

**DOCKET NO. 453-05-0073.M2
MDR NO. M2-04-1263-01**

—,	'	BEFORE THE STATE OFFICE
Petitioner	'	
	'	
VS.	'	OF
	'	
ARGONAUT INSURANCE COMPANY,	'	
Respondent	'	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Injured worker ___ (Claimant) challenges the denial of preauthorization by Argonaut Insurance Company (Carrier) for eight botox injections to treat Petitioner's compensable back injury. Respondent denied the procedure as not medically necessary. The Administrative Law Judge (ALJ) concludes that the proposed injections were medically necessary for the treatment of his injury. Consequently, Petitioner's request for the proposed treatment is denied.

I. STATEMENT OF THE CASE

Administrative Law Judge (ALJ) Gary Elkins convened and closed the hearing on October 14, 2004. Petitioner appeared at the hearing *pro se* and was assisted by Texas Workers' Compensation Commission Ombudsman Luz Loza. Respondent appeared and was represented by Attorney Christine Karcher. Notice and jurisdiction, which were not disputed, are addressed in the Findings of Fact and Conclusions of Law.

II. DISCUSSION

A. Background

Petitioner suffered a compensable injury to his lower back in _____. Approximately one month later he began seeing Arnulfo Carrasco, M.D., who remains his treating physician. A May 22, 2003, lumbar spine MRI revealed the existence of mild edema at the superior end-plates at Levels L5 and S1 and multi-level lumbar spondylosis without evidence of high-grade spinal canal stenosis or high-grade neural foraminal narrowing.

Following the MRI, Dr. Carrasco formulated a treatment regimen consisting of pain medications, triggerpoint injections, physical therapy, and an exercise program. On Claimant's second office visit on May 29, 2003, Dr. Carrasco also proposed treating him with botox injections "to get his pain level down to a more tolerable level." For the ensuing 16 months, Dr. Carrasco consistently concluded that Claimant was suffering from trigger point tenderness to the area of injury, and he continued to conclude that botox injections would benefit Claimant. In January 2004, Dr. Carrasco formally requested preauthorization for one visit of eight botox chemo-denervation injections with EMG guidance. The request was denied by Carrier as not medically necessary, which culminated in a hearing before SOAH and this Decision and Order.

B. Evidence and Argument

Claimant offered the following testimony in support of his position that the proposed botox injections are medically necessary:

- ! Previous botox injections significantly reduced his pain and, unlike other treatment approaches such as triggerpoint injections, provided long-term relief.
- ! Dr. Carrasco has used the botox procedure many times and has found it helpful.
- ! Reimbursement for additional pain medication, trigger point injections, and physical therapy has been denied, leaving no other treatment alternatives.
- ! While Claimant does not believe he will be able to live a normal life even if he does have access to botox injections, he believes the proposed injections will enable him to function in his job.

Carrier argued the following in support of its denial of reimbursement:

- ! Claimant's injury was nothing more than a strain/sprain, as determined by such objective means as an MRI and EMG.
- ! The treatment administered to Claimant following his a prior back injury and proceeding beyond his ___ injury was excessive in light of his poor response to similar treatment for chronic back problems existing before his compensable injury.
- ! The Payment policies under the Medicare Fee Guidelines (Guidelines) developed by Trailblazer Health Enterprises¹ (Trailblazer) require an inadequate response to other treatment approaches prior to resorting to botox injections, which Claimant failed to demonstrate.
- ! Dr. Carrasco concluded physical therapy provided to Claimant produced significant benefits.
- ! Botox injection therapy is not an accepted treatment Claimant's injury.
- ! The Guidelines do not recognize the treatment codes used by Dr. Carrasco in treating Claimant.
- ! The proposed botox injections are not recognized by the Guidelines for the treatment proposed by Dr. Carrasco.

C. Analysis and Conclusion

Preauthorization should be denied. Under the Medicare Fee Guidelines preauthorization for botox injections are not reimbursable where the injections are being proposed for investigational uses. Ailments for which botox treatment include a list of conditions unrelated to Claimant's condition as well as "any treatment of other spastic conditions not listed as covered in the policy."²

Because Claimant's ailment is not listed as a covered condition, the Guidelines consider it investigational and, thus, not reimbursable.

