

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

DECISION AND ORDER

___ appealed an Independent Review Organization (IRO) decision that denied preauthorization for Claimant to receive an intra-discal electro thermal annuloplasty (IDET) at disk levels L4-5 and L5-S1. The IRO concluded that the procedure was not medically necessary and was contraindicated based on ___ symptoms. This decision agrees with the IRO and concludes that an IDET is not medically reasonable and necessary for ___. Therefore, ___ appeal is denied.

I. JURISDICTION & HEARING

There were no challenges to notice or jurisdiction, and those matters are set forth in the findings of fact and conclusions of law without further discussion here. Administrative Law Judge (ALJ) Thomas H. Walston conducted a hearing in this case on June 9, 2004, at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, Austin, Texas. Attorney Dan Kelley appeared on behalf of American Home Assurance Company (AHAC) and Claimant ___ appeared by telephone. The hearing concluded and the record closed the same day.

II. DISCUSSION

1. Background

Claimant ___ is a ___ year-old female who injured herself at work at the ___ in ___, when she missed the last step on a ladder, stepped down, and injured her lower spine. The accident occurred October 29, 2001. ___ has undergone conservative treatment and diagnostic testing, including an EMG, an MRI, and a discogram. She has continued to complain of chronic low back pain extending into her left leg, and her treating physician, Dr. James Guess, has recommended an IDET for pain relief. AHAC denied preauthorization for the procedure as medically unnecessary. The IRO upheld AHAC's denial and ___ appeals.

1. Medical Records

___ medical records that were introduced into evidence are summarized below. Because leg pain and radiculopathy are contraindications for an IDET, notations of those conditions are highlighted.

- July 2, 2002 East Texas Medical Center - MRI showed minimally bulging disc at L4-5 without evidence of impingement or stenosis. Also a small lateral bulge on the right at L5-S1 with minimal impingement on the S1-2 nerve rootlet.
- August 26, 2002 Metrocrest Orthopaedics; **Lewis Frazier, M.D.** - ___ complained of low back pain aggravated by sitting and lying down; not relieved by medicine; localized pain at the lumbosacral junction on the left, associated with left leg intermittent numbness and weakness. Tests were generally negative except reflexes were absent at the ankles. Dr. Frazier thought the 7/2/02 MRI also showed some L4-5 central narrowing and a little L5-S1 bulge and concluded that the cause of ___ pain was not clear, with possible facet more likely than a sacroiliac joint component. He recommended an EMG and prescribed medication.
- September 10, 2002 Metrocrest Orthopaedics; **Jim Fernandez, M.D.** - Dr. Fernandez saw ___ upon referral by Dr. Frazier for an EMG. He noted that ___ claimed *pain in her left hip radiating down her leg* since her injury occurred. She reported the pain was constant and had worsened over the last few months. Physical exam was essentially normal except for absent reflexes in the ankles and ___ complaints of pain. The EMG was abnormal but this was primarily due to “poor patient relaxation” during the test. Based on the results that were obtained, Dr. Fernandez diagnosed ___ with *left L5 radiculopathy*. He also recommended epidural steroid injections if physical therapy was not helping ___ condition.
- September 26, 2002 Metrocrest Orthopaedics; **Lewis Frazier, M.D.** - follow-up visit; ___ reported no improvement and bilateral leg numbness and *left leg pain*. Physical exam was essentially normal. Dr. Frazier recommended that ___ be off work as her condition was aggravated by prolonged standing; he also recommended epidural steroid injections (ESI).
- October 30, 2002 Metrocrest Orthopaedics; **Lewis Frazier, M.D.** - Dr. Frazier performed ESI at L4-5 and an extrathecal myelogram.
- November 14, 2002 Metrocrest Orthopaedics; **Lewis Frazier, M.D.** - follow-up visit; ___ reported pain relief after ESI; leg pain resolved but some back pain with prolonged standing.
- December 12, 2002 Metrocrest Orthopaedics; **Lewis Frazier, M.D.** - follow-up after a 11/27/02 injection; ___ reported improvement, with some pain only after prolonged sitting or lying down. Dr. Frazier released ___ to return to work with limitations on standing, lifting, bending, etc. ___ continued to take Vicodin

for pain as needed.

