lumbar sprain/strain. Therefore, the ALJ finds that the requested procedures are not medically appropriate or necessary for treatment of Claimant's compensable injury and should not be preauthorized. In support of this determination, the ALJ

makes the following findings of fact and conclusions of law.

III. Findings of Fact

1. ___ (Claimant) worked at ___ and suffered a work-related injury on ___, while lifting items on her job.
2. At the time of Claimant's compensable injury, American Home Assurance Company (Carrier) provided workers' compensation insurance coverage to Claimant.
3. As a result of her compensable injury, Claimant had pain in her lower back and began receiving treatment from Trenton Weeks, D.C., and John Milani, M.D.
4. On December 1, 2004, the Texas Workers' Compensation Commission (Commission) issued a decision finding that Claimant's compensable injury consisted of a lumbar sprain/strain.
5. In January 2005, Claimant was placed at maximum medical improvement with a 5% whole person impairment.
6. In February 2005, a CT scan was performed on Claimant, with the findings reflecting no significant disc herniations or bulges. Moreover, the findings were unremarkable except for the determination that Claimant had a "congenitally narrowed lumbar spine central canal due to shorter pedicles."
7. Claimant underwent an MRI in March 2005, which showed some disc bulging at the L4-L5 and L5-S1 levels, and some disc dehydration.
8. After reviewing the MRI and available x-rays, Dr. Milani noted that Claimant had degenerative L5-S1 facet joints and an annular tear at the L5-S1 level. At that time, Dr. Milani recommended that a lumbar discogram and post-discogram CT scan be performed to verify the cause of Claimant's back pain.
9. A preauthorization request for a lumbar discogram and post-discogram CT scan for Claimant was submitted to Carrier.
10. Carrier denied the preauthorization request.
11. Dr. Milani requested reconsideration and Carrier maintained its denial.
12. Claimant then 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 procedures were medically necessary and should be authorized.

13. Carrier then requested a hearing on the IRO decision, and the matter was transferred to the State Office of Administrative Hearings (SOAH).
14. Notice of the hearing was sent on September 14, 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.
15. The hearing convened at SOAH's hearings facility on October 5, 2005, before ALJ Craig R. Bennett. Carrier was represented at the hearing by attorney Dan Kelley, and Claimant appeared by telephone and represented herself, with the assistance of Dr. Trenton Weeks. The record closed that same day.
16. In a report dated April 14, 2005, Dr. Milani notes that "on April 6, 2005, Horizon Blue Cross-Blue Shield of New Jersey finalized approval of an artificial disc replacement, stating that the patient 'must have degenerative disc disease confirmed by patient history and radiographic studies, i.e., MRI imaging and provocative discography.'"
17. Congenital abnormalities or disc degeneration in Claimant are not part of Claimant's compensable injury, a lumbar sprain/strain.
18. Claimant's lumbar sprain/strain does not involve a correctable pathology for which a discogram would serve as a useful tool for further treatment.

IV. Conclusions of Law

1. 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.
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. Carrier has the burden of proof. 28 TEX. ADMIN. CODE §§ 148.14(a) and 133.308(w).
5. Carrier has proven, by a preponderance of the evidence, that the requested procedures are not medically necessary treatment for Claimant's compensable injury.
6. The request for preauthorization should be denied.

ORDER

IT IS, THEREFORE, ORDERED that preauthorization for Claimant___. to receive a lumbar discogram with post-discogram CT scan is denied.

SIGNED October 7, 2005.

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