

NOTICE
Decision filed 06/27/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 1-10-1014WC

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23 (e)(1).

Workers' Compensation
Commission Division
FILED: June 27, 2011

IN THE APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

Workers' Compensation Commission Division

EXECUTIVE MAILING SERVICE,)	Appeal from
Petitioner on Review-Appellant,)	Circuit Court of
v.)	Cook County
JOSHUA GARCIA,)	No. 09L50484
Respondent on Review-Appellee,)	
and)	Honorable
WORKERS' COMPENSATION COMMISSION.)	James C. Murray,
)	Judge Presiding.

PRESIDING JUSTICE McCULLOUGH delivered the judgment of the court.
Justices Hoffman, Hudson, Holdridge, and Stewart concurred in the judgment.

ORDER

Held: The Workers' Compensation Commission's award of medical expenses was not against the manifest weight of the evidence.

On January 30, 2008, claimant, Joshua Garcia, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2006)), seeking benefits from employer, Executive Mailing Service. The arbitrator found claimant sustained back injuries that arose out of and in the course of his employment on January

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18, 2008, and awarded him 21-2/7 weeks' temporary total disability (TTD) benefits. The arbitrator also awarded claimant certain medical expenses in connection with his injury.

However, he relied on utilization review reports submitted by employer to deny expenses for the cost of claimant's physical therapy rendered after February 25, 2008; transforaminal injections; IDET procedures; discogram; and facet injections.

On review, the Workers' Compensation Commission (Commission) modified the arbitrator's decision to require employer to pay for claimant's discogram and IDET procedures. It otherwise affirmed and adopted the arbitrator's decision. On judicial review, the circuit court of Cook County confirmed the Commission's decision. Employer appeals, arguing (1) the Commission's award of medical expenses for claimant's discogram and IDET procedures was against the manifest weight of the evidence. We affirm.

The parties are familiar with the evidence presented and we will discuss it only to the extent necessary to put their arguments in context. On appeal, employer argues the Commission's award of medical expenses for claimant's discogram and IDET procedures was against the manifest weight of the evidence. It points to the medical utilization reports it submitted, noting they recommended non-certification of those procedures.

Pursuant to the Act, a claimant is entitled to receive all reasonable and necessary medical expenses incurred to cure or relieve the effects of his or her accidental injury. 820 ILCS 305/8(a) (West 2006). "The claimant bears the burden of proving, by a preponderance of the evidence, his entitlement to an award of medical expenses under section 8(a)." *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 546, 865 N.E.2d 342, 359 (2007). Whether medical charges are reasonable or causally connected to a claimant's work-related injury "are questions of

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fact to be resolved by the Commission, and its resolution of such matters will not be disturbed on review unless against the manifest weight of the evidence." *Westin Hotel*, 372 Ill. App. 3d at 546, 865 N.E.2d at 359.

Section 8.7 of the Act (820 ILCS 305/8.7 (West 2006)) permits the performance of a "utilization review" to determine the appropriateness of medical services provided to a claimant. That section states as follows:

"Utilization review means the evaluation of proposed or provided health care services to determine the appropriateness of both the level of health care services medically necessary and the quality of health care services provided to a patient, including evaluation of their efficiency, efficacy, and appropriateness of treatment, hospitalization, or office visits based on medically accepted standards." 820 ILCS 305/8.7(a) (West 2006).

The Commission must consider a utilization review "along with all other evidence and in the same manner as all other evidence, in the determination of the reasonableness and necessity of the medical bills or treatment." 820 ILCS 305/8.7(I) (West 2006).

Here, the record shows, and employer does not dispute, that claimant sustained work-related lower back injuries on January 18, 2008. He underwent conservative treatment for his injuries with little success. After conservative treatment failed, Dr. Scott Glaser recommended the discogram and IDET procedures at issue. The utilization review reports submitted by employer recommended non-certification of those procedures. However, the Commission ordered employer to pay for them as reasonable and necessary medical expenses.

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Employer relies on its utilization reports to challenging the Commission's decision. In finding claimant entitled to medical expenses for the discogram and IDET procedures, the Commission stated that utilization review reports were not intended to be dispositive "but rather as evidence to be assessed just like all other evidence." The plain language of section 8.7 of the Act supports the Commission's finding, stating utilization review evidence should be considered "with all other evidence and in the same manner as all other evidence." Employer's utilization reports were clearly not special evidence entitled to greater weight by the Commission than other evidence presented.

The utilization reports were also not immune from criticism. The Commission found fault with the reports as follows:

"[T]he utilization review criteria regarding the recommended discogram and intradiscal electrothermic therapy (IDET) procedure may be a bit too strict. First, the utilization review appears to discount IDET completely as a certifiable treatment *** because of the lack of precise proof of its efficacy. Second, the basis for rejecting the discogram because of the lack of 'documentation of consistent and overwhelming evidence' of pathology appears to be particularly unduly rigid because the discogram is primarily a diagnostic tool and it would be difficult to establish 'consistent and overwhelming evidence' of pathology without one."

Although the utilization review report stated evidence based guidelines did not consistently and overwhelmingly support the discogram or IDET procedures, it acknowledged

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the use of both procedures to treat low back injuries and even the recommendation of the IDET procedure by certain guidelines. With respect to the IDET procedure, the utilization report noted 60,000 such procedures had been performed world wide up to June 2005, and early studies showed some advantages over more invasive treatment. Additionally, the report stated that the IDET procedure was "recommended by practice guidelines written by the American Society of Interventional Pain Physicians." The report further showed that, although studies recently "questioned" the use of discography, it had been used in the past as part of the preoperative evaluation for patients with low back pain.

In this instance, the discogram and IDET procedures were recommended by claimant's treating physician. They were performed on him as an alternative to more invasive treatment and after he had received unsuccessful conservative treatment. Employer's utilization report acknowledged the use of both procedures under similar circumstances. That there is not "overwhelming" support for the performance of those procedures is not the standard by which medical expenses are awarded under the Act. The evidence presented was sufficient for the Commission to find the discogram and IDET procedures were reasonable and necessary to treat claimant's work-related injury. Its decision to award claimant costs associated with those procedures was not against the manifest weight of the evidence.

For the reasons stated, we affirm the circuit court's judgment.

Affirmed.