BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:	)	
	)	
K. I.	)	OAH No. 09-0247-PER
	)	Div. R&B No. 2009-415

DECISION

I. Introduction

W. I., a retired employee in the Public Employees' Retirement System, submitted a claim for medical benefits for services provided to his daughter, K. I. The claim was denied on the ground that the diagnostic procedure performed was not medically necessary. Mr. I. exhausted his administrative appeals, and the denial was upheld by the administrator. Mr. I. appeals.

Because Mr. I. has shown that the diagnostic procedure was medically necessary as that term is defined by the plan, the claim is granted.

II. Facts

When K. I. was five, she was found to have a brain tumor which had not been shown on x-rays, but which was discovered when she had an MRI.[1] Ms. I. overcame viral meningitis as an infant,[2] her childhood brain tumor, and asthma to become a competitive swimmer, training and competing at the collegiate level as a member of the swim team at S. D. S. U.[3]

Ms. I.'s childhood brain tumor had been treated by a craniotomy, and since then Ms. I. has experienced intermittent headaches. Towards the end of her junior year in college, in the spring of 2007, Ms. I. experienced severe headaches. She decided that when she returned to school in the fall, she would not resume competitive swimming.[4] When she came home for the summer, she visited her long-time treating physician, Dr. J.C. Cates, for treatment of her headaches. Dr. Cates ordered an MRI of her brain, which revealed no abnormalities.[5]

Ms. I. returned to school in late August of 2007. For the first time in 12 years, she was no longer a competitive swimmer. For a month or two after her return to school, she continued to swim recreationally, as well as engaging in other vigorous physical activity, including weight

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1 R. 69-70.
2 R. 6.
3 R. 80.
4 K. I. testimony (0:41:40).
5 R. 71-72.

lifting and water polo.[6] In late September, she began experiencing severe, point-specific back pain.[7] Ms. I. could not identify any specific event as a possible cause of the pain.[8] As a long-time competitive athlete, Ms. I. was used to acute and chronic pain from overuse, but this pain was different:[9] it did not improve over time, and it increased with flexion and extension of her thoracic spine.[10] Her back was sensitive to pressure, which made sleeping on her back uncomfortable.[11] Ms. I. reduced her level of physical activity because of the pain and tried non-steroidal anti-inflammatory over the counter medication for about two weeks; when that did not alleviate her pain she terminated her active exercise altogether.[12]

On December 31, 2007, after she had been at home for about two weeks on her winter break and had rested her back completely for several weeks, Ms. I. visited Dr. Cates for treatment of her back pain. Dr. Cates is board-certified in family medicine and sports medicine. Dr. Cates was aware of Ms. I.'s medical history, which included heart palpitations[13] and a diagnosis of hypermobility syndrome,[14] and he knew that Ms. I. had for some time been a competitive collegiate swimmer.[15] He also knew of a prior similar episode of back pain that had resolved after about two months.[16] The current pain, Ms. I. told him, had continued for nearly three months; it was "very focal, unrelenting and consistent."[17] She also told him that she was unaware of any specific event or trauma that might have triggered the pain.

Dr. Cates identified the painful area as the T4-6 area and had a thoracic spinal x-ray taken, which looked "pretty normal, although there may be some disc space narrowing."[18] Although non-traumatic injury to the thoracic spine is uncommon in the general population at a

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6 K. I. testimony (0:42:50).

7 K. I. testimony (0:43:30); R. 5 ("I had been experiencing severe point specific pain on my thoracic vertebrae that was unrelenting for months."); R. 80 ("I was having severe localized back pain in the fall semester that had been ongoing for a couple of months.").

8 K. I. testimony (0:40:30); R. 5.

9 R. 95.

10 K. I. testimony (1:31:00); R. 95.

11 R. 95.

12 K. I. testimony (0:39:20; 0:42:40-55; 0:45:00 ["Once my back started hurting, I couldn't do any of it."]; 1:29:00-1:30:00 [Advil, then complete rest prior to visiting Dr. Cates]); R. 5.

13 J. Cates testimony (0: 06:05; 0:13:30; 0:15:00). Ms. I. had been taking Toprol, apparently for this condition, but had discontinued it as ineffective. R. 125, 142.