- December 23, 2002 Metrocrest Orthopaedics; **Lewis Frazier, M.D.** - follow-up visit; no significant pain; working at light duty; continued Celebrex and recommended a chair-back brace to stabilize spondylolisthesis and *secondary stenosis / radiculopathy*.
- January 13, 2003 Metrocrest Orthopaedics; **Lewis Frazier, M.D.** ___ reported that she fell off a ladder again and had *increased pain down her left leg*. Physical exam generally normal except for increased pain. She was to continue working on light duty. Dr. Frazier requested preauthorization for an additional ESI.
- January 22, 2003 Metrocrest Orthopaedics; **James Guess, M.D.** - Dr. Guess saw ___ on referral by Dr. Frazier. He noted that ___ pain returned after second fall and seemed to be getting worse. She reported pain generally localized to her mid and low back with *some pain extending into her buttocks and thighs, down to her left calf*. Physical exam was essentially normal except for some limited range of motion. Dr. Guess noted that the prior MRI and x-rays showed disc dessication / degeneration at L4-5 and L5-S1. Dr. Guess thought ___ problems likely originated from the facet region and he recommended a facet injection.
- February 5, 2003 Plano Surgery Center; **Lewis Frazier, M.D.** - bilateral facet injections at L3-4, L4-5, and L5-S1. ___ reported 100% relief from pain.
- March 19, 2003 Metrocrest Orthopaedics; **James Guess, M.D.** ___ returned for a follow-up visit. She thought the pain was getting worse, rating it 8/10. She reported that the *pain extended from her low back into her left leg down to her foot*. Facet injection provided no lasting improvement. Physical exam was essentially normal. Flexion and extension x-rays showed degeneration at L4-5 and L5-S1. Dr. Guess recommended a CT/discogram to identify origins of her pain.
- March 27, 2003 Spine Resource Consultants; **Stanley Bigos, M.D.** performed a peer review of medical records concerning the need for a discogram. Dr. Bigos reported that ___ records showed inconsistent symptoms such as absent ankle reflexes in some reports but not others, and an EMG interpreted as showing acute and chronic left L5 radiculopathy but subsequent physical exams reported as neurologically normal. Dr. Bigos also pointed out that ___ MRI showed only “minimal” and “small” changes that describe common aging processes for a 49-year old woman. Therefore, Dr. Bigos concluded, “I am unable to find evidence that is supportable by the quality of data required by the reliable reviews to indicate either neurological or structural compromise

to reasonably suggest either resultant damage or correctable lesion.” He recommended home conditioning to improve her comfortable activity tolerance.

May 8, 2003

HEALTHSOUTH Evaluation Center; **Philip Osborne, M.D.** - a carrier-selected Independent Medical Exam (IME); S.L reported shooting pain in the lumbar spine *radiating down the left leg, burning down the left leg*, and tingling and tightness in the upper-mid thoracic area of the spine. Dr. Osborne reviewed ___ treatment history and noted that she was then taking Vicodin and Celebrex. On physical exam, Dr. Osborne observed ___ condition was essentially normal except for diffuse tenderness to palpation and reduced range of motion in the lumbar spine. However, no trigger points or spasms were observed. Also, Achilles reflexes were absent bilaterally. Dr. Osborne noted three positive Waddell signs that suggest symptom magnification. Dr. Osborne concluded that ___ had no structural damage from her accident and he thought she had a lumbosacral strain. He also thought the diagnosis of *L5 radiculopathy* “*was somewhat tenuous*” based on the EMG nerve conduction studies. Because ___ strength and sensory exam were normal, Dr. Osborne thought she had plateaued and was at Maximum Medical Improvement (MMI). Dr. Osborne also reported that ___ invalidated on various functional tests due to reports of pain. However, he thought ___ had no physiological findings that would substantiate her level of pain complaints. Dr. Osborne recommended that ___ return to work and gradually increase her level of activity and he thought that a discogram was not medically necessary.

June 2, 2003

Metrocrest Orthopaedics; **Dr. James Guess** - follow-up visit; ___ reported that she was doing about the same and rated her discomfort at 5/10. She was working light duty and continued to have *low back pain with extension into her left leg down to the left foot*. Her exam was essentially normal except for some pain on the left with straight leg raising. He recommended a discogram with CT scan to identify her pain generator.

December 10, 2003

Trinity Medical Center; **Tom Johnson, M.D.** - CT of the lumbosacral spine; showed complete radial annulus fissures at L3-4, L4-5, and L5-S1.

December 10, 2003

Metrocrest Orthopaedics; **Dr. James Guess** - performed discography in conjunction with the CT scan. This produced 8/10 pain with concordant pain at L4-5, but no such pain at either L3-4 or L5-S1.

