

SOAH DOCKET NO: 453-04-3678.M2

AMERICAN HOME ASSURANCE CO.,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
VS.	§	OF
	§	
WAYNE PAULLUS, M.D.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

The issue in this case is whether a lumbar discogram with CT scan of the Claimant's spine should be preauthorized. The Administrative Law Judge (ALJ) finds that the discogram should be preauthorized.

I. DISCUSSION

In September of 2003, the Claimant's doctor, Dr. Wayne Paullus, M.D., a neurosurgeon, (requesting physician) requested preauthorization for a lumbar discogram with post CT scan at the L3-4, L4-5, and L5-S1 levels of the Claimant's spine. American Home Assurance Company (Carrier) denied the request on grounds of medical necessity. The Carrier found that Claimant had no identified spinal instability, that he suffered from extensive psychological issues and that discography is subjective with high false positive rates. The requesting physician appealed the Carrier's denial and on February 3, 2004, an Independent Review Organization (IRO) found that the lumbar discogram was a reasonable diagnostic tool and medically necessary to evaluate the clinical situation and possible surgery. The Carrier appealed the IRO's decision.

The Claimant was working as a truck driver on ____, when he injured his back while pulling the pin connecting his truck to the trailer. He had been driving a truck for his employer, ____, for over four years. At the time of his injury, he experienced severe pain in his neck in particular, and also in his back. Later in the summer, MRIs documented a herniated disc in his cervical spine, for which he underwent a cervical fusion, as well as a herniated disc in his lumbar spine. In 2001, he underwent a laminotomy discectomy at the L3-4 and L5-S1 levels of his spine. He has continued to have severe chronic pain in his legs since the surgery. He has been treated with epidural steroid injections, narcotic medications, physical therapy, and a TENS unit, but has not had relief.

The Carrier has the burden of proof in this proceeding, even though the Respondent did not appear at the hearing. The Carrier offered medical records and over 100 pages of other materials, including, several abstracts of articles published in the *Spine* Journal, and excerpts from the *North American Spine Society Phase III Clinical Guidelines for Multidisciplinary Spine Care Specialists*, as well as the testimony of Melissa Tonn, M.D. None of the abstracts or guidelines appear to be directly on point, but rather concerned lumbar fusions, and discography on asymptomatic individuals

and false positive rates. The Carrier offered no argument or testimony explaining their connection

to issues in this matter. Dr. Tonn's testimony was largely conclusory, as she essentially restated the basis of the Carrier's original denial without further elaboration. Other than a general belief that discography is not helpful and there is a high false positive rate, the Carrier relies heavily on the fact that Claimant admitted himself for psychiatric treatment for depression and dependence on prescribed Oxycontin for his back pain, a drug he no longer takes. The Carrier also seemed to find it significant that he was brought to the emergency room for a narcotic and alcohol overdose at one point.

It is clear that the Claimant is depressed due to his persistent pain and has on occasion abused alcohol and experienced drug dependence on his prescribed medications. The Carrier failed to demonstrate why these incidents would obviously rule out discography. Significantly, in both of the Required Medical Evaluations performed, dated March 5, 2001 and August 27, 2003, the Claimant was found to be an "objective pain client," and not to be exaggerating his pain based upon the tests administered. Ex. 1 at 73 and 179.

The other basis for denial is that there is "no identified spinal instability" in the Claimant's lumbar spine. The medical records demonstrate Claimant is having significant problems with his lumbar spine before and since the lumbar discectomy surgery in 2001. For instance, a second opinion regarding spinal surgery from J. Brett Gentry, M.D., of the Southwest Neuroscience and Spine Center, dated March 7, 2003, found that a three level fusion of the lumbar spine from L3 to S1 was a reasonable option. Dr. Gentry stated that the "worst looking" levels are L3-4, L4-5, and L5-S1. While the doctors treating the Claimant have not found adequate explanation for his severe and debilitating pain, that, in and of itself, is not a basis for denying further testing that might shed light on the origins of the Claimant's pain and aid in its treatment.

The ALJ finds that Carrier failed to meet its burden of proof to demonstrate that the lumbar discogram is not medically necessary.

III. FINDINGS OF FACT

1. The Claimant was injured on ____, when he injured his back while pulling the pin connecting his truck to the trailer.
2. In September of 2003, the Claimant's doctor, Dr. Wayne Paullus, M.D., a neurosurgeon, (requesting physician) requested preauthorization for a lumbar discogram with post CT scan at the L3-4, L4-5, and L5-S1 levels of the Claimant's spine.
3. American Home Assurance Company (Carrier) refused to preauthorize the request for the discogram.

4. The Medical Review Division office (MRD) of the Texas Workers' Compensation Commission found, based upon a decision issued by an independent review organization, that the lumbar discogram was medically necessary.
5. The Carrier appealed the decision of the MRD.
6. Notice of the hearing was sent March 15, 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 was convened on June 15, 2004, with Administrative Law Judge (ALJ) Janet Dewey presiding and a representative for the Carrier participating. The requesting physician did not appear. The record closed the same day.
8. In 2001, the Claimant underwent a laminotomy diskectomy at the L3-4 and L5-S1 levels of his spine. He has continued to have severe chronic pain in his legs since the surgery. He has been treated with epidural steroid injections, narcotic medications, physical therapy, and a TENs unit, but has not had relief.
9. The requesting physician is considering a three-level fusion of the lumbar spine and is requesting discography to explore the reasons for Claimant's continuous pain in his left leg.
10. Other diagnostic tools have not provided adequate explanation of his pain and the lumbar discogram is reasonable and necessary healthcare to determine what course of treatment is appropriate for the Claimant.
11. The Claimant is an "objective pain client," and he is not exaggerating his pain based upon the tests administered during required medical examinations.
12. The Carrier failed to demonstrate that discography will not be a useful diagnostic tool for the Requesting Physician to determine the source of the Claimant's pain. Specifically, the Carrier failed to show that the Claimant's depression will interfere with the utility of the discography results.
13. A discogram of the Claimant's lumbar spine with post CT scan at L3-4, L4-5, L5-S1 is medically necessary and reasonable health care.

IV. CONCLUSIONS OF LAW

1. 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. Ch. 2003 (Vernon 2000 and Supp. 2004).
2. Carrier timely filed its request for a hearing as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052.
4. The Carrier has the burden of proof in this proceeding under 28 TAC § 148.21(h).
5. The requested lumbar discogram with CT scan is medically necessary healthcare and it should be preauthorized.

ORDER

IT IS, THEREFORE, ORDERED that preauthorization for a lumbar discogram with post CT scan at the L3-4, L4-5, and L5-S1 levels of the Claimant's spine is GRANTED.

SIGNED July 15, 2004.

**JANET R. DEWEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**