

**SOAH DOCKET NO. 453-04-2469.M2
TWCC MR NO. M2-04-0558-01**

—,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
UNIVERSITY OF TEXAS SYSTEM,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

___ (Claimant) challenges the decision of an Independent Review Organization (IRO) denying preauthorization of a lumbar discogram. University of Texas System (the Carrier) had denied the requested procedure on the basis that it was not medically necessary and the IRO upheld that decision. This decision finds that the requested procedure should be preauthorized.

I. JURISDICTION, NOTICE, AND VENUE

The State Office of Administrative Hearings (SOAH) has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T CODE ANN. Chapter 2003. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN., Chapter 2001 and SOAH's rules, 1 TEX. ADMIN. CODE (TAC) Chapter 155.

Notice of the hearing was sent to the parties on January 26, 2004. Notice and jurisdiction are not contested and are addressed in the Findings of Fact and Conclusions of Law set out below.

Administrative Law Judge (ALJ) John H. Beeler convened the hearing April 22, 2004, in the William P. Clements Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Petitioner appeared via telephone and was assisted by Barton Levy, Commission ombudsman. Carrier was represented by attorney Juliana Griggs. The hearing concluded and the record closed that same day.

II. BACKGROUND

Claimant incurred a compensable injury on ___, when, while working as a nurse, she slipped on spilled water and twisted her back. An MRI conducted on August 21, 2000, indicated an L4-L5 disc bulge and L5-S1 disc bulge. A myelogram conducted on November 9, 2000, indicated an L4-L5 bulging disc and degeneration of the disc at L5-S1. A repeat MRI done on June 3, 3002, showed herniated discs at L3-L4, L4-L5, and L5-S1. Claimant presently suffers from right groin pain, swelling on the right side of her hip, rectal spasms, pain down her right leg, and a little toe on her

right foot that sticks out to the side. Her treating physician requested a discogram to determine specifically what surgery, if any, would alleviate her conditions.

III. DISCUSSION

A. Applicable Law

The only issue in this case is whether, by a preponderance of the evidence, the requested treatment is shown to be medically necessary. Medical necessity is defined at TEX. LABOR CODE ANN. § 408.021(a), which states:

- (a) 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. The employee is specifically entitled to health care that:
 - (1) cures or relieves the effects naturally resulting from the compensable injury;
 - (2) promotes recovery; or
 - (3) enhances the ability of the employee to return to or retain employment.

Under 28 TAC § 148.21(h), the party requesting the hearing has the burden of proof pursuant to TEX. LABOR CODE ANN. § 413.031. Thus, Claimant, as the petitioner, must prove the requested treatment is reasonably required within the meaning of TEX. LABOR CODE ANN. § 408.021(a).

B. Evidence

Claimant testified concerning her condition. Her testimony is consistent with the background information set out above and is not disputed. No other witnesses testified but extensive documentary evidence was admitted. The documents were primarily doctors' reports and opinions concerning the medical necessity of the discogram.

IV. DISCUSSION AND ANALYSIS

Claimant has met her burden of establishing that the requested treatment is medically necessary and that it should be preauthorized. The ALJ reviewed the documentary evidence and concludes that the more credible evidence demonstrates that the discogram would provide Claimant's treating physician with valuable information needed to treat her condition and return her to work. While it is true that not every opinion in the documents recommends the procedure, several do, including not only Claimant's treating physician, but also the initial doctor chosen by the Carrier to evaluate Claimant. Claimant presented sufficient credible evidence to prove the requested treatment will enhance her ability return to employment, thus, Claimant is entitled to preauthorization of the discogram pursuant to TEX. LABOR CODE ANN. § 408.021(a).

V. FINDINGS OF FACT

1. ____ (Claimant) suffered a compensable injury to her back on ____, when she slipped in spilled water.
2. University of Texas System (Carrier) was the insurance provider at the time of the injury.
3. Claimant's treating physician requested preauthorization for a discogram.
4. Carrier denied the request for preauthorization for the discogram on the basis that the procedure is not medically necessary.
5. Following Carrier's denial, Claimant filed a timely request with the Texas Workers' Compensation Commission (the Commission, TWCC) for medical dispute resolution.
6. Claimant's request was assigned to an independent review organization (IRO) by the Commission's Medical Review Division (MRD).
7. The IRO issued a decision December 24, 2003, affirming the denial of the request for pre-authorization.
8. Claimant filed a timely request for hearing to contest the IRO decision.
9. Notice of the hearing was sent to the parties on January 26, 2004.
10. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
11. Administrative Law Judge John H. Beeler convened the hearing April 22, 2004, in the William Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Petitioner appeared via telephone and was assisted by Barton Levy, ombudsman. Carrier was represented by attorney Juliana Griggs. The hearing concluded and the record closed that same day.
12. The requested discogram will provide Claimant's treating physician with valuable information needed to treat her condition and return her to work.

VI. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. § 413.031.

2. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T CODE ANN. Chapter 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN., Chapter 2001 and SOAH's rules, 1 TEX. ADMIN. CODE (TAC) Chapter 155.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052.
5. Claimant met her burden of proving the requested procedure is medically necessary and reasonably required within the meaning of TEX. LAB. CODE ANN. § 408.021(a).
6. Based on the foregoing Findings of Fact and Conclusions of Law, the requested procedure should be preauthorized.

ORDER

IT IS, THEREFORE, ORDERED that University Texas System shall pay the reasonable costs of the discogram.

SIGNED May 24, 2004.

**JOHN H. BEELER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**