

**DOCKET NO. 453-05-3135.M2  
MDR Tracking No. M2-05-0388-01**

\_\_\_\_\_,  
**PETITIONER**  
**V.**  
**DALLAS FIRE INSURANCE**  
**COMPANY,**  
**RESPONDENT**

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**BEFORE THE STATE OFFICE**  
**OF**  
**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Workers' compensation insurance claimant \_\_\_\_\_ (Claimant) filed this petition, challenging the decision of an Independent Review Organization (IRO) denying preauthorization of a lumbar discogram. The IRO upheld the decision of Dallas Fire Insurance Company (Carrier) to deny the requested procedure on the basis that it was not medically necessary. This decision finds that, based on the evidence presented during the hearing, the requested procedure should be preauthorized.

**I. NOTICE AND PROCEDURAL HISTORY**

Administrative Law Judge (ALJ) Tommy L. Broyles held the hearing on this matter on August 3, 2005. The Carrier was represented by John V. Fundis. Claimant appeared by telephone with the assistance of Juan Mireles, Ombudsman for the Texas Workers' Compensation Commission (Commission). Staff for the Commission did not participate in the hearing. Proper notice of the hearing was provided as set out in the findings of fact and conclusions of law.

**II. DISCUSSION**

The evidence shows that, on \_\_\_\_, Claimant suffered a compensable injury to her back. She was provided with conservative care including epidural steroids, analgesics, chiropractic care, and

physical therapy but did not have relief from her pain. Presently, she complains of right-sided lumbar pain, radiating to her lower extremity. A neurological examination and electrodiagnostic studies were normal. An MRI on February 18, 2004, indicated lumbar arthritis with mild canal stenosis at L3-L4 and an annular tear with shallow central disc protrusion at L4-L5. The requested procedure would be used to assess whether and where spinal surgery should be performed on Claimant.

Testifying on behalf of Claimant, Dr. Urrea, an orthopaedic surgeon, opined that the discogram is medically necessary. He stated that Claimant has back and leg pain that has not improved with conservative treatment. He further noted that she has MRI abnormalities at L3-L4 and L4-L5. According to the doctor, a discogram would allow him to pinpoint better where Claimant's pathology is coming from and then to determine appropriate treatment. Dr. Urrea testified that in general, the discogram is the "standard of treatment" to evaluate discogenic pain and urged that the medical literature overwhelmingly supports it as an excellent pre-operation tool.

Carrier relies on the written opinion of the IRO doctor who stated that a discogram does not have diagnostic value when an individual has psychological problems such as depression. Claimant does suffer from depression. Carrier further points out that the other diagnostic tests already given to Claimant have all been negative. Finally, Carrier argues that the request for service regarded L2-L3 and L3-L4 while Dr. Urrea testified that L3-L4 and L4-L5 were the areas of interest. Because of this discrepancy, Carrier argues the requested procedure is not medically reasonable.

### **III. ALJ's DECISION**

Based on a careful review of the record, the ALJ concludes that Claimant has met her burden of showing that the requested procedure is medically necessary. The MRI provides some objective corroboration of the Claimant's subjective complaints. Conservative care has failed, and the Claimant's treating physician convincingly opined that the discogram is now needed in order to appropriately assess the next course of action. Dr. Urrea testified that discogram is accepted by the

Texas Workers' Compensation System and that it is done every day by spine surgeons and radiologists throughout Texas. He further convinced the ALJ that it is medically necessary for Claimant and that her psychological condition was not a barrier to this particular procedure. Accordingly, the ALJ finds that the requested procedure should be preauthorized.

As for the discrepancy regarding what level of the spine is applicable, the evidence suggests that levels other than those suspected of pain generation may be addressed during the discogram to increase the test's objectivity. Moreover, level L3-L4 is indicated as a concern by the MRI and is noted in the request for service.

#### **IV. FINDINGS OF FACT**

1. On \_\_\_\_, \_\_\_\_ (Claimant) suffered a compensable injury to her lower back.
2. At the time of Claimant's injury, her employer had workers' compensation insurance through Dallas Fire Insurance Company "Carrier."
3. Claimant seeks preauthorization for a discogram.
4. Carrier denied the request for preauthorization.
5. Claimant requested medical dispute resolution at the Texas Workers' Compensation Commission, which referred the matter to an Independent Review Organization (IRO).
6. The IRO found that the requested discogram should not 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 January 14, 2005. 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 August 3, 2005. Claimant and Carrier appeared and participated in the hearing.

10. Claimant has undergone an MRI which provides some objective corroboration of Claimant's subjective complaints of pain.
11. Conservative care has failed.
12. The requested discogram would provide additional information regarding Claimant's condition and aid the treating physician in determining whether and where to operate.
13. The requested discogram is medically necessary.

## **V. 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. §§2001.051 and 2001.052.
3. As the Petitioner, Claimant has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).
4. Claimant established that the requested discogram is medically necessary.
5. The requested preauthorization of a discogram of the lumbar spine should be granted. Tex. Lab. Code Ann. § 408.021.

### **ORDER**

**IT IS ORDERED** that the request submitted by Claimant \_\_\_\_\_ for preauthorization of a lumbar discogram is authorized.

**Signed this 12<sup>th</sup> day of August 2005.**

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**TOMMY L. BROYLES  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**