

AMERICAN HOME ASSURANCE COMPANY,	Petitioner	:	BEFORE THE STATE OFFICE
		:	
V.		:	OF
		:	
—,	Respondent	:	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

American Home Assurance Company (Carrier) challenges the decision of an Independent Review Organization (IRO) approving preauthorization of a lumbar discogram for workers' compensation Claimant _____. The Carrier denied the requested procedure on the basis that it was not medically necessary. The IRO reversed that decision. This decision finds that the requested procedure should be preauthorized.

I. NOTICE AND PROCEDURAL HISTORY

Administrative Law Judge (ALJ) Katherine L. Smith held the hearing on this matter on June 23, 2004. Proper notice of the hearing was provided as set out in the findings of fact and conclusions of law. The Carrier was represented by Jim Koriath and presented the testimony of Melissa Tonn, M.D., who is board certified in occupational medicine and pain management, in support of its position. Claimant appeared by telephone and represented herself, with the assistance of Texas Workers' Compensation Commission (Commission) Ombudsman Juan Mireles. Claimant testified and presented the testimony Robert Urrea, M. D., a fellowship-trained orthopedic spinal surgeon, by telephone. Commission staff did not participate in the hearing. The record closed the day of the hearing.

II. BASIS FOR DECISION

Claimant suffered a compensable injury to her back on _____, while lifting a box at her place of employment. Dr. Urrea recommends the discogram to assess whether and where spinal surgery should be performed on the Claimant.

Dr. Tonn testified that in her view discography is a highly subjective procedure, the results of which are largely influenced by the technician who performs the procedure. She further testified that recent research indicates discography is not appropriate to diagnose the need for spinal surgery, that it has a high false positive rate in workers' compensation patients, and that it can actually increase back pain. Dr. Tonn also testified that Claimant is not a candidate for surgery because of her young age, 26, and her obesity and because there is no evidence that her spine is unstable. She stated that surgery is not a proper treatment for back pain. Dr. Tonn is concerned that should Claimant undergo fusion surgery she will be condemned to lifelong pain and more surgeries. The more appropriate treatment in her opinion would be focusing on improved functioning with exercise and weight loss. She testified further that in 85% of cases of individuals with back pain, the origin of the pain cannot be identified, which would make surgery questionable.

In response, Claimant testified that she has received epidural steroid injections that provided no relief and that she has been treated with several medications, including hydrocodone and Soma, that have also provided little relief. In addition to passive care, such as chiropractic adjustments and physical medicine, which has been extensive, she testified that she has exercised at home and at the Montana Rehabilitation Center with little or no relief.

Dr. Urrea testified that Claimant underwent an MRI¹ that revealed an annular tear at the L4-5 level and a herniated disc at the L5-S1 level. He testified further that Claimant has lumbar radicular pain radiating down her leg, which corresponds with the MRI findings. He notes that conservative treatment has not provided Claimant with relief from her pain. He recommends the procedure to help identify the origin of Claimant's pain and whether she is a candidate for further treatment, including surgery. He testified further that the discogram is no more risky than performing a lumbar

1 According to the medical records in Ex. 2 at 6, the MRI occurred on June 12, 2003.

epidural injection. While fusion surgery is an aggressive option, he noted that endoscopic diskectomy with annuloplasty might be the better treatment option.

Based on the testimony and the medical record, the ALJ concludes the Carrier has failed in its burden of showing that the requested procedure is not medically necessary. Although the ALJ finds Dr. Tonn to be a credible and knowledgeable witness who has cast considerable doubt on the efficacy of spinal fusion surgery in this case, the ALJ concludes the Carrier has not justified its denial of the requested diagnostic procedure. As the Ombudsman noted in closing, discography is a recognized diagnostic tool that has been used for decades and is provided for in the Commission's Medical Fee Guideline. This appears to be a case where additional data would be useful, and the information expected from the discogram could be helpful in assessing the Claimant's treatment plan. Conservative care has failed, and Claimant's treating physician believes that discography is now needed in order to the appropriately assess the next course of action. Accordingly, the ALJ finds that the requested discography procedure should be preauthorized.

III. FINDINGS OF FACT

1. On _____, Claimant _____. suffered a compensable injury to her back while lifting a box at her place of employment.
2. At the time of Claimant's injury, her employer held workers' compensation insurance coverage through American Home Assurance Company (Carrier).
3. Claimant sought preauthorization for a lumbar discogram.
4. The Carrier denied the request for preauthorization.
5. Claimant requested medical dispute resolution at the Texas Workers' Compensation Commission (Commission), which referred the matter to an Independent Review Organization (IRO).
6. The IRO found that the requested lumbar discogram should be preauthorized.
7. Claimant timely requested a hearing before the State Office of Administrative Hearings (SOAH).

8. Notice of the SOAH hearing was sent to the parties on May 21, 2004. The notice informed the parties of the date, time, and location of the hearing, a statement of the matters to be considered, the legal authority under which the hearing would be held, and the statutory provisions applicable to the matters to be considered.
9. The SOAH hearing convened and closed on June 23, 2004. Claimant and the Carrier appeared at the hearing.
10. Claimant has undergone an MRI which provides objective corroboration of the Claimant ' s subjective complaints of debilitating pain.
11. Claimant continues to be in pain despite conservative treatment.
12. Discography is a recognized diagnostic procedure.
13. The requested discogram would provide additional objective information in determining the cause of Claimant ' s pain and to formulate further treatment.
14. The Carrier failed to establish that the requested lumbar discogram is not medically necessary.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to ' 413.031 of the Texas Workers ' Compensation Act, TEX. LAB. CODE ANN. ch. 401 *et seq.*
2. SOAH has jurisdiction over the hearing, 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.
3. Carrier timely filed its request for a hearing as specified in 28 TEX. ADMIN. CODE (TAC) ' 148.3.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV ' T CODE ANN. ' ' 2001.051 and 2001.052.
5. As the Petitioner, the Carrier has the burden of proof in this matter. 28 TAC ' 148.21(h).
6. The lumbar discogram is reasonably required under TEX. LABOR CODE ANN. ' ' 408.021(a) and 401.011(19) and should be preauthorized.

ORDER

IT IS ORDERED that the request submitted by Claimant___ for preauthorization of a lumbar discogram is granted.

Signed July 22, 2004.

KATHERINE L. SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS