MEDICAL CONTESTED CASE HEARING NO. 09049
M6-08-13932-01

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder.

ISSUE

A benefit contested case hearing was held on August 28, 2008, to decide the following disputed issue:

> Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IR0) that Claimant is not entitled to a thoracic myelogram for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was represented by RB, attorney. Carrier appeared and was represented by attorney, GT.

BACKGROUND INFORMATION

It is undisputed that Claimant sustained an injury during the course and scope of his employment on _____. The early accident reports state that the Claimant tripped over some concrete and fell backwards landing on his back. From the inception of the claim, Claimant reported low and upper back pain. He has undergone conservative treatment including extensive physical therapy.

Early diagnostic testing revealed a central and right side disc herniation extending behind the L4 vertebral body at L4-5 with impingement on the thecal sac; and, central and right side disc herniation at T7 with impingement on the spinal cord.

Claimant was diagnosed with thoracic radiculopathy secondary to the disc herniation as well as mechanical lumbar pain due to facet joint arthropathy without radiculopathy.

For his thoracic symptoms, Claimant underwent epidural steroid injections, which resulted in some pain relief.

The designated doctor initially certified Claimant at MMI on April 17, 2006 and assessed a 0% impairment rating for a lumbar sprain.

Claimant ultimately saw a surgeon, Dr. H, who noted the HNP with central stenosis at L4-5 and the HNP at T7 and recommended a caudal epidural steroid block to determine which area was the pain generator. On September 11, 2007, Dr. H noted that his request for the caudal ESI was denied at the IRO level. He further noted that his request for a discogram/CT had been twice denied by the carrier. In an effort to identify the pain generators for a determination of the necessity of surgery as part of the treatment plan, Dr. H recommended a repeat MRI as one had not been done in two years.

In October of 2007, Dr. H recommended surgery at L4-5, which took place on January 22, 2008. Claimant continued to have complaints of right side thoracic pain and his surgeon ordered a new MRI of the thoracic spine, which was performed on March 21, 2008. The radiologist found normal vertebral bodies and normal signal throughout the thoracic cord as well as no bulging annulus or disc herniation and no stenosis.

Dr. H reviewed the films and opined that the MRI was "very 'insensitive'" and suspected that there was some evidence of soft tissue protrusion "at a level that could be T7-8 out to the left side" but could not confirm that suspicion due to the poor quality MRI. He recommended a bone scan and possible myelogram/CT scan of the thoracic region. The bone scan was approved because of a worsening kyphotic deformity documented in Dr. H'srecords.

In reviewing Dr. H's request for a thoracic myelogram, the first utilization review doctor, Dr. A, an orthopedic surgeon, cited the *Official Disability Guidelines* reference to myelography and CT myelography, and stated that it was not indicated unless an MRI was unavailable, contraindicated or inconclusive. He also noted that the *ODG* provides for myelography as a surgical planning tool. Dr. A denied the preauthorization for myelography of the thoracic spine due to insufficient evidence of surgical indications per the *ODG*.

The utilization review doctor who reviewed the request on reconsideration, Dr. G, an orthopedic surgeon, also denied the requested treatment. Dr. G cited the same sections of the ODG cited by Dr. A, and opined that a thoracic myelogram and CT scan was not medically indicated. He noted Claimant's normal thoracic MRI and the fact that there was no indication that Claimant was being evaluated for surgical planning.

An IRO reviewer and board certified orthopedic surgeon reviewed the records and upheld the adverse determinations of the utilization review doctors. The IRO denied the CT myelogram stating that Claimant had no evidence of thoracic radiculopathy, therefore myelography would not elucidate the source of his thoracic pain and he was not a candidate for thoracic surgery. He also noted the normal repeat MRI of the thoracic spine.

DISCUSSION

Texas Labor Code Section 408.021 provides that 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. **Section 401.011(22-a)** defines health care reasonably required as "health care that is clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with: (A) evidence based medicine; or (B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community." "Evidence based medicine" is further defined, by **Section 401.011(18-a)** as the use of the current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts, and treatment and practice guidelines in making decisions about the care of individual patients.

The Division of Workers' Compensation has adopted treatment guidelines under Division **Rule 137.100**. That rule requires that health care providers provide treatment in accordance with the

current edition of the *Official Disability Guidelines (ODG),* and treatment provided pursuant to those guidelines is presumed to be health care reasonably required as mandated by the above-referenced sections of the **Texas Labor Code**.

ODG

The initial inquiry in any dispute regarding medical necessity is whether the proposed care is consistent with the *ODG*. As the utilization review and IRO doctors in the instant case have stated, the *ODG* allows for myelography if an MRI is unavailable; and, restricts the use of CT myelography to those situations where an MRI is unavailable, contraindicated or inconclusive.

The *ODG* Treatment Guidelines discuss CT myelography and myelography as follows:

Myelography: Recommended as an option. Myelography OK if MRI unavailable. (Bigos, 1999)

CT & CT Myelography: Not recommended except for indications below for CT. CT Myelography OK if MRI unavailable, contraindicated (e.g. metallic foreign body), or inconclusive. (Slebus, 1988) (Bigos, 1999) (ACR, 2000) (Airaksinen, 2006) (Chou, 2007) Magnetic resonance imaging has largely replaced computed tomography scanning in the noninvasive evaluation of patients with painful myelopathy because of superior soft tissue resolution and multiplanar capability. Invasive evaluation by means of myelography and computed tomography myelography may be supplemental when visualization of neural structures is required for surgical planning or other specific problem solving. (Seidenwurm, 2000) The new ACP/APS guideline as compared to the old AHCPR guideline is more forceful about the need to avoid specialized diagnostic imaging such as computed tomography (CT) without a clear rationale for doing so. (Shekelle, 2008)

Indications for imaging – computed tomography:

-Thoracic spine trauma: equivocal or positive plain films, no neurological deficit
-Thoracic spine trauma: with neurological deficit
-Lumbar spine trauma: trauma, neurological deficit
-Lumbar spine trauma: seat belt (chance) fracture
-Myelopathy (neurological deficit related to the spinal cord), traumatic
-Myelopathy, infectious disease patient
-Evaluate pars defect not identified on plain x-rays
-Evaluate successful fusion if plain x-rays do not confirm fusion (Laasonen, 1989)

As noted previously herein, "health care reasonably required" means health care that is clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with evidence-based medicine or if that evidence is not available, generally accepted standards of medical practice recognized in the medical community. Treatment provided pursuant to the *ODG* is presumed to be health care reasonably required.

