

MEDICAL CONTESTED CASE HEARING NO. 18009

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 Administrative Law Judge (ALJ) determines that Claimant is not entitled to cervical myelogram with CT scan for the compensable injury of (Date of Injury).

ISSUES

A contested case hearing was held on March 28, 2018 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to cervical myelogram with CT scan for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by LP, ombudsman. Respondent/Carrier appeared and was represented by KP, attorney.

EVIDENCE PRESENTED

No witnesses testified.

The following exhibits were admitted into evidence:

ALJ's Exhibits ALJ-1 and ALJ-2.

Claimant's Exhibits C-1 through C-4.

Carrier's Exhibits CR-1 through CR-F.

BACKGROUND INFORMATION

Claimant contested the determination of the IRO doctor who determined that he was not entitled to a cervical myelogram with CT scan. He relied on the medical records of Dr. JR, his treating doctor. Carrier argued that Claimant offered insufficient evidence-based medicine to overcome the IRO decision, which is based on the Official Disability Guidelines (ODG).

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(s), "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." The ODG addresses the necessity for the cervical myelogram:

Not recommended except for selected indications below, when MR imaging cannot be performed, or in addition to MRI.

ODG Criteria for Myelography and CT Myelography:

1. Demonstration of the site of a cerebrospinal fluid leak (post-lumbar puncture headache, post-spinal surgery headache, rhinorrhea, or otorrhea).
2. Surgical planning, especially in regard to the nerve roots; a myelogram can show whether surgical treatment is promising in a given case and, if it is, can help in planning surgery.

3. Radiation therapy planning, for tumors involving the bony spine, meninges, nerve roots or spinal cord.
4. Diagnostic evaluation of spinal or basal cisternal disease, and infection involving the bony spine, intervertebral discs, meninges and surrounding soft tissues, or inflammation of the arachnoid membrane that covers the spinal cord.
5. Poor correlation of physical findings with MRI studies.
6. Use of MRI precluded because of:
 - a. Claustrophobia
 - b. Technical issues, e.g., patient size
 - c. Safety reasons, e.g., pacemaker
 - d. Surgical hardware

Myelography or CT-myelography may be useful for preoperative planning. (*Bigos, 1999*) (*Colorado, 2001*) Myelography and CT Myelography has largely been superseded by the development of high resolution CT and magnetic resonance imaging (MRI), but there remain the selected indications for these procedures, when MR imaging cannot be performed, or in addition to MRI. (*Mukherji, 2009*)

The IRO reviewer agreed with two utilization review doctors and opined that the requested treatment did not meet ODG criteria. Specifically, the IRO reviewer noted that Claimant's symptoms do not present a clear pattern to justify the planned procedure. The reviewer also doubted that the myelogram was necessary because Claimant should not have surgery. Both utilization review doctors supported the IRO's opinion. Claimant provided the medical records from Dr. R. However, he did not cite the ODG Guidelines or other evidence-based medical studies to support the necessity of the requested treatment. The medical records in evidence from Dr. R do not provide a clear rationale as to the necessity of this procedure.

Claimant has the burden of proof on this case to show by the preponderance of evidence-based medical evidence that the disputed procedure is health care that is clinically appropriate and considered effective for his injury. Evidence-based medical evidence entails the opinion of a qualified expert that is supported by evidence-based medicine. The evidence presented at the hearing cannot be construed to constitute evidence-based medical evidence sufficient to overcome the decision of the IRO reviewer. As Claimant did not overcome the IRO decision by a preponderance of the evidence-based medical evidence, he has accordingly failed to meet his burden of proof.

The Administrative Law Judge 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. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
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 ALJ's Exhibit Number 2.
3. On (Date of Injury), Claimant was the employee of (Employer), Employer.
4. On (Date of Injury), Employer provided workers compensation insurance through Zurich American Insurance Company, Carrier.
5. On (Date of Injury), Claimant sustained a compensable injury.
6. A cervical myelogram with CT scan is not health care reasonably required for the compensable injury of (Date of Injury).

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 Claimant is not entitled to a cervical myelogram with CT scan.

DECISION

Claimant is not entitled to a cervical myelogram with CT scan 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 **ZURICH AMERICAN INSURANCE COMPANY**, and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7th STREET, SUITE 620
AUSTIN, TX 78701**

Signed this 4th day of April, 2018.

BRITT CLARK
Administrative Law Judge