December 17, 2003

Metrocrest Orthopaedics; **Dr. James Guess** - follow-up visit; ___ continued to report back pain and she continued to take Vicodin and Celebrex. Her

physical exam was essentially normal except for some *numbness of the left*

leg; Dr. Guess discussed the CT scan with ___ and recommended an IDET procedure or possible fusion. ___ preferred trying the IDET procedure.

January 19, 2004

Metrocrest Orthopaedics; **Dr. James Guess** - follow-up visit; ___ reported continued, worsening back pain; she rated the low back pain at 9/10, *extending into the left hip and down to her left foot*, and she reported some weakness and numbness of the left leg; she also continued to work light duty and take Vicodin and Celebrex; physical exam was essentially normal but Dr. Guess took ___ off duty and he noted that she had been denied for a IDET.

2. IRO Decision

___ appealed the Carrier's denial of Dr. Guess' request for an IDET, and the dispute was referred for review by an orthopaedic surgeon affiliated with the Ziroc IRO. After reviewing ___ history, the IRO physician agreed with Carrier's denial of an IDET. The rationale stated for the denial was as follows:

The records indicate that this patient has a chronic non-specific pain complex with no real good localizing signs of where her pain is coming from. She has some radicular pain in the L5 area and her EMG is positive, demonstrating some evidence of radiculopathy in this area. The MRI demonstrates some degree of spinal stenosis and other x-ray studies apparently demonstrate a spondylolisthesis. The treating physician has recommended an IDET procedure for this patient. IDET procedures are usually contraindicated by spinal stenosis and by radiculopathy. These two findings would be a contraindication not to do an IDET procedure on this particular patient. Records indicate that she also has a spondylolisthesis, and spondylolisthesis is another contraindication to IDET procedure.

On review of the recent literature regarding IDET procedures, the *Journal of Spine*, volume 28, November 2003 contains a report of Dr. Bryan Freeman who found that there was no significant difference in the outcome between IDET procedure and a placebo. He questioned the benefit of the IDET procedure. The reviewer does not find that the supplied medical records support the indication of an IDET procedure for this woman.

B. Expert Testimony

1. Petitioner's Evidence

Petitioner did not testify at the hearing, but she called Dr. James Guess as a witness. Dr. Guess graduated from the University of Michigan medical school and had an orthopaedic residency and a spine fellowship. He has worked in private practice since 1995. Dr. Guess explained that back pain can originate from tears in the fibers of a disc. The IDET procedure involves inserting a needle into the disc space, then inserting an electrical wand into the disc. The electrical wand heats the disc to destroy the torn fibers. Then, in theory, the disc will heal over the following several weeks, healthy scar tissue will form, and pain will be reduced. Dr. Guess further explained that the procedure tightens the disc but does not shrink it. He requested the procedure for two levels, L4-5 and L5-S1, and in his opinion the procedure is medically reasonable and necessary.

On cross-examination, Dr. Guess agreed that spondylolisthesis would be a contraindication for an IDET, but he did not believe that ___ had this condition. He recognized that there are such notations in ___ records but thought those were inaccurate. Dr. Guess also agreed that ___ had mild stenosis and some leg pain, but he did not think that these were contraindications for an IDET. Dr. Guess testified that he was familiar with the recent IDET / placebo study that showed no benefit from an IDET, but he said that other articles reach different conclusions. Also, Dr. Guess testified that he has successfully used the IDET procedure for four years. He did not know the charges for an IDET procedure but said they were less than the charges for a fusion.

2. Carrier's Evidence

AHAC offered the medical records summarized previously and called Dr. Melissa Tonn's as a witness. Dr. Tonn's has practiced medicine in Texas since 1987 and is Board Certified in Occupational Medicine and Pain Management. She testified that an IDET is indicated for pain limited to the back area and a good disc. It is contraindicated by leg pain, radiculopathy, spinal stenosis, spondylolisthesis, and psychological issues. After her review of ___ records, Dr. Tonn noted reports of stenosis, radiculopathy, and facet syndrome. She added that spondylolisthesis (spinal instability) has never been verified for ___. Dr. Tonn's opinion, any one contraindication should rule out the IDET procedure. In this case, she particularly noted ___ complaints of left hip and leg pain as a contraindication for the procedure.

