

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

Is the preponderance of the evidence contrary to the Independent Review Organization (IRO) decision that psychological screening is not a reasonable and necessary health care service related to the _____ compensable injury?

PARTIES PRESENT

Claimant was present at the hearing without legal representation. Mr. AW, ombudsman, was present to assist Claimant in the hearing. Mr. RR, attorney at law, represented Self-Insured.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on _____ while employed by (Employer). Claimant's treating doctor, Dr. B, an orthopedic surgeon, recommended Claimant undergo preoperative psychological screening. Self-Insured denied authorization for the psychological screening; and Dr. B requested an independent review of the case and Self-Insured's denial of the requested psychological screening. An independent clinical psychologist was appointed to review the reasonableness and necessity of the proposed psychological screening and has opined that the previous adverse determination should be upheld.

Texas Labor Code Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonable 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 *ODG*.

The applicable provisions of the *ODG* provide:

Psychological screening.

Recommended as an option prior to surgery or in cases with expectations of delayed recovery. Before referral for surgery, clinicians should consider referral for psychological screening to improve surgical outcomes, possibly including standard tests such as MMPI (Minnesota Multiphasic Personality Inventory) and Waddell signs. (Scalzitti, 1997) (Fritz, 2000) (Gaines, 1999) (Gatchel, 1995) (McIntosh, 2000) (Polatin, 1997) (Riley, 1995) (Block 2001) (Airaksinen, 2006) A recent study concluded that psychological distress is a more reliable predictor of back pain than most diagnostic tests. (Carragee, 2004) See also the Pain Chapter and the Stress/Mental Chapter.

Dr. B testified that Claimant has ongoing pain complaints related to the compensable injury for which spinal surgery is still a consideration. Spinal surgery was previously denied in this case, and there is no pending pre-authorization request for spinal surgery. Nonetheless, Dr. B contends the decision of the independent review organization (IRO) is in error and should be overturned as the *ODG* provides that psychological screening is a recommended option prior to surgery and should, therefore, be made before a referral for surgery.

Dr. B is correct in his recitation the *ODG*. The IRO determination is inconsistent with the *ODG* and is likewise contrary to the preponderance of the evidence in this case.

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. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
2. On _____, Claimant was an employee of (Employer).
3. On _____, the employer was self-insured.
4. Self-Insured delivered to Claimant a single document stating the true corporate name of Self-Insured, and the name and street address of Self-Insured's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
5. By Decision dated December 17, 2007, the IRO upheld Self-Insured's previous denial for psychological screening.
6. The IRO decision is inconsistent with the *ODG*.

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 contrary to the IRO decision that psychological screening is not a reasonable and necessary health care service related to the _____ compensable injury.

DECISION

The preponderance of the evidence is contrary to the IRO decision that psychological screening is not a reasonable and necessary health care service related to the _____ compensable injury.

ORDER

Self-Insured is ordered to pay benefits in accordance with this Decision, the Texas Workers' Compensation Act and the Commissioner's Rules.

The true corporate name of the Self-Insured is **(Self-Insured)**; and the name and address of its registered agent for service of process is:

**EXECUTIVE DIRECTOR
(ADDRESS)
(CITY), TEXAS (ZIP CODE)**

Signed this 17th day of July, 2008,

Sandra Weber Fullerton
Hearing Officer