

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 August 13, 2008, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that physical therapy three times per week for four weeks (12 sessions) is not reasonable and necessary medical treatment for the compensable injury of _____?

PERSONS PRESENT

Claimant appeared and was assisted by ombudsman DS. Carrier appeared and was represented by attorney SB.

BACKGROUND INFORMATION

Claimant sustained injury on _____ as a result of a fall. Claimant was diagnosed with a left patella fracture. Claimant has undergone two surgeries, the last of which was on September 24, 2007. The Claimant has previously undergone 44 sessions of physical therapy for her left knee condition. Claimant's physician, Dr. RW, M.D., has requested an additional course of physical therapy three times weekly for four weeks.

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 *Official Disability Guidelines (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**.

Accordingly, in a medical necessity dispute, the first issue is whether the proposed care is consistent with the *ODG*. The IRO, identified as a physician board certified in orthopedic surgery, upheld the denial stating that additional physical therapy is not medically necessary.

In the case at hand, the Claimant argued that she believed, along with her surgeon, that physical therapy was helping her achieve a goal of having improved range of motion and functionality. Carrier argues that Claimant only saw minimal improvement from the therapy and has had many more sessions than the *ODG* recommends.

The IRO noted in making a determination that the *ODG* recognizes the usefulness of physical therapy post surgery. The *ODG's* specific guideline for patella fractures is ten visits over eight weeks post surgery. At the time of the request, Claimant was well past the eight week period, and as such, another course of therapy is not indicated by the *ODG*. Claimant has already undergone more than the recommended number of sessions with minimal documented improvement.

The Claimant did not present evidence-based medical evidence as to the appropriateness of the proposed physical therapy and did not establish that no such evidence-based medical evidence is available. Nor was evidence presented that the proposed procedure meets generally accepted standards of medical practice recognized in the medical community. 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) and sustained a compensable injury.
 - C. The IRO determined that the requested physical therapy three times weekly for four weeks was not reasonable and necessary health care for the compensable injury of _____.
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 physical therapy three times weekly for four weeks.
4. Claimant previously attended forty-four treatments of physical therapy for her injury.
5. The *ODG* recommends ten visits over eight weeks post surgery for the patella fracture

diagnosis.

6. The preponderance of the evidence is not contrary to the decision of IRO that physical therapy three times weekly for four weeks 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 was proper in the (City) Field Office.
3. Physical therapy three times weekly for four weeks is not a reasonable and necessary health care service for the compensable injury of _____.

DECISION

Physical therapy three times weekly for four weeks 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 Section 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

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

Signed this 14th day of August, 2008.

Deeia Beck
Hearing Officer