14 R. 112; J. Cates testimony (0:15:40). Dr. Cates testified that a rheumatologist had diagnosed hypermobility syndrome.

15 J. Cates testimony (0:06:19).

16 J. Cates testimony (0:14:20).

17 R. 125.

young age, in Dr. Cates's experience as a specialist in sports medicine, it is not unusual for elite athletes, particularly in swimmers.[19] For this reason, Dr. Cates (who was not aware that Ms. I. had given up competitive swimming) deemed it likely that Ms. I. had injured her back while training or competing for the swim team.[20] Dr. Cates considered possible diagnoses for the pain Ms. I. was experiencing. The likely cause of the pain, he believed, was a fracture of the pars, degenerative disc disease, or facet arthritis.[21] He also considered the possibility of some cardiac involvement, or, less likely, a compression fracture.[22]

The spinal column includes the cervical (neck), thoracic (chest), and lumbar (lower back) vertebrae. The vertebrae are separated by discs. The pars is a bony segment of the vertebrae; facets are the joints connecting the vertebrae that provide flexibility in the spine.[23] Degenerative disc disease may result from a compressed disc; facet arthritis can occur as a result of damaged cartilage in the facet joints,[24] and spondylolysis (a slippage of the vertebra) may result from a pars fracture.[25] Degenerative disc disease and facet arthritis can occur as a result of a traumatic injury, as a result of wear and tear over a lifetime either through ordinary activity or, sooner, through strenuous physical activities affecting the spine.[26] The thoracic vertebrae, because they are attached to the ribs, are relatively stationary and inflexible as compared with the cervical or lumbar spine, and as a result all of these conditions are relatively less likely to occur in the thoracic spine than in the cervical or lumbar spine.[27] Nonetheless, competitive athletes, and in particular swimmers, can injure the thoracic spine, resulting in a pars fracture, facet arthritis, or degenerative disc disease, through hyperextension or hyperflexion.[28]

Degenerative disc disease is generally accompanied by radiculopathy, or irritation of the nerves radiating from the affected vertebrae.[29] The nerves typically affected by degenerative

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[18] R. 125 ("Her back reveals some tenderness to palpate, very focused at T4-5, and perhaps 6."). The radiologist found the x-ray entirely normal, and reported, "The disc spaces are well preserved. The vertebral bodies are in good alignment. There s no evidence of pathology."). R. 107

[19] J. Cates testimony (0:07:20; 0:10:36; 0:26:15).

[20] R. 125 ("She's a competitive swimmer and probably hurt her mid-thoracic with that activity.").

[21] J. Cates testimony (0:07:30-08:00; 0:25:00-0:26:30).

[22] J. Cates testimony (0:06:45).

[23] J. Cates testimony (0:26:30-50).

[24] J. Cates testimony (0:27:30).

[25] J. Cates testimony (0:07:15; 0:10:40; 0:25:00-50).

[26] J. Cates testimony (0:25:45-26:15). Dr. Fogarty testified such conditions would not be expected in the thoracic spine absent trauma. J. Fogarty testimony (1:10:00).

[27] J. Fogarty testimony (0:56:30).

[28] J. Cates testimony (0:07:07-08:45; 0:26:45-27:30). Dr. Cates testified a compression fracture was possible.

[29] J. Cates testimony (0:21:00-24:15).

disc disease in the mid-thoracic vertebrae do not radiate into the legs; rather, they generally lead to the chest area. Thus, when radiculopathy is present as a result of degenerative disc disease in the mid-thoracic vertebrae, the radiated pain, if present, occurs in bands extending horizontally, in some cases all the way to the chest area.[30]

The primary initial diagnostic procedure for back pain is x-rays.[31] If x-rays are negative, the indicated treatment is primarily to rest the affected area and administer anti-inflammatory drugs; back exercises or physical therapy may also be provided.[32] If, after a period of four to six weeks, the symptoms do not resolve, a diagnostic MRI is indicated.[33] Dr. Cates thought that Ms. I. had already "had a pretty good trial of conservative treatment."[34] In Dr. Cates's opinion, a prompt diagnosis of her symptoms was important to avoid an early onset of lifelong, chronic back pain,[35] and returning to competitive swimming without a firm diagnosis for the back pain would place Ms. I. at risk of further injury.[36] In order to identify the source of the pain Dr. Cates recommended an MRI.[37] If the MRI showed evidence of degenerative disc disease, facet arthritis, or a pars fracture, Dr. Cates anticipated recommending a significant change in lifestyle, including complete rest of the back for a period of time, with life-long cessation of the high level of physical activity that Ms. I. had previously engaged in.[38]

Ms. I. underwent the MRI on January 2, 2008.[39] The results were negative: no abnormality was found.[40] Ms. I. had a whole body bone scan on January 11, 2008, and again the results were negative and no abnormality was found.[41] Ms. I. returned to school, where she continued to rest her back.[42] By May, after another three or four months without stressful physical activity, the pain resolved. The cause of the symptom has never been identified. Dr.

