

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 held on July 16, 2008 to decide the following disputed issue:

Whether the preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO) that lumbar medial branch facet blocks are not reasonable and necessary health care services for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was represented by AT, attorney. Carrier appeared and was represented by R J, attorney.

BACKGROUND INFORMATION

On _____, Claimant sustained a compensable injury to his lumbar spine and he was subsequently diagnosed with lumbar radiculopathy and facet joint syndrome. Claimant underwent a fusion with hardware at L4-5 and L5-S1. On November 29, 2007, Claimant's treating doctor requested medial branch facet blocks for continuing low back pain. The Claimant testified that he had benefited from prior blocks and that he underwent facet blocks in September 2007. Claimant testified that he felt immediate relief after the September 2007 injection and that his symptoms were relieved for about four months. The Claimant has a history of left L5-S1 radiculopathy and he is status post fusion at L4-5 and L5-S1 and post laminectomy with changes at L4 and L5. On February 25, 2008, a request was made for a second set of medial branch blocks on the left. This request was denied with the rationale that the levels to be injected were not identified and the ODG states that there is a lack of evidence to support the therapeutic efficacy of lumbar medial branch blocks, especially for patients with radicular pain.

The IRO reviewer, a board certified pain management physician, recommended that the lumbar median branch facet blocks not be authorized. The IRO reviewer's rationale was that facet blocks should be limited to patients with low back pain that is non-radicular and facet blocks should not be performed in patients who have had a previous fusion procedure at the planned injection level. The IRO reviewer goes on to state that this patient's [Claimant] diagnosis includes radiculitis and the medical records document diminished Achilles reflex and lower extremity sensation. For this reason, certification cannot be supported.

Under the Official Disability Guidelines (ODG), in reference to lumbar medial branch facet blocks, the recommendation is:

Criteria for use of therapeutic intra-articular and medial branch blocks are as follows:

1. No more than one therapeutic intra-articular block is recommended.
2. There should be no evidence of radicular pain, spinal stenosis, or previous fusion.
3. If successful (pain relief of at least 50% for a duration of at least 6 weeks), the recommendation is to proceed to a medial branch diagnostic block and subsequent neurotomy (if the medial branch block is positive).
4. No more than 2 joint levels may be blocked at any one time.
5. There should be evidence of a formal plan of additional evidence-based activity and exercise in addition to facet joint injection 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. 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 Claimant's lumbar spine symptoms were temporarily relieved by the prior facet blocks performed in September 2007, the Claimant offered no evidence based medicine to contradict the determination of the IRO. The Claimant argued that, even though the ODG does not recommend this procedure, the literature and studies that the ODG is based upon does show that the injections could produce moderate improvement on a short-term basis (3 months). The Carrier argued that the Claimant did not meet the criteria as set out in the ODG for the use of therapeutic intra-articular and medial branch blocks and that the Claimant failed to produce evidence based medicine contrary to the determination of the IRO. The Claimant failed to provide evidence based medicine contrary to the recommendation in the ODG, he failed to provide evidence that he meets the criteria for therapeutic injections pursuant to the ODG and is the greater weight of the credible evidence presented 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 name and street address of Carrier's registered agent which was admitted into evidence as Hearing Officer's Exhibit Number 2.
 3. The treating doctor requested the Claimant undergo lumbar medial branch facet blocks to treat the compensable injury of _____.
 4. The requested service is not consistent with the *ODG* criteria for radicular and chronic lumbar pain.
 5. The Claimant failed to provide evidence based medicine contrary to the IRO's determination that lumbar medial branch facet blocks are not reasonable and necessary health care services 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 was proper in the (City) Field Office.
3. The preponderance of the evidence is not contrary to the decision of IRO that lumbar medial branch facet blocks are not reasonable and necessary health care services for the compensable injury of _____.

DECISION

The preponderance of the evidence is not contrary to the decision of the IRO that lumbar medial branch facet blocks are not reasonable and necessary health care services for the compensable injury of _____.

ORDER

The carrier is not liable for the benefits at issue in this hearing. The claimant remains entitled to medical benefits for the compensable injury in accordance with Section 408.021.

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

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

Signed this 16th day of July, 2008.

Carol A. Fougerat
Hearing Officer