

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.

ISSUE

A contested case hearing (CCH) was held on November 27, 2007, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that 12 sessions of physical therapy are not reasonable and necessary healthcare services for the compensable injury of ___?

PARTIES PRESENT

Claimant appeared and was assisted by an (Ombudsman).

Carrier appeared and was represented by an (Attorney).

The court reporter was BR.

Also present was ombudsman observer.

BACKGROUND INFORMATION

Claimant worked in the Employer's warehouse filling orders by pulling merchandise from shelves and placing the merchandise in boxes for shipping. She sustained a compensable injury on ___, when a box fell from an overhead shelf hitting her in the back of the head and neck. Claimant testified that a forklift driver working in the next row had accidentally hit the storage shelf causing the box to fall.

Claimant was sent to (medical center) the following day for treatment. This treatment was not completed, because Claimant was diagnosed with acute cardiovascular problems, unrelated to her work activities. In late May 2007, Claimant was released by her cardiologist to return for treatment of her compensable injury. On May 30, 2007, Claimant began treatment with Dr. V for the compensable injury. He provided a diagnosis of a closed head injury and neck pain. He recommended physical therapy along with further testing. Claimant's records indicate that Claimant received 13 physical therapy treatments between May 31, 2007 and July 12, 2007.

On July 6, 2007, Claimant had a physical therapy re-examination. This resulted in a 7 page computer generated physical therapy evaluation signed by the physical therapy provider. Dr. V is listed as the referral source, but there is no indication the treating doctor saw or approved of the physical therapy evaluation. There are numerous errors in the report, and the

diagnosis listed does not match up with the compensable injury. The physical therapy provider faxed the July 6, 2007, re-examination to the Carrier on July 12, 2007.

The Carrier considered the above fax to be a request for certification of medical services, and more specifically, a request to approve physical therapy for 2 times a week for 3 weeks. The Carrier noted the Official Disability Guidelines (ODG) provided 9 physical therapy sessions over a 4-week period for regional neck pain. The Carrier denied the request on July 17, 2007.

On July 23, 2007, the physical therapy provider faxed a request for reconsideration to the Carrier. No additional information was provided. The prior July 6, 2007, re-examination was faxed to the Carrier. On July 30, 2007, the Carrier denied the request for reconsideration.

On August 14, 2007, the physical therapy provider sent additional information to the Carrier that included a prescription for continued physical therapy from the treating doctor. The prescription was a request for pre-authorization for out-patient physical therapy 2 times per week for 3 weeks and a follow-up exam from the treating doctor explaining why the Claimant needed to complete her rehabilitation program. In addition, the Carrier was provided the July 13, 2007, designated doctor's report which found that Claimant was not at maximum medical improvement, because Claimant needed additional physical therapy. This August 14, 2007, communication, from the treating doctor, is important because it establishes that the Carrier had in its possession medical records which it failed to provide to the Independent Review Organization (IRO) for review.

After review of the August 14, 2007, submission for pre-certification of 6 sessions of physical therapy, the Carrier denied this request as not being filed timely. In response, Claimant filed a request for review by an IRO.

On September 30, 2007, the IRO found that the previous adverse determination should be upheld. The information provided to the IRO reviewer was very limited. There were 3 letters from the Carrier denying the Claimant's request for physical therapy and a July 2007, physical therapy evaluation. The reviewer commented that no mechanism of injury was provided. No physician evaluation was provided. No documentation of treatment or response to this treatment was provided. The reviewer concluded that there is no evidence that Claimant has benefited from the physical therapy, and given the lack of documentation, further physical therapy is not recommended. The IRO decision is based on the fact that there were no medical records of the Claimant to review.

The medical records that were submitted to the Carrier prior to the IRO review were the July 30, 2007, report of Dr. V, the treating doctor. This report provides an explanation as to why additional physical therapy was needed. In addition, the designated doctor's report of July 13, 2007, was provided to the Carrier. The designated doctor recommended additional physical therapy.

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. Health care reasonably required is further defined in Texas Labor Code Section 401.011 (22a) 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 evidence based medicine or, if evidence based medicine is not available, then generally accepted

standards of medical practice recognized in the medical community. Health care under the Texas Workers' Compensation system must be consistent with evidence based medicine if that evidence is available. Evidence based medicine is further defined in Texas Labor Code Section 401.011 (18a) to be the use of the current best qualified 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 accordance with the above statutory guidance, the Division of Workers' Compensation has adopted treatment guidelines by Division Rule 137.100. This rule directs health care providers to provide treatment in accordance with the current edition of the Official Disability Guidelines (ODG), and such treatment is presumed to be health care reasonably required as defined in the Texas Labor Code. Thus, the focus of any health care dispute starts with the health care set out in the Official Disability Guidelines (ODG).

In the present case, the Claimant does not dispute that the ODG provides for 9 physical therapy sessions, as noted in the IRO decision. The treating doctor explains that although Claimant has already had 12 sessions of physical therapy, she is in need of further physical therapy because she did not receive active physical therapy as contemplated by the ODG. Claimant has a heart condition unrelated to the compensable injury. Because of the heart condition, Claimant did not receive active physical therapy. She received heat treatment, ice packs and electrical stimulation. Physical exercise was limited. Thus, Claimant never received the physical therapy as outlined in the ODG. Claimant's heart condition has improved and her treating doctor has requested 6 physical therapy sessions. I find the treating doctor's request, as explained above, does comply with the Official Disability Guidelines (ODG) and is more persuasive than the IRO decision.

I find the greater weight of the credible evidence is contrary to the decision of the IRO. Additional physical therapy for 2 times per week for 3 weeks is necessary and reasonable medical care, and is within the authorized treatment plan set out in the ODG. It is noted that the Claimant's treating doctor requested only 6 physical therapy sessions, not the 12 denied by the Carrier.

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).
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's request for physical therapy 2 times per week for 3 weeks does comply with the Official Disability Guidelines (ODG).
4. Six sessions of physical therapy are health care reasonably required 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 contrary to the decision of the IRO that 12 sessions of physical therapy are not reasonable and necessary health care services for the compensable injury of ____.

DECISION

Six sessions of physical therapy are health care reasonably required for the compensable injury of ____.

ORDER

Carrier is ordered to pay benefits in accordance with this decision, the Texas Workers' Compensation Act, and the Commissioner's Rules.

The true corporate name of the insurance Carrier is **HARTFORD INSURANCE COMPANY OF THE MIDWEST**, and the name and address of its registered agent for service of process is:

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201**

Signed this 15th day of April, 2008.

Donald E. Woods
Hearing Officer