

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.

ISSUES

A contested case hearing was held on August 12, 2008, to decide the following disputed issue:

1. Is the requested bilateral T5-T7 radiofrequency thermocoagulation (CPT codes 64626 and 64627) one side at a time one week apart reasonably necessary health care for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by JA, ombudsman.
Respondent/Carrier appeared and was represented by JG, attorney.

BACKGROUND INFORMATION

Claimant is 58 years-old and was injured on _____, while lifting and turning at work. Surgery has not been recommended. Current medications include: Lidoderm patch; oxycodone, Lexapro, and tizanidine. Claimant has degenerative disc disease at T6/7. She has been diagnosed with a strain to her thoracic spine superimposed on the pre-existing degenerative finding at T6/7. On June 27, 2007, when she was examined by Dr. BB, M.D., Carrier doctor, he noted the following:

Claimant underwent multiple injections with Dr. S, which helped for roughly two months each time. She had two separate radiofrequency thermocoagulation therapy treatments, which helped for roughly two months. A trial of spinal cord stimulator made her worse. Dr. S recommended a morphine pump; however, this was not authorized. An MRI scan of the thoracic spine on 02/01/07 showed no change from the previous study. She reports constant back pain. She uses a transcutaneous electrical nerve stimulation unit roughly three times a week and notes this is very helpful.

Dr. S, M.D., has recommended approval of bilateral T5-T7 radiofrequency thermocoagulation one side at a time one week apart. Radiofrequency thermocoagulation is the "burning" of nerves. It actually refers to the passage of current from an electrode placed in nervous tissue that heats and destroys the tissue around the electrode. Because radiofrequency current heats the tissue and the tissue heats the electrode tip, burning is not a correct description of the procedure. Temperature is the basic parameter and should be measured. Sympathetic nerves and some other small somatic nerves such as those that innervate the facet joints, respond very well to this modality. See *Brief Reports from the Pain Management Symposium, Interventional Pain Management*, Tibor A. Racz, M.D., **Baylor Univ. Med. Cent., (July, 2000)**.

RMR was assigned as the Independent Review Organization (IRO). On April 18, 2008, the IRO upheld the Carrier denial and provided the following analysis and explanation:

The *ODG* treatment guidelines from 2007 state that thoracic facet injection and radiofrequency thermocoagulation are not justifiable at all due to lack of support in the medical literature regarding the efficacy of this procedure. Additionally, *ODG* treatment guidelines do not support repeating this procedure unless patients demonstrate at least three to six months of more than 50% relief. Based upon Dr. S's notes, this patient has not validly obtained that degree of pain reduction or duration with the last set of radiofrequency thermocoagulation procedure. Moreover, there is no reliability in the subjective reports of this patient's pain and in her reports of improvement, as it is mathematically impossible for any patient to have exactly the same numeric pain score yet also have 80% to 90% improvement in pain. Finally, the thoracic MRI scan clearly demonstrates no evidence whatsoever of thoracic facet disease at the requested T5, T6, or T7 levels. This patient has had this identical procedure performed at least twice, yet there is no documentation of significantly improved function, decreased opiate use, significant change in pain complaint or pain level, or participation in an independent, active exercise-based program. Therefore, for all the reasons described above including *ODG* treatment guidelines and the documentation of the requesting physician, the request for bilateral T5-T7 radiofrequency thermocoagulation (64626, 64627) one side at a time one week apart is not medically reasonable or necessary and is not medically indicated for any condition present in this patient as related to the alleged work injury of

Therefore, the previous recommendations for non-authorization of this procedure are upheld.

Rule 137.100 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 reasonably required.

Claimant presented a letter from Dr. S, M.D., to support her position. Dr. S's letter reads as follows:

(Claimant) has been under my care since May 26, 2005 for the treatment of back pain secondary to thoracic spondylarthritis. This pain has been well controlled with rhizotomy of the facet medial nerves. She was seen in my office on March 11, 2008 with a complaint of a return of pain in the thoracic region. At that time, I ordered a repeat bilateral T5-T7 radiofrequency thermocoagulation of the facet medial nerves.

It has come to my attention that this procedure has been denied by her insurance carrier. Apparently, there is some concern about questions of the efficacy of radiofrequency thermocoagulation. I would like to take this opportunity to point out that RFTC has proven to be a highly effective therapeutic treatment for (Claimant). Regardless of the findings of a few published studies, the patient fared very well with bilateral T5-T7 RFTC in August 2007. At her follow-up visit in September 2007, she reported 80% relief. This therapy typically works for 9 months to one year. This is the reason that I have requested a repeat

rhizotomy for (Claimant). The decision to deny repeat thoracic radiofrequency thermocoagulation for this patient was made in error and warrants reconsideration. If you have questions, please contact my office.

Claimant has failed to present evidence-based medicine contrary to the recommendation in the *ODG*. Therefore, the requested bilateral T5-T7 radiofrequency thermocoagulation (CPT codes 64626 and 64627) one side at a time one week apart is not reasonably necessary medical care for the compensable injury of _____.

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, and 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. The *Official Disability Guidelines (ODG)* state that thoracic facet injection and radiofrequency thermocoagulation are not justifiable at all due to lack of support in the medical literature regarding the efficacy of this procedure.
4. The preponderance of the evidence is not contrary to the IRO determination that the requested bilateral T5-T7 radiofrequency thermocoagulation (CPT codes 64626 and 64627) one side at a time one week apart is not reasonably required medical treatment 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 requested bilateral T5-T7 radiofrequency thermocoagulation (CPT codes 64626 and 64627) is not reasonably required health care for the compensable injury of _____.

DECISION

The requested bilateral T5-T7 radiofrequency thermocoagulation (CPT codes 64626 and 64627) is not reasonably required health care 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 **AMERICAN HOME ASSURANCE COMPANY**, and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701-3232**

Signed this 15th day of August 2008

Cheryl Dean
Hearing Officer