Dr. Tonn's also explained that the theory behind the IDET procedure is that heating the collagen in the disc helps heal tears, denervates the disc, and reduces pain. However, she stated that tests have not confirmed that the procedure works and she noted the November 2003 article in *Spine* that showed no difference in results between a placebo and the IDET procedure. She added that early tests of the procedure showed some positive results, but those tests were performed on athletes

which does not reflect the typical workers' compensation population. In addition, Dr. Tonn's cautioned that an IDET is an invasive procedure and that too much heat can damage the disc, causing a "raisin effect." She also questioned the validity of the discogram used to justify an IDET, because, in her opinion, a discogram is a subjective, questionable test. Finally, Dr. Tonn's stated that an IDET procedure is usually billed at around \$8,000, and she did not think it was medically reasonable or necessary for ___ in this case.

C. ALJ's Analysis and Decision

Under the workers' compensation system, an employee who sustains a compensable injury is entitled to health care reasonably required by the nature of the injury. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment. TEX. LABOR CODE ANN. § 408.021. In an appeal from an IRO decision, the non-prevailing party ___ has the burden of proof.

In this case, ___ requested preauthorization for an IDET procedure. Dr. Guess and Dr. Tonn's agreed that spondylolisthesis is a contraindication for an IDET, but they also agreed that this condition was not confirmed for ___ records contain repeated reports of radiating left leg pain extending down to her left foot. The records also contain some indication of stenosis, although this evidence was limited. Dr. Guess did not believe that radiating pain into the leg or stenosis were contraindications for an IDET, but both Dr. Tonn's and the IRO doctor stated that they were. The ALJ concludes that a preponderance of the evidence supports a conclusion that ___ had stenosis and pain radiating to her left hip and leg down to her left foot, and that these symptoms are contraindications for an IDET. Therefore, the ALJ finds that the proposed IDET is contraindicated and, hence, is not medically reasonable and necessary for ___ Consequently, the ALJ affirms the IRO's denial of ___ request for an IDET procedure.

Dr. Tonn's and the IRO doctor also questioned the efficacy of IDET procedures, referring to a November 2003 study that showed no difference between the results of an IDET and a placebo. However, this article was not offered into evidence and the record contains insufficient evidence to conclude that an IDET procedure is never a valid treatment. Further, Dr. Guess stated that he has had success with IDET procedures over the past four years. Therefore, the ALJ emphasizes that he does not decide whether an IDET is a valid procedure. Instead, the ALJ merely finds that ___ has contraindications that preclude an IDET being a medically reasonable or necessary procedure in her case.

III. FINDINGS OF FACT

1. Claimant ___ suffered a compensable injury on ___, when she missed the last step of a ladder, stepped down, and injured her lower spine.

2. ___ has received conservative treatment for her low back from Dr. Lewis Frazier and Dr. James Guess.
3. Since at least September 10, 2002, ___ has made complaints of low back pain radiating down her left leg to her left foot.
4. In December 2002, Dr. Frazier diagnosed ___ with secondary stenosis and radiculopathy.
5. In late December 2003, Dr. Guess requested preauthorization for an intra-discal electro thermal annuloplasty (IDET) for ___ at L4-5, and L5-S1.
6. American Home Assurance Company (AHAC), the Carrier, denied Dr. Guess' request.
7. Dr. Guess and ___ requested medical dispute resolution.
8. The Independent Review Organization (IRO) denied ___ and Dr. Guess' appeal and denied preauthorization for the requested IDET procedure.
9. ___ requested a hearing before the State Office of Administrative Hearings, seeking to reverse the IRO's denial of the requested IDET procedure.
10. ___ stenosis, radiculopathy, and leg pain are contraindications for an IDET procedure.
11. An IDET procedure at L4-5, and L5-S1 is not medically reasonable and necessary for ___ due to her symptoms that contraindicate an IDET procedure.
12. A hearing was conducted June 9, 2004, and the record closed the same day.
13. ___ and the AHAC attended the hearing.
14. All parties received not less than 10 days notice of the time, place, and nature of the hearing; 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.
15. All parties were allowed to respond and present evidence and argument on each issue involved in the case.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing, including the authority to issue a decision and order. TEX. LABOR CODE ANN. § 413.031(k).
2. All parties received proper and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. ___ has the burden of proof by a preponderance of the evidence.
4. A IDET procedure at L4-5 and L5-S1 is not medically reasonable or necessary for the proper treatment of ___ TEX. LABOR CODE ANN. §§ 401.011(19) and 408.021.
5. ___ appeal is denied and AHAC is not required to pay for an IDET procedure at L4-5, and L5-S1 for ___

ORDER

IT IS, THEREFORE, ORDERED that ___ appeal is hereby denied and preauthorization is denied for an IDET procedure at L4-5 and L5-S1, as requested by Dr. James Guess.

SIGNED June 29, 2004.

**THOMAS H. WALSTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**