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30 J. Cates testimony (0:23:10-30; 0:24:20-30); J. Fogarty testimony (1:13:30).

31 Dr. Cates testified that it is more difficult to identify degenerative disc disease from x-rays of the thoracic spine. Dr. Fogarty disagreed.

32 J. Cates testimony (0:34:30-36:40).

33 R. 128; J. Fogarty testimony (1:15:00-1:16:00); J. Cates testimony (0:34:30-0:36:40).

34 J. Cates testimony (0:22:25).

35 J. Cates testimony (0:28:00-10).

36 J. Cates testimony (0:21:15; 0:28:30-28:40).

37 R. 125. Dr. Cates also referred Ms. I. to a neurologist regarding her headaches. *Id.*

38 J. Cates testimony (0:19:26).

39 R. 40.

40 R. 40.

41 R. 41.

42 K. I. testimony (0:42:20).

Cates believes that the pain was caused by a spinal condition that remained undetected even with the MRI.[43]

W. I. submitted a claim for payment of the fee for the MRI, $2,055.[44] His medical plan provides payment for services that are "medically necessary." To be considered medically necessary, a diagnostic procedure such as an MRI must be: (1) indicated by the health status of the patient and expected to provide information to determine the course of treatment; and (2) no more costly than another service which could fulfill those requirements.[45]

The claim was initially denied as not medically necessary. The claims review states, "Back pain without evidence of nerve compression or radiculopathy is not sufficient reason to use [an MRI]."[46] Ms. I. sought review by a review panel.[47] The review panel unanimously concurred with the initial denial.[48] The panel based its decision, in part, on an external review by a physician board-certified in diagnostic radiology.[49] That reviewer concluded:

> [W]ith focal pain without radiculopathy, as in this case, and without a history of recent trauma the consensus is for conservative treatment/therapy. This conservative treatment includes usage of nonsteroidals and modification of activities. … The patient did take Topral [sic] 50 mg a day for an unknown length of time. Modification of activity is not noted.
> …
> The Interqual criteria[50] for the patient[']s described symptoms (back pain, focal, without radiation or weakness) specifically state that there should be nonsteroidal use for >3 weeks as well as activity modification of at least 6 weeks prior to progressing to MRI.[51]

The reviewer referenced two resources in support of her conclusion, the American College of Radiology Appropriateness Criteria, and an article in Physical Therapy, a professional journal.[52]

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43 J. Cates testimony (0:30:15; 1:10:30).
44 R. 61.
45 Health Care Plan, pp. 17-18.
46 R. 120, R. 121.
47 R. 80.
48 R. 31, 85, 86, 88.
49 R. 31, 104.
50 The InterQual criteria are included in the record at R. 128-133.
51 R. 87.
52 R. 103-104. Both references are available online. The Appropriateness Criteria (October 2008 edition) may be found at www.acr.org (click on Appropriateness Criteria). The review panel did not specify which criterion was considered. The journal article may be found at www.ptjournal.org (click on PTJ Archive). Neither document was included in the record.

The administrative law judge has not considered the contents of either of the referenced documents in reaching a decision in this case. The Appropriateness Criteria include musculoskeletal imaging (including suspected stress or insufficiency fractures) and neurological imaging (including low back pain). For the latter, the criteria summary states, "If radiographs are not adequate to solve the clinical problem, MRI is the clear-cut choice for imaging, particularly in the elite athlete…". For the former, the criteria state that in the absence of a "red flag," MRI

Ms. I. requested a review by an independent review organization.[53] The review was conducted by Dr. Jeanne Fogarty, a physician board-certified in radiology,[54] who concluded that the MRI was not medically necessary, stating "[w]ith no clinical evidence for spinal cord or nerve root compression, fracture or tumor, an MRI will not provide any additional information to assist in treating this patient's relatively recent onset of mid back pain."[55] Accordingly, the independent review organization concluded that the MRI was not medically necessary.[56] The plan administrator upheld the denial of the claim.[57]

