

**AMERICAN HOME
ASSURANCE COMPANY,
Petitioner**

V.

**WORKERS= HEALTHCARE,
Respondent**

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This case is an appeal by American Home Assurance Company (APetitioner@), from a decision of an independent review organization (AIRO@) on behalf of the Texas Workers' Compensation Commission (ACommission@) in a dispute regarding preauthorization for epidural steroid injections sought by Workers' Healthcare (ARespondent@). The IRO found that Petitioner incorrectly denied preauthorization of the injections for the treatment of a claimant suffering from a back injury.

This decision disagrees with that of the IRO, finding that preauthorization of the disputed services should not be approved. Respondent failed to appear at the evidentiary hearing in this action. The record therefore reflects minimal support for its position in the matter.

I. JURISDICTION AND VENUE

The Commission has jurisdiction over this matter pursuant to ' 413.031 of the Act. The State Office of Administrative Hearings (ASOAH@) has jurisdiction over matters related to the hearing in 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. No party challenged jurisdiction or venue.

II. STATEMENT OF THE CASE

The hearing in this docket was convened on July 15, 2004, at SOAH facilities in the William P. Clements Building, 300 W. 15th St., Austin, Texas. Administrative Law Judge (AALJ@) Mike Rogan presided. Petitioner was represented by Jim Korioth, attorney. Respondent failed to appear through any representative and failed to inform SOAH, either before or after the hearing, of any reason for its non-appearance. After presentation of evidence and argument by Petitioner, the hearing was adjourned and the record was closed on that same date.¹

The record revealed that on ___, the claimant suffered a compensable back injury. Since that time, she has received conservative therapy to address persisting lower back pain with radicular symptoms.

¹The staff of the Commission formally elected not to participate in this proceeding, although it filed a general AStatement of Matters Asserted@ with the notice of the hearing.

When Respondent sought preauthorization for further conservative therapy β in the form of interlaminar epidural steroid injections (AESIs@) β Respondent denied it on the grounds that the proposed treatment was medically unnecessary.² Respondent then sought medical dispute resolution through the Commission.

The IRO to which the Commission referred the dispute issued a decision on May 24, 2004, concluding that preauthorization of the disputed injections was appropriate. As its basis for decision, the IRO declared:

[W]ith respect to interlaminar epidural injections in patients with radicular pain, evidence for the overall effectiveness of [such] steroid injections in managing chronic low back pain is moderate for short-term relief and limited for long-term relief. It is therefore appropriate to undertake a trial of epidural steroids.

Petitioner subsequently made a timely request for review of the IRO decision before SOAH.

III. THE PARTIES' EVIDENCE AND ARGUMENTS

A. Petitioner

Petitioner presented the testimony of Dr. Melissa Tonn, M.D., who is board-certified in occupational medicine. Dr. Tonn noted that the records in this case reflect uncertainty on the part of the claimant's care providers, with a number of differing diagnoses over that period. In Dr. Tonn's view, the records do not show that the patient ever exhibited a true, acute radiculopathy. ESIs are intended to address nerve-root irritation caused by compression or extrusion of an intervertebral disk β conditions not demonstrated in this case.

Dr. Tonn added that ESIs, at best, are short-term palliatives. They do not reduce the rate at which patients receiving them ultimately require spinal surgery. She concluded that ESIs are not medically necessary at the claimant's present stage of treatment. Rather, the claimant's circumstances call for an aggressive rehabilitation program without invasive procedures.

2. Respondent

Respondent did not submit any documents to SOAH for the hearing or appear at the hearing to offer evidence or argument.

IV. ANALYSIS

Petitioner bears the burden of proving those deficiencies that it contends should invalidate the IRO's decision in this case. In the ALJ's view, it has sufficiently discharged that burden.

