

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 September 22, 2008, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to 10 sessions of physical therapy to include aquatic therapy for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was assisted by JT, Ombudsman.

Carrier appeared and was represented by DY, Attorney.

BACKGROUND INFORMATION

Claimant injured her right knee in a trip and fall incident on _____. She fell forward, with the right knee hitting the edge of the curb. After diagnostic testing, Claimant was diagnosed with a right knee contusion and bone bruise.

Claimant began treating with Dr. S, an orthopedic surgeon, on April 25, 2008. He requested a MRI of the right knee, which was performed on April 30, 2008. Dr. S read the MRI to show no evidence of internal derangement. He referred Claimant to physical therapy.

Claimant began physical therapy on May 1, 2008. She had nine sessions between May 1, 2008 and May 21, 2008. On May 23, 2008, Claimant advised Dr. S that she was getting worse. Dr. S terminated the physical therapy and placed her in a non-weight bearing program for 2 weeks. He noted that the physical therapy was aggravating Claimant's knee injury.

On June 6, 2008, Dr. S found Claimant's knee pain to be much improved. He recommended she resume physical therapy, but with aquatic therapy only. Dr. S requested pre-authorization for 12 sessions of aquatic therapy on June 6, 2008. The Carrier issued a partial authorization on June 11, 2008. It approved two physical therapy sessions on a 1-week period in order for the Claimant to transition to a home, self-directed program. The remaining 10 physical therapy sessions were denied as exceeding the ODG treatment guidelines. These are the 10 sessions of physical therapy at issue in this case.

On June 26, 2008, Dr. S requested a reconsideration. The Carrier denied the request noting that Claimant should have graduated to a home program by this time.

Claimant requested review of the Carrier's denial of the 10 sessions of aquatic therapy. An Independent Review Organization (IRO) issued a decision on July 19, 2008, upholding the

Carrier's denial. The IRO decision is remarkable because it does not mention aquatic therapy, which is the subject of the review request and the decision is based on the reviewer's medical judgment, clinical experience and expertise in accordance with accepted medical standards. Unfortunately, it does not refer to the ODG or any other medical treatment guidelines.

Claimant timely appealed the IRO decision by requesting this Medical Contested Case Hearing (MCCH).

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. 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 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 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 Official Disability Guidelines (ODG).

The problem raised in this case is that neither the requesting doctor nor the IRO reviewer attempted to justify this request for medical treatment using evidence-based medicine as required by the Texas Workers' Compensation Act. The ODG does have separate provision concerning aquatic therapy, but neither party made reference to that provision. The resolution of this case is determined by the status of this dispute at the Medical Contested Case Hearing (MCCH). This is an appeal of the IRO decision that upheld the Carrier's denial of treatment. That IRO decision carries presumptive weight, and the party who disagrees with the decision must show that the preponderance of the evidence is contrary to the IRO decision. In order to overcome this presumption, the Claimant must provide some credible scientific justification for the treatment requested.

In this case, Claimant's treating doctor signed a request for pre-authorization of 10 sessions of aquatic therapy. He provided no justification for his request. Given the statutory requirement that medical treatment be justified using evidence-based medicine, the doctor's unsupported assertion alone will never meet this standard.

Claimant has the burden of proof. She failed to provide expert medical evidence based on some credible scientific study or treatment guideline that is contrary to the IRO decision.

It is noted that this decision against the Claimant may seem quite harsh, given that the IRO decision did not justify its denial of the requested treatment using evidence-based medicine. It suffers from the same problems as does the Claimant's case. For that reason, it would not have

taken much evidence to overturn the poorly justified IRO decision. But, it does take some evidence-based medicine to do so. None was submitted. The requesting doctor had three opportunities to present evidence-based medicine to justify his request prior to the IRO decision. For whatever reason, he elected not to do so. His request for treatment fails for lack of justification using the statutory requirements.

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).
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. Claimant's treating doctor requested 10 sessions of physical therapy to include aquatic therapy for the compensable injury of _____.
4. The IRO decision upheld the Carrier's denial of the requested treatment.
5. Ten sessions of physical therapy to include aquatic therapy is not health care reasonably required 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 IRO that Claimant is not entitled to 10 sessions of physical therapy to include aquatic therapy for the compensable injury of _____.

DECISION

Claimant is not entitled to 10 sessions of physical therapy to include aquatic therapy 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:

**COUNTY JUDGE
(ADDRESS)
(CITY), TEXAS (ZIP CODE)**

Signed this 24th day of September, 2008.

Donald E. Woods
Hearing Officer