III. Discussion

At issue in this case is whether at the time it was performed an MRI was "medically necessary" within the meaning of Mr. I.'s health care plan, in light of the facts as found at the hearing. The plan states:

> Benefits are available for medically necessary services…to diagnose…a physical or medical condition.
> To be medically necessary, the service…must be:
> …
> ● A diagnostic procedure indicated by the health status of the patient and expected to provide information to determine the course of treatment…; and
> ● No more costly than another service…which could fulfill these requirements.
>
> In determining if a service…is medically necessary, the claims administrator will consider:
> ● Information provided on the affected person's health status;
> ● Reports in peer-reviewed medical literature;
> ● Reports and guidelines published by nationally recognized health care organizations that include supporting scientific data;
> ● Generally recognized professional standards of safety and effectiveness…for diagnosis, care or treatment;
> ● The opinion of health care professionals in the generally recognized health specialty involved;

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is not indicated; pain persisting over six weeks, however, is identified as a "red flag." As previously stated, the administrative law judge has disregarded the criteria, since neither party introduced them into evidence and neither of the doctors who testified addressed them.

53 R. 30.

54 J. Fogarty testimony (0:50:49). The external review organization's report states that the external reviewer was board-certified in radiology. R. 56. However, the record includes a summary of expert qualifications indicating that the external reviewer was board-certified in orthopedics. R. 20.

55 R. 20-21.

56 R. 56-58.

57 R. 10, 59-60.

- Any other relevant information brought to the claim's administrator's attention.[58]

1. Health Status

A patient's health status may be said to include both the patient's medical history and the patient's medical condition at the time the procedure was performed. In this case, at the time she visited Dr. Cates K. I. was 22 years old. She had been for many years a competitive swimmer, engaging in strenuous physical activity, including weight training that created an unusually high degree of stress and strain on her back. She had been diagnosed with hypermobility syndrome, a condition that in some forms is associated with scoliosis,[59] and which can increase the risk of musculoskeletal issues.[60] She had severe, focal, long-standing (more than two months) pain at the T4 through T6 vertebrae, with no known traumatic origin and absent radiculopathy, and had experienced a similar episode that had resolved without treatment after about two months. She had for several weeks treated the pain with over the counter non-steroidal anti-inflammatory medication, and had rested her back for more than one month.[61]

2. Peer-Reviewed Medical Literature

The review panel relied on an article in a professional journal, and Dr. Fogarty testified that she had reviewed medical literature generally.[62] Both the panel and Dr. Fogarty assert that the medical literature supports their opinion that an MRI was not indicated. However, because none of the medical literature has been included in the record, it is impossible to assess the weight the literature should be afforded.

3. Peer-Review Guidelines

The review panel relied on peer-reviewed criteria, the American College of Radiology's Appropriateness Criteria. However, those criteria are not in the record.[63]

The record does include the InterQual MRI imaging criteria issued by McKesson Corporation and relied on by the review panel.[64] Those criteria do not include suspected facet

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58 Health Care Plan at 17-18.

59 R. 42-44.

60 J. Cates testimony (0:15:40).

61 The preponderance of the evidence is that Ms. I. reduced her level activity due to pain shortly after she began experiencing it, in early October; that she then tried Advil for a couple of weeks; and that after the drugs and reduced activity failed to eliminate her symptoms, she gave her back complete rest, beginning in advance of the start of her Christmas break. *See* note 12, *supra*.

62 J. Fogarty testimony (1:02:00-04:00).

63 *See* note 52, *supra*.

64 R. 128-133. There is no indication in the record that the InterQual criteria have been peer-reviewed; they are proprietary, rather than in the public record.

arthritis or fracture of the pars as an indication for an MRI. MRI is listed as indicated for diagnosis of suspected thoracic radiculopathy: it is the "initial study of choice for suspected nerve root compression, whether caused by disc disease, tumor, or metastatic disease."[65] Mild to moderate pain continuing for more than three weeks after treatment by non-steroidal anti-inflammatory drugs, coupled with reduced physical activity for more than six weeks is an indication for an MRI, according to the criteria.[66]

4. Safety and Effectiveness

The safety of the MRI procedure is not at issue. Although Dr. Fogarty testified that a CT scan is more effective than an MRI for certain purposes,[67] the preponderance of the evidence is that an MRI is an effective diagnostic tool for thoracic spinal pain. At issue is not whether the procedure is effective, but rather whether it was premature in this particular case.