Both of the utilization review doctors and the IRO doctor denied the requested lumbar myelogram

with CT citing the relevant provisions of the *ODG*, specifically the fact that there was no showing that an MRI was unavailable, contraindicated or inconclusive (in fact one had been performed and was interpreted as being normal); and, there was no indication that Claimant was being evaluated for surgical planning or was a candidate for surgical intervention in the thoracic area. It is incumbent on the Claimant, therefore, to provide evidence-based medicine sufficient to overcome the presumption afforded the *ODG* and the opinions of the doctors correctly applying the *ODG*.

Other Evidence Based Medicine

When weighing medical evidence, the hearing officer must first determine whether the doctor giving the expert opinion is qualified to offer it, but also, the hearing officer must determine whether the opinion is relevant to the issues in the case and whether the opinion is based upon a reliable foundation. An expert's bald assurance of validity is not enough. *See* ***Black v. Food Lion, Inc.***, 171 F.3rd 308 (5th Cir. 1999); ***E.I. Du Pont De Nemours and Company, Inc. v. Robinson***, 923 S.W.2d 549 (Tex. 1995). When determining reliability, the hearing officer must consider the evidence in terms of (1) general acceptance of the theory and technique by the relevant scientific community; (2) the expert's qualifications; (3) the existence of literature supporting or rejecting the theory; (4) the technique's potential rate of error; (5) the availability of other experts to test and evaluate the technique; (6) the clarity with which the theory or technique can be explained to the trial court; and (7) the experience and skill of the person who applied the technique on the occasion in question. ***Kelly v. State***, 792 S.W.2d 579 (Tex. App.-Fort Worth 1990).

Claimant failed to present an evidence-based medical opinion from a competent source to overcome the IRO's decision. The treatment proposed by Dr. His a departure from the *ODG* in that he recommends CT myelography but fails to show how an MRI is unavailable, contraindicated or inconclusive. (Especially in light of the fact that a lumbar MRI was performed in March of 2008). In a letter dated August 14, 2008, Dr. H cited the same section of the ODG referenced herein and specifically referred to the studies cited by the *ODG* section in an effort to justify the requested service. Dr. H stated that Claimant's thoracic MRI was inconclusive, and he suspected nerve root tethering in the thoracic region or "some other compelling evidence to explain the patient's ongoing symptomatology." He opined that Claimant definitively matched the patient selection criteria listed in the *ODG* and reurged the need for a dynamic weight-bearing myelogram/CT scan with flexion and extension sequences for the thoracic and lumbar spine region. He stated that the study was needed for surgical planning and he preferred visualization of the potential pain generators via the requested study. Despite the fact that Dr. H cited the *ODG* in support of his request, he failed to explain why the March 2008 MRI was inconclusive. His references to the *ODG* sections cited by the utilization review doctors and the IRO herein referenced the lumbar spine, but did not address the thoracic spine, which is the spinal region the subject of the requested service. His conclusory statements, without sufficient reference to the *ODG* or other evidence-based medicine justifying departure from the *ODG*, do not meet the requisite evidentiary standard required to overcome the presumption afforded the IRO. The preponderance of the evidence is not contrary to the IRO decision and the requested thoracic myelogram with CT does not meet the criteria set out in the *ODG*.

Even though all the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

FINDINGS OF FACT

1. The parties stipulated to the following facts:

   A. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.

   B. On _____, Claimant was the employee of (Employer), when he sustained a compensable injury.

   C. The IRO determined that the requested services were not reasonable and necessary health care services for the compensable injury of _____.

2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and name and street address of Carrier's registered agent which was admitted into evidence as Hearing Officer's Exhibit Number 2.

3. Claimant's surgeon recommended a thoracic myelogram CT scan.

4. The *ODG* recommends thoracic CT myelography where an MRI is unavailable, contraindicated or inconclusive; where there are equivocal or positive plain films, and no neurological deficit; or, where there is neurological deficit.

5. The IRO decision upheld the Carrier's denial of the requested thoracic myelogram with CT because the Claimant's medical records did not show that an MRI was unavailable, contraindicated or inconclusive; did not show neurological deficit; and, did not show that Claimant was a surgical candidate.

6. The requested service is not consistent with the *ODG* criteria for thoracic myelography with CT.

7. The requested thoracic myelogram with CT is not health care reasonably required for the compensable injury of _____.

CONCLUSIONS OF LAW

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.

2. Venue was proper in the (City) Field Office.

3. The preponderance of the evidence is not contrary to the decision of IR0 that a thoracic myelogram with CT is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to a thoracic myelogram with CT for the compensable injury of _____.

ORDER

Carrier is not liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with Section 408.021.

The true corporate name of the insurance carrier is **ST. PAUL FIRE AND MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
D/B/A CSC – LAWYERS INCORPORATING SERVICE COMPANY
701 BRAZOS STREET #1050
AUSTIN, TEXAS 78701

Signed this 10th day of November, 2008.

Erika Copeland
Hearing Officer