¹ TrailBlazer Health Enterprises, LLC, describes itself as a wholly-owned subsidiary of BlueCross BlueShield of South Carolina that administers the Medicare program under contracting arrangements with the Centers for Medicare & Medicaid Services (CMS). As both a Part A intermediary and Part B carrier, TrailBlazer administers some aspect of the Medicare program for beneficiaries and providers in nearly every state in the nation. The Commission's 2002 *Medical Fee Guideline* uses reimbursement methodologies borrowed from the federal Medicare program, under which Trailblazer writes payment policies. Those payment policies are applicable to the services proposed in this case.

² Exhibit 4, at p. 8.

Even though Claimant described substantial pain relief benefits he enjoyed following his previous botox injections, he failed to overcome the presumption created by the Guidelines that such injections are investigational. Except for Claimant's explanation that his doctor had successfully employed botox injections for treating back pain and that the injections had provided pain relief, he presented no objective evidence of their viability as an accepted treatment alternative for back pain or one that should otherwise be reimbursable under the Guidelines.

Even if the proposed injections were listed in the Guidelines as a legitimate treatment for Claimant's injury, he failed to demonstrate that he had experienced an inadequate response to the other treatments he has received. This is a prerequisite to botox injections under the Guidelines. Instead, the evidence indicates Claimant had responded favorably to trigger point injections; he simply described the botox injections as being more helpful to him. Also, Dr. Carrasco observed in March 2004 that Claimant had benefitted substantially from physical therapy.

The Guidelines do not recognize the use of botox injections for the treatment of Claimant's injury. Even if they did, Claimant's proposal would fail to meet to the Guidelines' prerequisites to treatment. Consequently, preauthorization for the requested botox injections is denied.

III. FINDINGS OF FACT

1. Claimant, an injured worker, suffered a compensable injury to his lower back in ____.
2. At the time of Claimant's injury, his employer held workers' compensation insurance coverage through Argonaut Insurance Company (Respondent).
3. In May 2003, Claimant began a treatment regimen with his treating doctor, Arnulfo Carrasco, M.D., consisting of pain medications, triggerpoint injections, physical therapy, and an exercise program.
4. During Claimant's second office visit with Dr. Carrasco in May 2003, the doctor proposed treating him with botox injections to reduce his pain level.

5. In January 2004, Dr. Carrasco formally requested preauthorization for one visit of eight botox chemo-denervation injections with EMG guidance.
6. Respondent denied preauthorization for the procedure as not medically necessary.
7. Following an Independent Review Organization's conclusion that the proposed injections were not shown to be medically necessary, Claimant requested a hearing before SOAH.
8. Notice of the hearing was mailed to the parties September 9, 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.
9. Administrative Law Judge (ALJ) Gary Elkins convened and closed a hearing on October 14, 2004. Claimant appeared at the hearing *pro se*. Carrier appeared and was represented by Attorney Christine Karcher.
10. Claimant has not experienced an inadequate response to other treatment approaches.
11. Claimant has benefitted from triggerpoint injections for the treatment of his compensable injury.
12. Claimant has benefitted from physical therapy for the treatment of his compensable injury.
13. Claimant failed to present objective evidence that botox injections are a viable treatment alternative for back pain.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding pursuant to ' 413.031(k) of the Act 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. ' ' 2001.051 and 2001.052.
3. As Petitioner, Claimant bears the burden of proof in this matter. 28 TEX. ADMIN. CODE (TAC) ' 148.21(h).
4. The Medicare Guidelines created by Trailblazer Health Enterprises, LLC (Trailblazer) apply to Claimant's request for preauthorization.
5. The Medicare Guidelines do not recognize botox injections for the treatment purpose proposed by Claimant.

6. For recognized treatments, the Medicare Guidelines require a showing that the injured worker has inadequately responded to conventional methods of treatment such as medication and physical therapy.
7. Based on the foregoing Findings and Conclusions, preauthorization for the proposed botox injections should be denied.

ORDER

IT IS ORDERED that preauthorization for one visit of eight botox chemo-denervation injections with EMG guidance is denied.

Signed November 15, 2004.

**GARY W. ELKINS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**