

SOAH DOCKET NO. 454-07-0889.P1

<p>_____, Petitioner</p> <p>v.</p> <p>TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION AND CLAUDE MICHEL OLIVA, M.D., Respondents</p>	§ § § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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DECISION AND ORDER

_____ (self-insurer, referred to as Carrier) challenges a medical interlocutory order (MIO) issued by the Texas Department of Insurance, Division of Workers' Compensation (Division), requiring Carrier to pay for two epidural steroid injections (injections) in a 90-day period to be performed in a doctor's office. This decision concludes that both injections were performed in an ambulatory surgical center and not in a doctor's office as required under the MIO. Because the injections were not performed as ordered under the MIO, the Carrier is entitled to seek reimbursement from the Subsequent Injury Fund of all amounts paid in connection with the injections performed on October 9, 2006, and January 5, 2007.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The MIO was issued on September 26, 2006, pursuant to the Division's Prospective Review Medical Examination (PRME) rules at 28 TEX. ADMIN. CODE § 134.650. The Carrier filed a timely hearing request. After proper and timely notice, the hearing convened and closed on October 10, 2007, at the State Office of Administrative Hearings (SOAH), with the undersigned Administrative Law Judge (ALJ) presiding. The Carrier and the Division were represented by counsel, who appeared in person.

SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073(b) and 413.055 and TEX. GOV'T CODE ANN. ch. 2003.

II. DISCUSSION

A. Background

The injured worker (Claimant) worked as a _____ for _____. On _____, a large student jumped on her and knocked her to the concrete, and then fell on top of her. Claimant injured her right knee and lower back. An MRI of the spine showed L5-S1 protrusion/bulge. She complained of constant pain in her low back. Claimant worked for about four months after the injury but had to stop working because of her pain.¹

Employees have a right to necessary health care under TEX. LAB. CODE ANN. §§ 408.021 and 401.011. Section 408.021(a) provides: "An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment." Section 401.011(19) of the Labor Code provides that health care includes "all reasonable and necessary medical . . . services."

The Carrier has the burden of proof in this proceeding.²

B. Evidence and Analysis

On August 4 and 10, 2006, Claude Michel Oliva, M.D., Claimant's pain management specialist, filed requests with the Carrier to have three injections (CPT Code 62282, injection of neurolytic agent, lumbar to be performed in an outpatient/ambulatory surgical setting)

¹ The record is unclear as to whether Claimant has returned to work.

² TEX. LAB. CODE ANN. § 413.055; 28 TEX. ADMIN. CODE § 148.14(a).

preauthorized for Claimant. Carrier denied both requests and the reconsideration of those requests, stating that the requests were vague, that a previous injection had only provided four days of relief, and that there were no neurological deficits. On August 30, 2006, Dr. Oliva filed a Request for Prospective Review of Medical Care Not Requiring Preauthorization, seeking two injections. The Division sent the request to Gerald Lennon Hill, M.D., for prospective medical review. On September 18, 2006, Dr. Hill found that the two injections were medically necessary to treat Claimant's condition. He ordered "lumbar ESI - 2 injections in 90 day period to be performed in doctor's office." On September 26, 2006, the Division issued its MIO, ordering the two injections in a 90-day period to be performed in a doctor's office.

In this case, the ALJ does not address the medical necessity of the injections because Dr. Oliva did not follow the directives of the MIO. Because the injections proposed by Dr. Oliva were to be performed in an ambulatory surgical center, preauthorization of the injections was required under 28 TEX. ADMIN. CODE § 134.600(p)(2). Under 28 TEX. ADMIN. CODE § 134.600(p)(2), non-emergency health care requiring preauthorization includes outpatient surgical or ambulatory surgical services. Once the requests for preauthorization (and the reconsideration of those requests) had been denied, Dr. Oliva should have sought review by an independent review organization (IRO) in accordance with 28 TEX. ADMIN. CODE § 134.600(o)(3) (also see, 28 TEX. ADMIN. CODE § 133.308, MDR decision by Independent Review Organization). Instead of seeking an IRO review of the preauthorization requests, however, Dr. Oliva sought review of the same injections under the PRME provisions found at 28 TEX. ADMIN. CODE § 134.650.³

Dr. Hill, the PRME doctor, was specific in his understanding that the injections would occur in a doctor's office. He apparently knew (or should have known) that injections in an ambulatory surgical center would require preauthorization. In fact, he knew that Dr. Oliva had previously requested preauthorization of the injections and that those requests had been denied by the Carrier.⁴ Consistent with the PRME concept, therefore, Dr. Hill ordered that the injections be done in a doctor's office. Nonetheless, Dr. Oliva testified at the hearing that he did

³ Dr. Oliva knew that the injections performed in an ambulatory surgical center required preauthorization because he sought and was denied preauthorization on two occasions. 28 TEX. ADMIN. CODE § 134.650 should not be used to circumvent the preauthorization requirement.