² The physician who reviewed the preauthorization request for Petitioner stated, A... ESIs in the treatment of radiculopathy are best used when the treatment of a radiculopathy cannot be managed by other means. The best responses from ESIs are reported within the first three months from the onset of radicular pain ...@

The evidence and testimony offered by Petitioner represent support for the Petitioner's position that is considerably more coherent and systematic than the IRO's somewhat cursory rationale for decision in this case. Because the weight of the evidence in the record supports Petitioner's position, the ALJ concludes that the IRO's decision should be reversed.

V. CONCLUSION

The ALJ finds that, under the record provided in this case, the medical services at issue have not been shown to be medically necessary. Accordingly, preauthorization for these services (epidural steroid injections) should be denied, contrary to the prior decision by the IRO.

VI. FINDINGS OF FACT

1. On ___, the claimant suffered a back injury that was a compensable injury under the Texas Worker's Compensation Act ("the Act"), TEX. LABOR CODE ANN. § 401.001 *et seq.*
2. Since the time of the injury, the claimant has received conservative therapy to address persisting lower back pain with radicular symptoms.
3. When Workers' Healthcare ("Respondent") sought preauthorization to provide the claimant further conservative therapy - in the form of interlaminar epidural steroid injections ("ESIs") - American Home Assurance Company ("Petitioner"), the insurer for claimant's employer, denied preauthorization on the grounds that the proposed treatment was medically unnecessary.
4. Respondent made a timely request to the Texas Workers' Compensation Commission ("Commission") for medical dispute resolution with respect to the requested preauthorization.
5. The independent review organization ("IRO") to which the Commission referred the dispute issued a decision on May 24, 2004, concluding that Respondent's request for preauthorization should be approved because "[T]he overall effectiveness of [ESIs] in managing chronic low back pain is moderate for short-term relief . . ."
6. Petitioner requested in timely manner a hearing with the State Office of Administrative Hearings ("SOAH"), seeking review and reversal of the IRO decision regarding preauthorization.
7. The Commission mailed notice of the scheduling of a hearing in this matter to the parties at their addresses on June 17, 2004.
8. A hearing in this matter was convened on July 15, 2004, at the William P. Clements Building, 300 W. 15th St., Austin, Texas, before Mike Rogan, an Administrative Law Judge with SOAH. Petitioner was represented. Respondent did not appear through any representative and failed to inform SOAH, either before or after the hearing, of any reason for its non-appearance.

9. Uncertainty as to the nature of the claimant's condition has produced a number of differing diagnoses since the injury, with the records failing to show that the claimant ever exhibited a true, acute radiculopathy
10. ESIs are intended to address nerve-root irritation (radiculopathy) caused by compression or extrusion of an intervertebral disk - conditions not demonstrated by the record in this case.
11. At this stage in the claimant's treatment, her circumstances call for an aggressive rehabilitation program without invasive procedures (such as ESIs).

VII. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act ("the Act"), TEX. LABOR CODE ANN. § 413.031.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in 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. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TEX. ADMINISTRATIVE CODE ("TAC") § 133.305(g) and §§148.001-148.028.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Petitioner, the party seeking relief, bore the burden of proof in this case, pursuant to 28 TAC § 148.21(h).
6. Based upon the foregoing Findings of Fact, the requested treatment for the claimant, as noted in Finding of Fact No. 3, does not represent an element of health care medically necessary under § 408.021 of the Act.
7. Based upon the foregoing Findings of Fact and Conclusions of Law, the findings and decision of the IRO in this matter issued on May 24, 2004, were incorrect; preauthorization for the requested ESIs, as noted in Finding of Fact No. 3, should be denied.

ORDER

IT IS THEREFORE, ORDERED that the appeal of American Home Assurance Company, seeking denial of preauthorization for lumbar epidural steroid injections to treat the claimant's chronic lower back pain, be granted, contrary to the findings and decision of the independent review organization in this matter, issued on May 24, 2004.

SIGNED July 19, 2004.

**MIKE ROGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**