

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder.

ISSUES

A contested case hearing was held on July 15, 2009 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to a cervical MRI without contrast for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was represented by AT, attorney. Respondent/Carrier appeared and was represented by RJ, attorney.

BACKGROUND INFORMATION

Claimant/Petitioner (Claimant) sustained a compensable injury to his cervical spine on _____. Claimant underwent a successful cervical fusion on October 1, 2008 with improvement in the previous neurological deficit. Claimant participated in post-op physical therapy but began experiencing severe radicular symptoms in February 2009. On February 23, 2009, Dr. P, Claimant's treating doctor, recommended a repeat MRI of the cervical spine without contrast. The proposed procedure was denied by the Carrier/Respondent (Carrier) and submitted to an IRO who upheld the Carrier's denial. The IRO reviewer, a board certified neurologist, concluded that a cervical spine MRI was not medically necessary at this time. The IRO reviewer noted that there are other issues to look into before suspecting a failure of the cervical fusion.

Texas Labor Code Section 408.021 provides that 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. Section 401.011(22-a) defines health care reasonably required as "health care that is clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with: (A) evidence based medicine; or (B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community." "Evidence based medicine" is further defined, by Section 401.011(18-a) as the use of the current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts, and treatment and practice guidelines in making decisions about the care of individual patients. The Division of Workers' Compensation has adopted treatment guidelines under Division Rule 137.100. That rule requires that health care providers provide treatment in accordance with the current edition of the *ODG*, and treatment provided pursuant to those guidelines is presumed to be health care reasonably required as mandated by the above-referenced sections of the Texas Labor Code. The initial inquiry, therefore, in any dispute regarding medical necessity, is whether the proposed care is consistent with the *ODG*.

Although the *ODG* does not specifically address repeat MRI's, the *ODG* recommends the following for MRI's:

In determining whether or not the patient has ligamentous instability, magnetic resonance imaging (MRI) is the procedure of choice, but MRI should be reserved for patients who have clear-cut neurologic findings and those suspected of ligamentous instability. (Anderson, 2000) (ACR, 2002) See also ACR Appropriateness Criteria™. MRI imaging studies are valuable when physiologic evidence indicates tissue insult or nerve impairment or potentially serious conditions are suspected like tumor, infection, and fracture, or for clarification of anatomy prior to surgery. MRI is the test of choice for patients who have had prior back surgery. (Bigos, 1999) (Bey, 1998) (Volle, 2001) (Singh, 2001) (Colorado, 2001) For the evaluation of the patient with chronic neck pain, plain radiographs (3-view: anteroposterior, lateral, open mouth) should be the initial study performed. Patients with normal radiographs and neurologic signs or symptoms should undergo magnetic resonance imaging. If there is a contraindication to the magnetic resonance examination such as a cardiac pacemaker or severe claustrophobia, computed tomography myelography, preferably using spiral technology and multiplanar reconstruction is recommended. (Daffner, 2000) (Bono, 2007)

Indications for imaging -- MRI (magnetic resonance imaging):

- Chronic neck pain (= after 3 months conservative treatment), radiographs normal, neurologic signs or symptoms present
- Neck pain with radiculopathy if severe or progressive neurologic deficit
- Chronic neck pain, radiographs show spondylosis, neurologic signs or symptoms present
- Chronic neck pain, radiographs show old trauma, neurologic signs or symptoms present
- Chronic neck pain, radiographs show bone or disc margin destruction
- Suspected cervical spine trauma, neck pain, clinical findings suggest ligamentous injury (sprain), radiographs and/or CT "normal"
- Known cervical spine trauma: equivocal or positive plain films with neurological deficit.

Pursuant to the *ODG* recommendations, MRI's are indicated only if there has been progression of neurologic deficit. The Claimant's treating doctor's office notes indicate that the Claimant had normal neurological examinations until February 23, 2009. The medical records dated after March 2009 clearly document a progression of neurological deficits post cervical fusion. However, the Claimant offered no opinion or report from a qualified doctor to rebut the determination of the IRO or explain how the Claimant meets the criteria in the *ODG* for a cervical MRI. Based on the evidence presented, the Claimant failed to offer evidence based medicine sufficient to contradict the determination of the IRO and the preponderance of the evidence is not contrary to the decision of the IRO.

Even though all the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

FINDINGS OF FACT

1. The parties stipulated to the following facts:

- A. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - B. On _____, Claimant was the employee of (Employer), when he sustained a compensable injury.
2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
 3. The treating doctor requested the Claimant undergo a repeat MRI of the cervical spine without contrast for the compensable injury of _____.
 4. The Claimant failed to offer sufficient medical evidence to prove that he meets the criteria suggested in the *ODG* for a cervical spine MRI without contrast.
 5. The evidence based medicine presented is not contrary to the IRO's determination that a cervical MRI without contrast is not a reasonable and necessary health care service for the compensable injury of _____.

CONCLUSIONS OF LAW

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. Venue is proper in the (City) Field Office.
3. The preponderance of the evidence is not contrary to the decision of the IRO that a cervical MRI without contrast is not health care service reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to an MRI of the cervical spine without contrast for the compensable injury of _____.

ORDER

Carrier is not liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICES COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TX 78701**

Signed this 17th day of July, 2009.

Carol A. Fougerat
Hearing Officer