⁴ Division Ex. 1 at 4.

not administer the injections in his office; he administered them at Covenant SurgiCenter, an ambulatory surgical center.⁵ He testified, however, that these injections could have been administered in a doctor's office.⁶

Because Dr. Oliva administered the injections at an ambulatory surgical center (for which preauthorization had been required, requested, and denied), he failed to follow the directives of the MIO; therefore, Carrier is entitled to seek reimbursement from the Subsequent Injury Fund for the two injections performed on October 9, 2006, and January 5, 2007.

III. FINDINGS OF FACT

1. The injured worker (Claimant) worked as a _____ for _____ as a _____.
2. On _____, a large student jumped on her and knocked her to the concrete, and then fell on top of her.
3. Claimant injured her right knee and lower back.
4. An MRI of the spine showed a protrusion/bulge at spine level L5-S1.
5. Claimant complained of constant pain in her low back.
6. Claimant worked for about four months after the injury but had to stop working because of her pain.
7. On August 4 and 10, 2006, Claude Michel Oliva, M.D., Claimant's pain management specialist, filed requests with South Plains School Workers' Compensation Program (Carrier) to have three epidural steroid injections (injections) (CPT Code 62282, injection of neurolytic agent, lumbar to be performed in an outpatient/ambulatory surgical setting) preauthorized for Claimant.
8. Carrier denied both requests and the requests for reconsideration, stating that the request was vague, that a previous injection had only provided four days of relief, and that there were no neurological deficits.
9. On August 30, 2006, Dr. Oliva filed a Request for Prospective Review of Medical Care Not Requiring Preauthorization, seeking two injections (CPT Code 62282).

⁵ Carrier Ex. 1 at 10 and 55. An ambulatory surgical center is defined as "a freestanding facility, other than a physician's office, where surgical and diagnostic services are provided on an ambulatory basis." Division Ex. 1 at 26.

⁶ The testimony is unclear as to whether Dr. Oliva could have performed the injections in his office. He testified generally that with the appropriate equipment, a doctor could administer injections in his/her office.

10. Texas Department of Insurance, Division of Workers' Compensation (Division) sent the request to Gerald Lennon Hill, M.D., for a prospective review medical examination.
11. On September 18, 2006, Dr. Hill found that the two injections were medically necessary to treat Claimant's condition.
12. Dr. Hill ordered "lumbar ESI - 2 injections in 90-day period to be performed in doctor's office."
13. On September 26, 2006, the Division issued the medical interlocutory order (MIO), ordering the two injections in a 90-day period to be performed in a doctor's office.
14. Dr. Hill knew that Dr. Oliva had requested preauthorization of the injections and that those requests had been disputed by the Carrier.
15. Dr. Hill, therefore, ordered that the injections be done in a doctor's office.
16. Dr. Oliva did not administer the injections in his office. He administered them at Covenant SurgiCenter, an ambulatory surgical center.
17. The injections could have been administered in a doctor's office with the appropriate equipment.
18. Dr. Oliva did not follow the directives of the MIO.
19. Carrier requested a hearing not more than 20 days after receiving notice of the MIO.
20. All parties received not less than 10 days notice of the hearing that 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.
21. After proper and timely notice, the hearing convened on October 10, 2007, at the State Office of Administrative Hearings, with the Administrative Law Judge Michael J. O'Malley presiding. The Carrier was represented by Gregory D. Solcher, and the Division was represented by Dean L. Krohn.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073(b) and 413.055 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. The Carrier had the burden of proof in this proceeding, and it met its burden in this case. TEX. LAB. CODE ANN. § 413.055; 28 TEX. ADMIN. CODE § 148.14(a).
4. Under 28 TEX. ADMIN. CODE § 134.600(p)(2), non-emergency health care requiring preauthorization includes outpatient surgical or ambulatory surgical services.
5. Preauthorization of the injections (CPT Code 62282) was required under 28 TEX. ADMIN. CODE § 134.600(p)(2).
6. Once the requests for preauthorization (and the reconsideration of those requests) had been denied, Dr. Oliva's remedy was to seek review by an independent review organization in accordance with 28 TEX. ADMIN. CODE § 134.600(o)(3).
7. Because Dr. Oliva failed to follow the directives of the MIO, Carrier is entitled to seek reimbursement from the Subsequent Injury Fund of all amounts paid in connection with two injections performed on October 9, 2006, and January 5, 2007.

ORDER

IT IS THEREFORE, ORDERED that because Claude Michel Oliva, M.D., failed to follow the directives of the medical interlocutory order, _____ is entitled to seek reimbursement from the Subsequent Injury Fund for the two epidural steroid injections performed on October 9, 2006, and January 5, 2007, if payment was submitted for those injections.

SIGNED December 5, 2007.

**MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**