

**SOAH DOCKET NO. 453-05-7856.M2  
TWCC MR NO. M2-05-1444-01**

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|--|---|--------------------------------|
| ____,<br><b>Petitioner</b>                                   | § | <b>BEFORE THE STATE OFFICE</b> |
|  | § |                                |
|  | § |                                |
| v.   | § |                                |
|  | § | <b>OF</b>                      |
| <b>ZURICH AMERICAN INSURANCE<br/>COMPANY,<br/>Respondent</b> | § |                                |
|  | § |                                |
|  | § |                                |
|  | § | <b>ADMINISTRATIVE HEARINGS</b> |

**DECISION AND ORDER**

**I. INTRODUCTION**

\_\_\_\_ (Claimant) disputes a decision of an independent review organization (IRO), on behalf of the Texas Workers' Compensation Commission (TWCC), concerning the pre-authorization of a medical service for the Claimant. The IRO agreed with Zurich American Insurance Company (Carrier) and did not find that the requested service is reasonably medically necessary to treat the Claimant's compensable injury.

The Claimant has been repeatedly injured, but the evidence only shows that the Carrier is liable for one of those injuries-to the Claimant's back in 2000. However, the Claimant contends that the requested service is necessary due to continuing pain from an injury he received in 1991-a time when there is no evidence that the Carrier was even his employer's insurer. Even if the Claimant, who is not a medical expert, could be wrong about the cause of his current pain, the evidence does not show that the requested service is reasonably necessary, regardless of the cause of or liability for it.

Because he cannot find that the requested service is reasonably necessary, the Administrative Law Judge (ALJ) finds that the request for pre-authorization should be denied. Accordingly, the ALJ denies pre-authorization for the requested service. The Carrier raised other issues that the ALJ need not reach.

## II. FINDINGS OF FACT

1. In \_\_\_\_, the Claimant injured his back while working for \_\_\_\_.
2. There is no evidence that the Carrier was the workers-compensation insurer for the Claimant's employer in 1991.
3. As a result of his 1991 injury, the Claimant had back surgery on lumbar vertebrae (L) 4, L5, and sacral vertebrae 1 on March 24, 1994.
4. Over six years later, on \_\_\_\_, the Claimant sustained another, work-related injury to his back (Compensable Injury) when he slipped on stairs and fell.
5. On that date, the Claimant's employer was \_\_\_\_, and the Carrier was its workers-compensation insurance carrier.
6. A magnetic resonance image (MRI) of the Claimant's spine on August 23, 2000, showed post-surgical changes, but his spine was otherwise normal and unremarkable.
7. On March 8, 2001, a functional capacity evaluation showed that the Claimant was able to function at a heavy physical demand level with restrictions or at a medium physical demand level without restrictions.
8. On April 16, 2001, the Claimant reached maximum medical improvement from his \_\_\_\_, injury with a five percent whole-person impairment rating.
9. In 2002, the Claimant re-injured his back.
10. In 2002 and thereafter, the Claimant no longer worked for \_\_\_\_, whom the Carrier once insured.
11. There is no evidence that the Carrier was the workers-compensation insurer for the Claimant's employer in 2002.
12. On November 15, 2004, the Claimant was examined by Linda C. Smith, M.D., who found that the Claimant had chronic back pain but no evidence of radiculopathy.
13. On January 26, 2005, the Claimant had lower back pain and visited Charles B. Clark, III, M.D. (Provider).
14. On that same date, the Provider suspected that the Claimant was having a lumbar spasm with radiculopathy and prescribed an MRI, with and without contrast, of the Claimant's back.
15. The Provider sought pre-authorization from the Carrier for the MRI.

16. The Carrier denied pre-authorization of the MRI contending that the information submitted did not show that it was medically necessary.
17. The Provider filed a request for medical dispute resolution with TWCC concerning the MRI pre-authorization dispute.
18. An IRO reviewed the medical dispute and did not find that it was reasonably medically necessary.
19. The evidence in this case does not show that the requested MRI is more likely than not reasonably medically necessary due to the Claimant's \_\_\_\_, Compensable Injury for which the Carrier is liable.
20. After the IRO decision, the Claimant asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) ALJ.
21. Required notice of a contested-case hearing concerning the dispute was mailed to the Claimant and the Carrier.
22. On August 17, 2005, SOAH ALJ William G. Newchurch held a contested-case hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded and the record closed on that same day.
23. The Claimant appeared at the hearing by telephone.
24. The Carrier appeared at the hearing through its attorney, James R. Sheffield, II.

### **III. CONCLUSIONS OF LAW**

1. 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 TEX. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) (West 2004) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2004).
2. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
3. Based on the above Findings of Fact and Gov't Code § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) § 155.41(b) (2004), and 28 TAC §§ 133.308(u) and 148.14 (2005), the Claimant has the burden of proof in this case.
4. 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 that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. Labor Code § 408.021 (a).

5. TWCC must specify by rule which health care treatments and services require express pre-authorization by a carrier. A carrier is not liable for those specified treatments and services unless pre-authorization is sought by the claimant or a health care provider and either obtained from the carrier or ordered by TWCC. Labor Code §413.014.
6. Pre-authorization is required for an MRI. 28 TAC § 134.600.
7. Based on the above Findings of Fact and Conclusions of Law, the Provider's request of the Carrier for pre-authorization of the MRI should be denied.

**ORDER**

**IT IS ORDERED THAT** the Provider's request of the Carrier for pre-authorization of the MRI is denied.

**SIGNED August 31, 2005.**

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**WILLIAM G. NEWCHURCH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**