

MEDICAL CONTESTED CASE HEARING NO. 16056

**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. For the reasons discussed herein, the Hearing Officer determines that Claimant is not entitled to a repeat MRI for the lumbar spine with and without contrast for the compensable injury of (Date of Injury).

**ISSUES**

A contested case hearing was held on January 19, 2017 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to a repeat MRI for the lumbar spine with and without contrast for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by HS, ombudsman. Respondent/Carrier appeared and was represented by JL, attorney.

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury to his lumbar spine on (Date of Injury) from a slip and fall accident when he walked down some stairs. Claimant had an MRI performed on February 5, 2013 for the lumbar spine with and without contrast, which resulted in a laminectomy at L2-3 with discectomy and grafting. Another MRI was performed on December 31, 2014 with an impression of multilevel lumbar spondylosis along with stenosis at L2-3, postoperative laminectomy findings at L4-5, and bilateral foraminal stenosis at L5-S1. A CT Myelogram dated January 8, 2016 revealed foraminal narrowing at L2-3 and other levels along with severe degenerative disc disease at L2-3 as well as multilevel facet arthrosis and evidence of prior fusions.

During a follow-up visit after an epidural steroid injection on June 29, 2015, Claimant's physician, SH, D.O., believed it was the surgical hardware causing Claimant's pain, which was worsening. Dr. H's plan of care included Claimant undergoing a CT Myelogram to evaluate the hardware pain. Then, in June 2016, Dr. H wanted Claimant to undergo an MRI scan to evaluate why his pain was escalating. Dr. H requested pre-authorization for a repeat MRI for the lumbar spine with and without contrast. Claimant, however, testified a repeat MRI is needed because the first MRI could not be properly read.

The proposed procedure by Dr. H was denied by the Carrier/Respondent (Carrier) and submitted to an IRO, who upheld the Utilization Review denials, and Claimant appealed.

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. Health care reasonably required is further defined in Texas Labor Code Section 401.011 (22a) 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 evidence based medicine or, if evidence based medicine is not available, then generally accepted standards of medical practice recognized in the medical community. Health care under the Texas Workers' Compensation system must be consistent with evidence based medicine if that evidence is available. Evidence based medicine is further defined in Texas Labor Code Section 401.011 (18a) to be 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. The Commissioner of the Division of Workers' Compensation is required to adopt treatment guidelines that are evidence-based, scientifically valid, outcome-focused and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. Texas Labor Code Section 413.011(e). Medical services consistent with the medical policies and fee guidelines adopted by the commissioner are presumed reasonable in accordance with Texas Labor Code Section 413.017(1).

In accordance with the above statutory guidance, the Division of Workers' Compensation has adopted treatment guidelines by Division Rule 137.100. This rule directs health care providers to provide treatment in accordance with the current edition of the Official Disability Guidelines (ODG), and such treatment is presumed to be health care reasonably required as defined in the Texas Labor Code. Thus, the focus of any health care dispute starts with the health care set out in the ODG. Also, in accordance with Division Rule 133.308 (t), "A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division are considered parties to an appeal. In a Contested Case Hearing (CCH), the party appealing the IRO decision has the burden of overcoming the decision issued by an IRO by a preponderance of evidence-based medical evidence."

Although the ODG does not specifically address repeat MRIs, the ODG recommends the following for MRIs for the low back:

Recommended for indications below. MRI is the test of choice for patients with prior back surgery, but for uncomplicated low back pain with radiculopathy, this test is not recommended until after at least one month of conservative therapy, sooner if severe or progressive neurologic deficit. Repeat MRI is not routinely recommended, and should be reserved for a significant change in symptoms and/or findings suggestive of significant

pathology (e.g., tumor, infection, fracture, neurocompression, recurrent disc herniation). (Bigos, 1999) (Mullin, 2000) (ACR, 2000) (AAN, 1994) (Aetna, 2004) (Airaksinen, 2006) (Chou, 2007) See also *ACR Appropriateness Criteria™*; Standing MRI.

