

**SOAH DOCKET NO. 453-04-5855.M2  
TWCC MDR NO. M2-04-1151-01**

<b>AMERICAN HOME ASSURANCE COMPANY, Petitioner</b>	'	<b>BEFORE THE STATE OFFICE</b>
	'	
	'	
<b>V.</b>	'	<b>OF</b>
	'	
<b>JACOB ROSENSTEIN, M.D., Respondent</b>	'	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

This is a dispute over a request for preauthorization for a cervical myelogram with CT for workers' compensation (Claimant). The Administrative Law Judge (ALJ) concludes the request should be denied.

**I. HISTORY**

The Claimant, who was a supervisor at \_\_\_\_\_, was injured on \_\_\_\_\_, when a shelf hit her on the head. Since then, she has suffered from persistent neck pain, numbness and tingling in her arm. Her symptoms have not improved with conservative care. She has been unable to return to work.

The Claimant has submitted to a battery of tests, including two previous myelograms with CT, on February 10, 1999, and June 3, 2001. She was approved for cervical fusion surgery in 1999, but the surgery was not performed because she was overweight. That approval expired. In 2002, Dr. Rosenstein, her treating physician, again requested approval for fusion surgery. That request was denied by the Independent Review Organization (IRO) based on the reviewing doctor's interpretation of her medical records. That denial was not appealed.

In 2004, Dr. Rosenstein requested approval of another cervical myelogram with CT as a prelude to surgery, because he believed the previous tests were too old to be relied upon. The workers' compensation carrier, American Home Assurance Company (AHAC), denied the request. Dr. Rosenstein filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission), which referred the request to an IRO. The IRO approved that request. AHAC filed a timely request for a hearing before the State Office of Administrative Hearings, contesting the IRO approval. The hearing was held October 14, 2004, before ALJ Henry D. Card, with both parties participating. The hearing was adjourned, and the record closed, the same day.

## **II. DISCUSSION**

Under TEX. LAB. CODE ANN. ' 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. 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 TEX. ADMIN. CODE (TAC) ' 148.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. ' 413.031.

The parties agree that the cervical myelogram and CT are designed to be a prelude to surgery. There is significant disagreement among the many doctors who have evaluated the Claimant as to whether surgery is advisable. Drs. Rosenstein, Marable, Acosta, Ward, and the original IRO doctor believed surgery was warranted. Drs. Cwikla, Stasikowski, Tonn, and the second IRO reviewer believed it was not. The IRO reviewer in this case did not directly address that subject, but from the decision it may be extrapolated that he or she believed surgery was at least an option.

Dr. Tonn, who testified for AHAC, stated the testing would be duplicative. She observed that the Claimant had undergone previous cervical myelograms and that recent electrodiagnostic testing had discovered no evidence of a radiculopathy. She pointed to the 2002 denial of preauthorization of surgery. She stated the requested tests were not necessary in light of that denial and the results of other tests.

Dr. Rosenstein testified that the patient was in pain and was entitled to the health care necessary to cure or relieve her condition. He observed that most of the doctors who opposed surgery or, in this case, the myelogram, including Dr. Tonn, had not treated the Claimant. He argued that the myelogram was medically necessary.

As was mentioned above, Dr. Rosenstein requested preauthorization for surgery in 2002. That request was denied and not appealed. The records do not show any significant change in the Claimant's condition since that denial that would justify revisiting that decision. If surgical intervention is not available, the cervical myelogram with CT is not medically necessary. Therefore, the ALJ denies the request for preauthorization.

### **III. FINDINGS OF FACT**

1. \_\_\_\_ (the Claimant), who was a supervisor at \_\_\_\_, was injured on \_\_\_\_, when a shelf hit her on the head.
2. Since her injury, the Claimant has suffered from persistent neck pain, numbness and tingling in her arm.
3. The Claimant's symptoms have not improved with conservative care.
4. The Claimant has been unable to return to work.

5. The Claimant has submitted to a battery of tests, including two previous myelograms with CT, on February 10, 1999, and June 3, 2001.
6. The Claimant was approved for cervical fusion surgery in 1999, but the surgery was not performed because she was overweight. That approval expired.
7. In 2002, Dr. Jacob Rosenstein, the Claimant's treating physician, again requested approval for surgery.
8. The 2002 request for preauthorization for fusion surgery was denied by the Independent Review Organization (IRO) based on the reviewing doctor's interpretation of the Claimant's medical records.
9. The IRO's denial of the 2002 request for preauthorization for surgery was not appealed.
10. In 2004, Dr. Rosenstein requested approval of another cervical myelogram with CT as a prelude to surgery, because he believed the previous tests were too old to be relied upon.
11. The workers' compensation carrier, American Home Assurance Company (AHAC), denied the request.
12. Dr. Rosenstein filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission), which referred the request to an IRO.
13. The IRO approved the 2004 request.
14. AHAC filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).
15. Notice of the hearing was sent to the parties May 24, 2004.
16. 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.
17. The hearing was held October 14, 2004, before ALJ Henry D. Card, with both parties participating. The hearing was adjourned, and the record closed, the same day.
18. The cervical myelogram and CT are designed to be a prelude to surgery.

19. The records do not show any significant change in the Claimant's condition since the 2002 denial that would justify revisiting that decision.
20. If surgical intervention is not available, the cervical myelogram with CT is not medically necessary.

#### **IV. CONCLUSIONS OF LAW**

1. 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.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. ' 2001.052.
3. Under 28 TAC ' 148.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. ' 413.031.
4. AHAC proved the requested procedure was not medically necessary under TEX. LAB. CODE ANN. §408.021.
5. The request for preauthorization should be denied.

#### **ORDER**

It is, therefore, ordered that the Carrier, American Home Assurance Company, shall not be required to preauthorize a cervical myelogram with CT for the Claimant, \_\_\_\_\_

**SIGNED November 12, 2004.**

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**HENRY D. CARD**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**