

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 benefit contested case hearing was opened on May 28, 2008, and closed on June 18, 2008, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that a lumbar discogram at L3-L4 and L5-S1 with a control at L1-L2 is not a reasonable and necessary health care service for the compensable injury of _____?

PARTIES PRESENT

Petitioner appeared and was assisted by IG, Ombudsman. Carrier appeared and was represented by CA, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on _____ when a special education student weighing 188 pounds fell on her during a class activity period. The claimant received conservative treatment, including ten sessions of physical therapy, steroid injections and oral steroids.

Claimant was referred for pain management with Dr. VM. He recommended a discogram at L3–L4 and L5-S1, with a control at L1-L2. Dr. M submitted the request to the Carrier and it was denied on February 15, 2008. Dr. SS, an orthopedist, favored surgical intervention at L5-S1, but also recommended a discogram. A request for reconsideration to the carrier was denied on February 28, 2008. The Carrier cited insufficient documentation, including the lack of an in-depth psychological examination as required by the Official Disability Guidelines (ODG) for approval of the procedure.

A review by an Independent Review Organization (IRO) was requested by the Claimant. The IRO agreed that the proposed discogram was not medically indicated. The IRO cited the ODG as follows:

Not recommended. In the past, discography has been used as part of the pre-operative evaluation of patients for consideration of surgical intervention for lower back pain. However, the conclusions of recent, high quality studies on discography have significantly questioned the use of discography results as a preoperative indication for either IDET or spinal fusion. These studies have suggested that reproduction of the patient's specific back complaints on injection of one or more discs (concordance of symptoms) is of limited diagnostic value. (Pain production was found to be common in

non-back pain patients, pain reproduction was found to be inaccurate in many patients with chronic back pain and abnormal psychosocial testing, and in this latter patient type, the test itself was sometimes found to produce significant symptoms in non-back pain controls more than a year after testing.)

While not recommended above, if a decision is made to use discography anyway, the following criteria should apply:

- o Back pain of at least 3 months duration
- o Failure of recommended conservative treatment including active physical therapy
- o An MRI demonstrating one or more degenerated discs as well as one or more normal appearing discs to allow for an internal control injection (injection of a normal disc to validate the procedure by a lack of a pain response to that injection)
- o Satisfactory results from detailed psychosocial assessment (discography in subjects with emotional and chronic pain problems has been linked to reports of significant back pain for prolonged periods after injection, and therefore should be avoided)
- o Intended as a screen for surgery, i.e., the surgeon feels that lumbar spine fusion is appropriate but is looking for this to determine if it is not indicated

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).

While Dr. S provided a letter indicating that the discogram was necessary to guide further medical intervention, the letter did not mention the ODG or provide any evidence-based medicine in support of the claimant's position.

Health care reasonably required under the Texas Workers' Compensation Act must be evaluated based on evidence based medicine. In this case, the IRO decision evaluated the health care request in view of evidence based medicine. The preponderance of the evidence is not contrary to the IRO decision.

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 she 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. Dr. S, an orthopedist, recommended a discogram to consider surgical necessity and the appropriate procedure for the Claimant.
4. The preponderance of the evidence is not contrary to the IRO decision that a discogram at L3-L4 and L5-S1 with a control at L1-L2 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 IRO decision that a discogram at L3-L4 and L5-S1 with a control at L1-L2 is not a reasonable and necessary health care service for the compensable injury of _____.

DECISION

The preponderance of the evidence is not contrary to the decision of the IRO that a discogram at L3-L4 and L5-S1 with a control at L1-L2 is not a reasonable and necessary health care service 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, **(SELF-INSURED)** and the name and address of its registered agent for service of process is:

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE)**

Signed this 20th day of June, 2008.

Carolyn Cheu
Hearing Officer