5. Opinion of Health Care Professionals

This factor calls for consideration of the opinion of health care professionals "in the generally recognized health care specialty at issue." In this case, the health care specialty at issue might be said to be orthopedics, sports medicine, or radiology. Dr. Cates is board-certified in sports medicine and Dr. Fogarty is board-certified in radiology. The opinions of both should be considered.

Dr. Fogarty's opinion was that a thoracic compression spinal injury, herniated disc, or facet joint stress would not be expected because such injuries are generally limited to older patients, in the absence of direct trauma.[68] However, Dr. Cates's opinion was that a thoracic spinal injury of that nature would not be unusual in a younger patient who is a competitive athlete, particularly one diagnosed with hypermobility syndrome.[69] Because Dr. Cates is the treating physician,[70] because he has direct clinical experience with patients who, like Ms. I., are elite athletes, and because he is board-certified in the more relevant specialty, sports medicine,

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65 R. 131.

66 R. 129 (Item 140).

67 J. Fogarty testimony (0:54:00-0:58:00).

68 J. Fogarty testimony (0:53:10). Dr. Fogarty based her opinion in part on a search of the medical literature regarding possible links between competitive swimming, hypermobility, and thoracic back injuries. She found nothing in the literature to support use of an MRI as a diagnostic tool even with that history. J. Fogarty testimony (1:08:00).

69 J. Cates testimony (1:09:00 [facet arthritis]).

70 *See generally*, Rhines v. State, Public Employees' Retirement Board, 30 P.3d 621, 628-629 (Alaska 2001); Lopez v. Administrator, Public Employees' Retirement System, 20 P.3d 568, 571 (Alaska 2001); Childs v. Copper Valley Electrical Association, 860 P.2d 1184, 1189-90 (Alaska 1993); Black v. Universal Services, Inc., 627 P.2d 1073, 1075 (Alaska 1981).

Dr. Cates's opinion regarding the possible causes of his patient's back pain is more persuasive than Dr. Fogarty's opinion.

Nonetheless, within the area of her own expertise, radiology, Dr. Fogarty's observations regarding the efficacy of an MRI as a diagnostic procedure are more persuasive than Dr. Cates's. Dr. Cates's opinion was that x-rays are less effective in the thoracic spine and that the type of injury he suspected is "only rarely" or "very difficult" to pick up by x-rays.[71] He added, and Dr. Fogarty agreed, that an MRI is the examination of choice to identify degenerative disc disease.[72] Dr. Fogarty testified that an x-ray is usually sufficient to diagnose bone damage and when an x-ray does not suffice, a CT scan or facet injection is preferable to an MRI as a diagnostic procedure for a pars defect or facet arthritis,[73] although an MRI is preferable to a CT scan for a compression fracture.[74]

6. Medical Necessity

A. AN MRI WAS INDICATED BY MS. I.'S HEALTH STATUS

All parties agree that in the absence of radiculopathy or another "red flag,"[75] an MRI is generally not indicated as the initial diagnostic procedure for back pain. Rather, x-rays and conservative treatment are indicated. The fundamental issue in this case is the nature of the conservative treatment that should be provided prior to an MRI, and whether, at the time the MRI was provided, Ms. I. had received a sufficient course of conservative treatment to warrant an MRI.

The InterQual imaging criteria include persistent back pain after non-steroidal anti-inflammatory medication for three weeks and activity modification for six weeks as a "red flag" for MRI imaging.[76] Dr. Fogarty agreed that an MRI is indicated when a patient has back pain that is unresolved for four to six weeks, if conservative treatment has failed to alleviate the condition and x-rays have not provided a diagnosis.[77] Dr. Cates testified that one month of rest would be sufficient in an athlete, and that while physical therapy or specific back exercises,

