MEDICAL CONTESTED CASE HEARING NO. 09070
M6-08-15094-01

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 September 15, 2008, to decide the following disputed issue:

> Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to a post-myelogram CT scan 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

The medical records show that Claimant sustained an injury to his head, neck and low back in the course and scope of his employment on _____. An MRI performed on June 29, 2006 revealed a compression fracture involving the L2 vertebral body with no evidence of displacement as well as a central and left sided disc protrusion and left lateral recess stenosis at L4-5 and a central and left sided disc herniation and lateral recess and foraminal stenosis at L5-S1.

Claimant received conservative treatment including medication and physical therapy. EMG testing in October of 2006 revealed no evidence of radicular symptoms in the upper or lower extremities, however, Claimant was diagnosed with lumbar radiculopathy.

In November of 2006, the designated doctor found that Claimant had not reached MMI, and recommended injections at L4-5 and continued work hardening and physical therapy. In early 2007, Claimant underwent a series of epidural steroid injections, which provided limited benefit of brief duration.

Dr. H saw the Claimant on August 22, 2007. He noted the pathology evidenced by the June 29, 2006 MRI. He also noted the series of three epidural steroid injections which provided 10 to 15% relief for one month each. Dr. H diagnosed the compression fracture at L2, multilevel spondylosis, severe disc resorption at L5-S1 and chronic lumbar radicular symptoms. He recommended lumbar discography at L1-2, L3-4, L4-5 and L5-S1. He stated that Claimant was a surgical candidate and he wanted to perform the discography to identify all pain generators.

A psychological evaluation performed on October 18, 2007, opined that there were minimal psychological factors present and Claimant was an excellent candidate for a discogram.

The carrier denied the requested discogram citing the *ODG* and the fact that discography is not recommended.

Upon denial of the requested discography, Dr. H proceeded to request preauthorization for anterior discectomy and fusion at L4-5 and L5-S1. That surgical request was also denied by the carrier. That denial was upheld by an IRO on June 3, 2008.

On July 1, 2008, Dr. H addressed the denial of the requested surgery and upcoming spinal surgery hearing. He requested a dynamic myelogram with flexion/extension views and post-myelogram CT scan to further clarify Claimant's pathology and pain generators since the discogram had been denied.

The first utilization review doctor, Dr. P, a neurosurgeon, cited the *ODG* and denied the requested dynamic weight bearing lumbar myelogram with post myelogram CT scan. He noted that the *ODG* states that CT myelography is recommended if MRI is unavailable, contraindicated or inconclusive. The reviewer further noted the MRI results and conservative treatment and stated that there was no clear documentation of conditions or diagnoses with supportive/objective and imaging findings for which CT myelography was indicated.

The utilization review doctor (a neurosurgeon) who reviewed the request on reconsideration, Dr. G, also denied the requested treatment. He also cited the *ODG* for the proposition that CT myelography is recommended if MRI is unavailable, contraindicated or inconclusive. Dr. G denied the requested procedure. He noted that Claimant had previously undergone an MRI, which indicated significant pathology, however there was no indication from the records that Claimant had a progressive neurologic deficit that would require repeat imaging.

An IRO reviewer and board certified physiatrist reviewed the records and upheld the adverse determinations of the utilization review doctors. The IRO denied the requested post-myelogram CT scan citing the *ODG* and noting that Claimant already had an MRI scan, which adequately defined his anatomy and likely the pathology for which he was having symptoms. He stated that in light of the presence of an abnormal MRI scan, there did not appear to be clear indication for additional neural imaging tests.

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, therefore, 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 for the low back 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:
>
> -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 and the lack of clinical evidence of neurological deficit. It is incumbent on the Claimant, therefore, to provide evidence-based medicine sufficient to overcome 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. Dr. H is a board certified surgeon and is certainly qualified to render an opinion regarding low back surgery and treatment. The treatment proposed by Dr. H, however, is a departure from the *ODG* in that the procedure is only recommended in the absence of an MRI or in cases where an MRI is contraindicated or inconclusive. Dr. H cited the same *ODG* provisions relied on by the utilization review and IRO doctors. He also cited some of the specific studies cited by the relevant *ODG* section. He concluded that Claimant "definitively matches patient selection criteria" and requested expedited coverage of the requested dynamic weight-bearing myelogram/CT scan. He stated that Claimant's response to conservative treatment had been refractory and the study was needed for surgical planning. The treatment proposed by Dr. H is 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 June of 2006). Further, the reports of Dr. H do not sufficiently document neurological deficit.

Under the Act, treatment provided pursuant to the *ODG* is presumed to be health care reasonably required as mandated by the above-referenced sections of the **Texas Labor Code**. Mere citation to the *ODG*, however, does not carry the day. When both parties cite the *ODG* in support of their position, that position must be supported by sufficient evidence to justify application of the *ODG*. Dr. H's references to the *ODG* articles, without explanation as to how they apply in the instant case do not amount to evidence-based medicine. His records and conclusory opinions, 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 IRO. The preponderance of the evidence is not contrary to the IRO decision and the requested post myelogram CT scan 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 treating surgeon recommended a post-myelogram CT scan.

4. The *ODG* recommends CT myelography where an MRI is unavailable, contraindicated or inconclusive and where there is evidence of neurological deficit.

5. The IRO decision upheld the Carrier's denial of the requested post-myelogram CT scan because the Claimant's medical records did not show that an MRI was unavailable, contraindicated or inconclusive and did not show neurological deficit.

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

7. The requested post-myelogram CT scan 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 IRO that a post-myelogram CT scan is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to a post-myelogram CT scan 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 **TRAVELERS INDEMITY 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 31st day of December, 2008.

Erika Copeland
Hearing Officer