

**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 November 10, 2008 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to bilateral L4/L5, L5-S1 facet medial nerve blocks for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

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

**BACKGROUND INFORMATION**

Dr. S, pain specialist, has treated Claimant since February of 2006, for a work related injury that occurred on \_\_\_\_\_. He prescribed medication and orders for physical therapy. When Claimant continued to have low back pain that radiated to the right hip and right thigh down the side, Dr. S requested authorization for bilateral facet medial nerve blocks at L4/L5, L5-S1. The blocks were denied by a reviewing physician because Claimant had radicular symptoms and low back pain. When Dr. S appealed the reviewer's adverse determination, it was upheld.

An Independent Review Organization (IRO) reviewed the proposed care to determine if the adverse determination was appropriate. The IRO upheld the previous adverse determination for the blocks, noting that Claimant had two previous fusions at the planned injection levels and that Claimant did not have facet-related pain. The IRO relied on the Official Disability Guidelines (ODG) which states that blocks should not be performed if the patient had a previous fusion procedure at the planned injection level and if the patient did not have facet-related pain. In addition the reviewer relied on his medical judgment, clinical experience and expertise in accordance with accepted medical standards.

Dr. S, in responding to the IRO, wrote that an examination on August 26, 2008 demonstrated that Claimant's pain was clearly facet related, explaining that previous examinations that did not document facet pain were most likely documented in error. He also wrote that the requested blocks would not be at the prior fusions but at the nerve, commenting that hardware placed during the previous surgeries would prevent blocking the facet joints.

Dr. S also wrote that Claimant had multiple pain generators, one of which appeared to be lumbar facet mediated pain. He relied on **Practical Management of Pain** by R, commenting that Claimant met R's description for lumbar facet syndrome as low back pain with or without

radiation. He wrote that R opined that a major indication for facet joint injection included bilateral facet arthrosis at L4-5 as well as postlaminectomy changes at L3-4 and L4-5, as found on Claimant.

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 401.0111 (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 statutory guidance, the Division of Workers' Compensation 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 ODG, and such treatment is presumed to be health care reasonably required as defined in the Texas Labor Code. The focus of any health care dispute starts with the health care set out in the ODG.

Claimant did not meet his burden of proof to overcome the findings of the IRO who relied on the criteria in the ODG for use of diagnostic blocks for facet mediated pain. That criteria indicates that a patient's clinical presentation should be consistent with facet joint pain and that blocks should not be performed in patients who have had a previous fusion procedure at the planned injection level.

In the present case, the evidence shows that Claimant had a laminectomy at L3 to L5 in August of 2007 and a redo laminectomy and fusion with pedicle screw at L3 to L5 in December of 2007. Medical records do not show that he had facet joint pain on May 20, 2008 or July 17, 2008 when examined by Dr. S.

Evidence provided by Dr. S, in his writings and in his reference to R, was not sufficient evidence based medicine to overcome the presumption given to the IRO. Claimant failed to provide sufficient evidence based medicine contrary to the recommendation of the IRO and failed to provide evidence that he meets the criteria for the requested procedure.

The IRO reviewer, who relied on the ODG, was persuasive.

Even if I have not discussed all of the evidence that was presented, I have considered all of it. 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), 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. Claimant's medical records do not document facet joint pain.
  4. In August of 2007 Claimant had a laminectomy at L3 to L5.
  5. In December of 2007 Claimant had another laminectomy and fusion at L3 to L5.
  6. Bilateral L4/L5, L5-S1 facet medial nerve blocks are 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 Independent Review Organization that Claimant is not entitled to bilateral L4/L5, L5-S1 facet medial nerve blocks for the compensable injury of \_\_\_\_\_.

### **DECISION**

Claimant is not entitled to bilateral L4/L5, L5-S1 facet medial nerve blocks 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

**MF**  
**(ADDRESS)**  
**(CITY), TEXAS (ZIP CODE)**

Signed this 20th day of November, 2008.

CAROLYN F. MOORE  
Hearing Officer