

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 26, 2008, in MCCH Docket No.1 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the purchase of a wheelchair ramp is not reasonably required health care for the compensable injury of _____?

A contested case hearing was held on August 26, 2008, in MCCH Docket No. 2 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that purchase of a power scooter is not reasonably required health care for the compensable injury of _____?

The hearings in the cases and on the issues as set forth hereinabove encompass substantially the same issues and evidence and were consolidated in the interests of judicial economy.

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by MF, ombudsman. Respondent/Carrier appeared and was represented by KM, attorney.

BACKGROUND INFORMATION

Claimant injured her left knee in 2005 when she slipped on the wet floor at work. In (month & year of DOI), she slipped and fell on a wet spot on the floor and injured her right knee and right hip. She began using a walker due to bilateral knee pain and has requested that Carrier pay to build a wheelchair ramp at her home and buy her a power scooter to improve her mobility. Carrier denied both requests, the independent review organization agreed, and Claimant appealed the denial. She links the need for a new wheelchair ramp to the request for the power scooter, but also asserts that the ramp she uses to get into her home has no landing and is dangerous.

In assessing Claimant's request for a power scooter, the IRO physician reviewer noted that the medical records provided for his review did not document objective evidence of weakness or muscular atrophy. Claimant's treating physician, Dr. R, DO, confirmed the absence of atrophy. The physician reviewer stated that Claimant's right knee deficits were subjective and there was no objective evidence of a functional deficit in the right knee. That statement is consistent with the findings of Dr. S, MD, a Carrier-selected RME doctor who examined Claimant on January 9,

2008. The physician reviewer stated that the use of a scooter for ambulation was not necessary according to ODG criteria and that the purchase of a power scooter is not medically necessary.

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 (Texas Labor Code §408.021). "Health care reasonably required" is defined 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, generally accepted standards of medical practice recognized in the medical community (Texas Labor Code §401.011(22-a)). "Evidence based medicine" means 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 (Texas Labor Code §401.011 (18-a)). In accordance with the above statutory guidance, 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.

With regard to the use of power scooters, the ODG states:

Powered Mobility Devices (PMDs). Not recommended if the functional mobility deficit can be sufficiently resolved by the prescription of a cane or walker, or the patient has sufficient upper extremity function to propel a manual wheelchair, or there is a caregiver who is available, willing, and able to provide assistance with a manual wheelchair. (CMS, 2006) Early exercise, mobilization and independence should be encouraged at all steps of the injury recovery process, and if there is any mobility with canes or other assistive devices, a motorized scooter is not essential to care. See also Immobilization.

It is undisputed that Claimant can ambulate with the assistance of a walker. She has not, fortunately, been confined to a wheelchair as of the date of the hearing in this matter but there is no evidence that would tend to show that she does not have sufficient upper extremity function to use a manual wheelchair if she were to need one.

Dr. R disagrees with the URA doctors, the IRO physician reviewer, and the ODG. She believes that the power scooter would enhance Claimant's mobility. Claimant argues that Dr. R's testimony outweighs the IRO determination and proves by a preponderance of the evidence that the power scooter is medically necessary.

In determining the weight to be given to expert testimony, a trier of fact must first determine if the expert is qualified to offer it. The trier of fact must then determine whether the opinion is relevant to the issues at bar and whether it is based upon a solid foundation. A medical doctor is not automatically qualified as an expert on every medical question and an unsupported opinion has little, if any, weight. Black v. Food Lion, Inc., 171 F.3rd 308 (5th Cir. 1999). Health care providers are directed to provide treatment in accordance with the current edition of the Official Disability Guidelines (ODG), and such treatment is presumed to be reasonably required. (28 Tex. Admin. Code § 137.100 (Rule 137.100)). Dr. R espoused the use of a power scooter but offered no evidence-based medicine contrary to the ODG and the recommendations of the URA physicians and the IRO physician reviewer. The preponderance of the evidence-based medicine

supports the determination of the IRO that Claimant's request for a power scooter should be denied.

The IRO physician reviewer determined that the requested wheelchair ramp was not medically necessary. As noted above, the need for the ramp was primarily predicated on the need for the power scooter. The physician reviewer stated that "[u]pon reviewing the ODG Guidelines concerning the use of wheelchair ramps" he did not find the purchase to be medically necessary. Dr. R recommended that Claimant be provided with the ramps, but there was no evidence presented that would tend to show that evidence-based medicine or the generally accepted standards of practice recognized in the medical community either supported or discouraged the use of wheelchair ramps for patients who used ambulatory assistive devices. Dr. R disagrees with the IRO physician reviewer and noted that she had previously disagreed with one of the URA doctors regarding the necessity for the ramp. The determination of the IRO is entitled to presumptive weight and a mere difference of opinion among the health care providers regarding the need for the ramp is insufficient to fulfill the Claimant's burden to show that the preponderance of the evidence is contrary to the IRO's determination.

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 sustained compensable injuries to her right knee and hip while employed by (Employer).
 - C. The Texas Department of Insurance (TDI) selected (Independent Review Organization) as the independent review organization (IRO) in this matter.
 - D. Employer is a self-insured entity and its third party administrator is (Self Insured).
 - E. On April 28, 2008, the IRO issued its determination that the purchase of a power scooter is not necessary treatment for the injury of _____.
 - F. On April 22, 2008, the IRO issued its determination that the purchase of a wheelchair ramp is not necessary treatment for the injury of _____.
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 3.
3. Claimant requested pre-authorization for the purchase of a power scooter and a wheelchair ramp to be built at her home.
4. The power scooter is a durable item whose purchase price is more than \$500.00.

5. The wheelchair ramp is a durable item whose purchase price is more than \$500.00.
6. Claimant's use of her lower extremities is hampered by pain in her left knee from a prior compensable injury and ongoing pain in her right knee.
7. Claimant's functional mobility deficit can be sufficiently resolved by the prescription of a cane or walker and Claimant has used and continues to use a walker to enhance her mobility.
8. Claimant has sufficient upper extremity function to propel a manual wheelchair.
9. The purchase of a power scooter is not reasonably required medical treatment for the compensable injury of _____.
10. Claimant has a ramp at her home that makes it easier for Claimant to enter her home, although there are problems with her current ramp as a result of the lack of a landing at the entrance to her home.
11. The evidence failed to show that the current ramp at Claimant's home was not usable or that the replacement of that ramp was medically necessary.
12. The purchase of a wheelchair ramp 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 preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that purchase of a power scooter is not reasonably required health care for the compensable injury of _____.
4. The preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that purchase of a wheelchair ramp is not reasonably required health care for the compensable injury of _____.

DECISION

The preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that purchase of a power scooter is not reasonably required health care for the compensable injury of _____. The preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that purchase of a wheelchair ramp 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 **(SELF INSURED)** and the name and address of its registered agent for service of process is

SS
(ADDRESS)
(CITY), TX (ZIP CODE)

Signed this 27th day of August, 2008.

KENNETH A. HUCHTON
Hearing Officer