

**SOAH DOCKET NO. 453-04-2776.M2
TWCC NO. M2-04-0536-01**

EAST TEXAS CHIROPRACTIC,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	OF
	§	
ACE USA/ESIS	§	
Respondent	§	BEFORE THE STATE OFFICE

DECISION AND ORDER

East Texas Chiropractic (Provider), challenged the decision of ACE USA/ESIS (Carrier) denying preauthorization for a lumbar discogram for ___ (Claimant). In this decision, the Administrative Law Judge (ALJ) finds that Provider met its burden of showing that the requested procedure is reasonable and necessary medical care and should have been preauthorized. Therefore, the ALJ concludes the requested procedure should be authorized.

The hearing convened and closed on February 25, 2004, before Steven M. Rivas, Administrative Law Judge (ALJ). Provider appeared and was represented by Michael Fleck, D.C. Carrier appeared and was represented by Dean Pappas, attorney.

I. DISCUSSION

1. Background Facts

Claimant sustained a compensable back injury on ____. Following his injury, Claimant underwent extensive treatment including physical therapy, epidural steroid injections, and medication treatment to relieve his back pain, to no avail. Additionally, Claimant attempted a work hardening program, but quit after a week due his back pain. Claimant has also undergone several MRI examinations, an EMG, and CT scan. Based on the results of the diagnostic tests, Claimant's treating doctors recommended Claimant have a discogram in preparation for back surgery.

Provider's request for preauthorization to administer the lumbar discogram was denied by the

Carrier as not medically necessary. The dispute was referred to an Independent Review Organization (IRO), which agreed with Carrier. Provider appealed the IRO decision to the State Office of Administrative Hearings.

2. Applicable Law

Pursuant to the Texas Workers' Compensation Act ("the Act"), TEX. LAB. CODE ANN. § 408.021 *et seq.*, an employee who sustains a compensable injury is entitled to all health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment.

Under TEX. LAB. CODE ANN. § 401.011(19), health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.

Certain categories of health care identified by the Commission require preauthorization, which is dependant upon a prospective showing of medical necessity under § 413.014 of the Act and 28 TEX. ADMIN. CODE (TAC) § 134.600. In this instance under 28 TAC §134.600(h) (7), preauthorization is required for the discogram requested by Provider.

C. Evidence and Analysis

Five surgeons who have examined Claimant recommended he have back surgery to treat his injury. The recommendations were based on Claimant's MRI exam results and the other diagnostic tests. However, the IRO reviewer upheld Carrier's denial because Claimant had not exhausted "all non-operative modalities." Dr. Fleck, Claimant's current treating doctor argued that the IRO was wrong because Claimant had already undergone several MRI examinations and physical therapy over the past three years to relieve his back pain, without any lasting relief. Dr. Fleck's argument was persuasive because he is familiar with Claimant's extensive treatment and multiple requests for a discogram.

Carrier argued Claimant should not have the requested discogram because all of his treating doctors decided he is candidate for back surgery, and the discogram will offer no additional benefit.

However Carrier did not offer any evidence that indicated the discogram would not benefit the surgeon who eventually performs the surgery. Conversely, Dr. Fleck testified the discogram would, in fact, benefit Claimant because it would allow the surgeon to determine the exact origin of pain and location of the spinal surgery.

Carrier did however offer several authorization denial letters from Intracorp, the utilization review company that denied the discogram. The strongest argument against having a discogram contained in the denial letters was that a discogram “cannot predict the outcome of treatment as far as pain relief.” However, the ALJ is not persuaded by this argument primarily because it is mainly based on evidence from studies that were not cited in the denial letter.

Finally, the ALJ was persuaded by the report of Charles E. George, M.D., who performed an Independent Medical Evaluation on Claimant on October 16, 2003. The report indicated that the discogram should be performed after Charles Gordon, M.D., one of Claimant’s treating doctors, previously expressed the need for having a discogram performed before he would perform surgery. Dr. George wrote that if the discogram “helps Dr. Gordon make his diagnosis and gives him more backing for this surgery, then I think that it should be done.”

Dr. Fleck testified on behalf of Provider and offered medical records and reports regarding the medical necessity of a lumbar discogram in this case. Carrier, on the other hand, merely cross-examined Provider’s witnesses and offered evidence that failed to sufficiently discredit or contradict Provider’s position.

Therefore, Provider met its burden of proving, by a preponderance of the evidence, that the requested lumbar discogram is medically necessary and should be preauthorized.

II. FINDINGS OF FACTS

1. ____ (Claimant) sustained a compensable back injury on ____.
2. Claimant was treated by several treating doctors and subsequently came under the care of East Texas Chiropractic (Provider), who recommended Claimant undergo a lumbar discogram.

3. Provider sought preauthorization for the discogram from ACE USA/ESIS (Carrier) and was denied.
4. Provider sought medical dispute resolution with the Texas Workers' Compensation Commission's Medical Review Division, which referred this matter to an Independent Review Organization (IRO). The IRO report concurred with Carrier and denied preauthorization.
5. Provider timely requested a hearing before the State Office of Administrative Hearings (SOAH).
6. Notice of the hearing in this case was mailed to the parties on February 3, 2004. 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.
7. The hearing convened and closed on February 25, 2004, before Steven M. Rivas, Administrative Law Judge (ALJ). Provider appeared and was represented by Michael Fleck, D.C. Carrier was represented by Dean Pappas, attorney. The hearing was adjourned and the record closed the same day.
8. Claimant had a prior MRI exam, an EMG and CT scan.
9. Based on the results of Claimant's previous diagnostic tests and procedures, he is a candidate for back surgery.
10. A lumbar discogram would allow Provider an opportunity to determine the exact origin of pain and location for spinal surgery.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. ("the Act").
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. The Provider, as Petitioner, had the burden of proof on appeal by a preponderance of the evidence under § 413.031 of the Act, and 28 TEX. ADMIN. CODE §148.21(h).
5. Under § 408.021(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.

6. Under 28 TAC § 134.600(h)(7), preauthorization is required for a lumbar discogram.
7. Provider proved the requested discogram is medically necessary for treating Claimant's compensable injury.
8. Based on the above Findings of Fact and Conclusions of Law, Provider's request for preauthorization should be granted.

ORDER

IT IS, THEREFORE, ORDERED that preauthorization for the requested lumbar discogram is granted.

SIGNED March 15, 2004.

**STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**