

MEDICAL CONTESTED CASE HEARING 21007

DECISION

This case is decided pursuant to the Texas Workers' Compensation Act and the Rules of the Texas Department of Insurance, Division of Workers' Compensation (DWC). For the reasons discussed herein, the Administrative Law Judge determines the following:

The preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that an MRI of the cervical spine without contrast is not health care reasonably required for the compensable injury of (Date of Injury).

ISSUE

A contested case hearing was held on March 25, 2021, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that an MRI of the cervical spine without contrast is not health care reasonably required for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Claimant appeared and was assisted by JM, ombudsman. Insurance Carrier appeared and was represented by JL, attorney. The hearing was held by teleconference in accordance with Commissioner Cassie Brown's March 24, 2020, memo to system participants regarding workers' compensation operations in light of COVID-19.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant.

For Insurance Carrier: None.

The following exhibits were admitted into evidence:

Administrative Law Judge Exhibit: ALJ-1.

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

Insurance Carrier's Exhibits: CR-A through CR-H.

DISCUSSION

Claimant sustained a compensable injury on (Date of Injury), when the air bag exploded in the truck that she was driving. The compensable injury includes at least a cervical spine injury and left shoulder injury.

Treating doctor, Dr. AT, requested an MRI of the cervical spine without contrast. Preauthorization from Insurance Carrier's utilization review agent was requested and denied. Claimant then requested an IRO review of the denial. In the decision letter dated September 1, 2020, the IRO upheld Insurance Carrier's denial. Claimant is now appealing the IRO decision.

To determine if treatment is medically necessary, Texas law requires DWC to use treatment guidelines. These guidelines must be evidence-based, scientifically valid, and outcome-focused. Use of these guidelines ensures that an injured employee will receive reasonable and necessary health care. (*See* Labor Code §413.011(e) and 413.017(1).) DWC uses the current edition of the *Official Disability Guidelines (ODG)*. If the *ODG* does not address the requested treatment, then other guidelines or generally accepted standards of practice recognized in the medical community are used.

In this dispute, Claimant has the burden of showing by a preponderance of the medical evidence that the IRO decision is wrong. Claimant relied on her testimony and the medical records in evidence to support her position of entitlement to the disputed procedure. Insurance Carrier relied on the medical records and the IRO decision in evidence to support its position that Claimant is not entitled to the requested medical service.

On July 2, 2020, Dr. AS, a peer reviewer for Insurance Carrier's utilization review agent, stated that the disputed treatment is not medically necessary. According to the peer reviewer:

This is a chronic case. Patient's original injury is from (year). All we are told is that the patient has chronic neck pain. No exam is documented. No indication for presumably a new MRI of the cervical spine is provided. Therefore, the request for MRI of the Cervical Spine without contrast, as outpatient, is not medically necessary.

The peer reviewer noted that he attempted to make a peer-to-peer call to Dr. T, and there was no answer and no option to leave a message.

On July 30, 2020, Dr. HK, another peer reviewer for Insurance Carrier's utilization review agent, reviewed the record. Dr. K concurred with Dr. S:

Based on the clinical information provided, the Reconsideration Request for MRI of the Cervical Spine without contrast, as outpatient is not recommended as medically necessary. The initial request was non-certified noting that this is a

chronic case. Patient's original injury is from (year). All we are told is that the patient has chronic neck pain. No exam is documented. No indication for presumably a new MRI of the cervical spine is provided. Therefore, the request for MRI of the Cervical Spine without contrast, as outpatient, is not medically necessary. There is insufficient information to support a change in determination, and the previous non-certification is upheld. The most recent physical examination findings documented are from 2017. Serial office visit notes since that time note no significant change in physical exam. There is no clear rationale provided to support an MRI at this time given no significant change in the patient's clinical presentation. Therefore, medical necessity is not established in accordance with current evidence based guidelines.

Dr. K also stated that she made two attempts for a peer-to-peer call to Dr. T, and she left two messages. Dr. K stated that Dr. T did not return her calls.

According to the IRO reviewer, a pain medicine doctor, the prospective request for an MRI of the cervical spine without contrast is not medically necessary. The IRO reviewer recommended upholding the previous non-certifications. He stated:

Serial progress reports document no significant changes in physical examination. There are no prior MRI scans submitted for review. It is unclear how MRI findings would change the current treatment plan. It is unclear if the patient has undergone any recent active treatment. Therefore, the request is not medically necessary and upheld.

The IRO reviewer indicated that the basis for his decision is the *ODG*, medical judgement, clinical experience, and expertise in accordance with accepted medical standards.

The *ODG* does not support the necessity of the disputed treatment and the generally accepted standards of practice recognized in the medical community do not support the necessity of the disputed treatment. Therefore, the preponderance of the evidence is not contrary to the decision of the IRO that an MRI of the cervical spine without contrast is not health care medically necessary for the compensable injury of (Date of Injury).

In summary, the evidence offered, does not provide a persuasive explanation using evidence-based medicine of how the disputed treatment is necessary.

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

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 Ace American Insurance Company, Insurance Carrier.
 - D. The (Date of Injury), compensable injury includes at least a cervical spine injury and left shoulder injury.
 - E. The Independent Review Organization decision upheld Insurance Carrier's denial of an MRI of the cervical spine without contrast.
2. Insurance Carrier delivered to Claimant a document stating Insurance Carrier's true corporate name and the registered agent's name. This document was admitted into evidence as Insurance Carrier's Exhibit CR-B.
3. The Independent Review Organization decision was sent to the parties on September 1, 2020.
4. On September 18, 2020, Claimant filed this appeal of the Independent Review Organization decision with the Division of Workers' Compensation. The appeal was filed within twenty days from the date the Independent Review Organization decision was sent to the parties.
5. The decision of the Independent Review Organization has not become final because the Division of Workers' Compensation timely received the request for appeal.
6. The preponderance of the evidence-based medical evidence does not support that an MRI of the cervical spine without contrast is medically necessary 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 Independent Review Organization (IRO) that an MRI of the cervical spine without contrast is not health care reasonably required for the compensable injury of (Date of Injury).

ORDER

Insurance Carrier is not liable for the benefits in dispute in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with Texas Labor Code §408.021.

The true corporate name of Insurance Carrier is **ACE AMERICAN INSURANCE COMPANY**.
The name and address of its registered agent for service of process is:

**CT CORPORATION SYSTEM
1999 BRYAN STREET, STE 900
DALLAS, TX 75201**

Signed on the 31st day of March, 2021.

Early Moye
Administrative Law Judge