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71 J. Cates testimony (0:08:44; 0:09:30-50).
72 J. Cates testimony (1:07:00-08:00); J. Fogarty testimony (1:04:30).
73 J. Fogarty testimony (0:53:50-0:55:40; 1:05:40-1:06:00).
74 J. Fogarty testimony (0:55:00).
75 Dr. Fogarty testified that other "red flags" for MRI for back pain include trauma, symptoms of an abscess, and a history of cancer. J. Fogarty testimony (0:52:40-53:10).
76 R. 128.
77 J. Fogarty testimony (1:15:00-16:00).

traction, and ultrasound could be tried, rest was the primary component of conservative treatment.[78]

At the time she visited Dr. Cates, Ms. I. had already taken non-steroidal anti-inflammatory medication for about two weeks. The preponderance of the evidence is that she had reduced her level of physical activity for more than two months and given her back a complete rest for at least one month.[79] However, neither the review panel nor Dr. Fogarty was aware of these facts, because neither the use of non-steroidal anti-inflammatory medication nor the reduced physical activity was noted in Dr. Cates's medical record for December 31, 2007, which was the only medical record that they reviewed.[80]

When the claim reviews, internal and external, are considered in light of Dr. Cates's December 31, 2007, medical record, it appears that the claim was denied primarily because the medical record did not show that conservative treatment had been attempted. But the internal review panel and Dr. Fogarty did not review Dr. Cates's prior medical records and they did not have the benefit of his extended knowledge of Ms. I.'s medical history or of Ms. I.'s description of the course of events. Dr. Fogarty's review stated that Ms. I.'s back pain was "relatively recent."[81] In fact, Ms. I.'s back pain was not "relatively recent" -- it had persisted for three months. Furthermore, Ms. I.'s testimony at the hearing established that she had attempted conservative treatment, including non-steroidal anti-inflammatory medication, reduced activity, and ultimately complete rest for a considerable period of time before visiting Dr. Cates on December 31, 2007. Moreover, Dr. Fogarty's opinion that an MRI was not medically necessary rested to a large degree on her opinion that it would have been highly unusual to find an injury of the type Dr. Cates suspected, in the thoracic spine. But, as previously observed, her opinion on regarding the likelihood of such an injury is less persuasive than that of Dr. Cates, who specializes in sports medicine and has substantial relevant clinical experience. As the treating physician Dr. Cates's opinion was that it was important to make a diagnosis at an early time in order to avoid aggravating any underlying condition and prevent long-term effects. In light of Ms. I.'s prior conservative treatment, the MRI was medically necessary.

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78 J. Cates testimony (0:34:30-36:40).
79 *See* notes 12 & 61, *supra*.
80 R. 87. *See* note 13, *supra*.
81 R. 20-21.

B. COURSE OF TREATMENT

To be "medically necessary," a diagnostic procedure must be "expected to provide information to determine the course of treatment." In this particular case, the preponderance of the evidence is that the MRI was expected to provide information regarding the existence or non-existence of degenerative disc disease, facet arthritis, or a pars fracture, which had not been identified by an x-ray. However, the administrator argues that because the course of treatment would not have been affected regardless of the outcome of the MRI, the claim should be denied.

Dr. Cates testified that the primary reason for the MRI was to determine whether or not Ms. I. could return to her collegiate swimming career. But Ms. I., unknown to him, had already decided that she would not return to the swim team. The course of treatment in the short run, thus, would have been largely the same whether or not the MRI revealed degenerative disc disease, facet arthritis, or a pars fracture: Ms. I. would have continued conservative treatment (primarily, reduced physical activity). But more than the short term was at issue. Dr. Cates testified that if the MRI had revealed degenerative disc disease, facet arthritis, or a pars fracture, he would have advised Ms. I. to permanently discontinue all forms of strenuous physical activity that would have created unusual stress for her back. Even if he had known that Ms. I. had already decided to give up competitive swimming, he would have advised her to make substantial changes in her personal lifestyle. The MRI would have provided information that would determine the course of treatment over the long term, after any immediate symptoms had resolved through continued conservative treatment.

IV. Conclusion

The diagnostic procedure was indicated, and was expected to provide information that would affect the course of treatment. Coverage is therefore available. The claim for coverage is granted.

DATED October 14, 2009.

Signed
Andrew M. Hemenway
Administrative Law Judge

Adoption

This Decision is issued under the authority of AS 39.35.006. The undersigned, in accordance with AS 44.64.060, adopts this Decision as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 18th day of November, 2009.

By: *Signed*
Andrew M. Hemenway
Administrative Law Judge