**Indications for imaging -- Magnetic resonance imaging:**

- Thoracic spine trauma: with neurological deficit
- Lumbar spine trauma: trauma, neurological deficit
- Lumbar spine trauma: seat belt (chance) fracture (If focal, radicular findings or other neurologic deficit)
- Uncomplicated low back pain, suspicion of cancer, infection, other “red flags”
- Uncomplicated low back pain, with radiculopathy, after at least 1 month of conservative therapy, sooner if severe or progressive neurologic deficit.
- Uncomplicated low back pain, prior lumbar surgery
- Uncomplicated low back pain, cauda equina syndrome
- Myelopathy (neurological deficit related to the spinal cord), traumatic
- Myelopathy, painful
- Myelopathy, sudden onset
- Myelopathy, stepwise progressive
- Myelopathy, slowly progressive
- Myelopathy, infectious disease patient
- Myelopathy, oncology patient
- Repeat MRI: When there is significant change in symptoms and/or findings suggestive of significant pathology (e.g., tumor, infection, fracture, neurocompression, recurrent disc herniation)

The IRO doctor, a medical doctor board certified in Orthopedic Surgery, thought the requested treatment was not medically necessary and noted the denial letters from the Utilization Review Agents indicated the lack of apparent progressive neurologic deficit or re-injury, VAS pain levels and/or recent information regarding comprehensive conservative treatments rendered. The IRO doctor indicated in his October 13, 2016 report that the ODG supports consideration for a repeat MRI in certain circumstances, which included severe or progressive neurologic deficit after failure of reasonable conservative treatment. The IRO doctor determined that the level of severity of the subjective findings was not “recently detailed in a visual analogue score as compared to prior” and there lacked evidence of progressive neurologic findings and/or failure of recent reasonable conservative treatment.

WN, M.D., testified on behalf of Carrier supporting the IRO doctor’s findings that a repeat MRI because of complaints of pain and suspicion the pain may be caused by hardware is not medically necessary and not consistent with the ODG. Dr. N testified that ODG does not support the use of MRI and other imaging for post-surgical back pain when there is been definitive CT Myelogram that has been done, which occurred in this case. He explained that a CT Myelogram is the definitive diagnostic for evaluating post-surgical spine pain problem, because the metal from the hardware will interfere with the imaging in an MRI resulting in a bad resolution.

Neither Claimant nor Dr. H in his medical records cited the ODG treatment guidelines or any other evidence based medical evidence to support their position.

There was no objection to the testimony, reports, or qualifications of any doctor.

The Hearing Officer considered all of the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all of the evidence whether or not the evidence is specifically discussed in this Decision and Order

### **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 (Date of Injury), Claimant was the employee of (Employer), Employer.
  - C. On (Date of Injury), Employer provided workers' compensation insurance with TASB Risk Management Fund, Carrier.
  - D. Claimant sustained a compensable injury on (Date of Injury).
  - E. The Texas Department of Insurance appointed MedHealth Review, Inc., as the independent review organization (IRO) in this matter.
  - F. The IRO determined that the proposed repeat MRI for the lumbar spine with and without contrast is not health care reasonably required for the compensable injury of (Date of Injury).
2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. The decision of the IRO that the Claimant is not entitled to a repeat MRI for the lumbar spine with and without contrast is not health care reasonably required for the compensable injury of (Date of Injury) is not contrary to the preponderance of the evidence.

**CONCLUSIONS OF LAW**

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. Venue is proper in the (City) Field Office.
3. The preponderance of the evidence is not contrary to the decision of the IRO that a repeat MRI for the lumbar spine with and without contrast is not health care reasonably required for the compensable injury of (Date of Injury).

**DECISION**

Claimant is not entitled to a repeat MRI for the lumbar spine with and without contrast for the compensable injury of (Date of Injury).

**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 §408.021.

The true corporate name of the insurance carrier is **(CARRIER)** and the name and address of its registered agent for service of process is

**(NAME)**  
**(ADDRESS)**  
**(CITY), TEXAS (ZIPCODE)**

Signed this 27th day of January, 2017.

Dee Marlo Chico  
Hearing Officer