

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 October 30, 2008 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the IRO decision that Claimant is not entitled to outpatient cervical epidural steroid injections at C4-5, 6-7 for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was assisted by JT, Ombudsman.

Carrier appeared and was represented by SB, Attorney.

BACKGROUND INFORMATION

Claimant injured his cervical and lumbar spine in an automobile accident on _____. The Carrier has accepted the cervical spine as part of the compensable injury.

Claimant had a cervical MRI on December 21, 2007. It was read to show disc bulging from C2-3 through C6-7. There was facet joint arthropathy at four levels, as well.

In mid-January 2008, Claimant was initially evaluated by Dr. O. Dr. O found that Claimant had neck pain that radiated into both upper extremities. Dr. O recommended epidural steroid injections for the cervical spine. On January 22, 2008, Dr. O submitted a pre-authorization request for an epidural steroid injection at the C6-7 level. On January 29, 2008, the Carrier denied the request, noting that Claimant does not meet Official Disability Guidelines (ODG). This pre-authorization request was not pursued further.

On March 3, 2008, a second request for pre-authorization of an epidural steroid injection at C6-7 was presented to the Carrier. Again, the request was denied by the Carrier and no other action was taken on this request.

On June 17, 2008, Dr. O submitted a pre-authorization request to perform epidural steroid injections at C4-5 and C6-7. The Carrier denied this third request and Dr. O requested a reconsideration on June 20, 2008 for the C6-7 level only. On June 25, 2008, the Carrier denied the request for reconsideration of the C6-7 epidural steroid injection. The C4-5 level was not submitted for reconsideration.

Claimant requested the Carrier's denial be reviewed by an Independent Review Organization (IRO). The IRO issued a decision dated August 20, 2008, upholding the Carrier's

denial of the medical procedure request. Claimant appealed this decision to a 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).

Claimant has the burden of overcoming the decision issued by the IRO by a preponderance of the evidence-based medical evidence. In this case, Claimant has failed to meet that burden. In a memo dated October 22, 2008, the requesting doctor asserts for the first time that Claimant does meet the ODG criteria. This assertion is made two months after the IRO decision was issued. The time to justify his request for medical treatment should have been made at the time the initial request was made to the Carrier. In this case, the first denial in January 2008 by the Carrier was based on failure to comply with the ODG. Yet, the requesting doctor never addressed the ODG until October 2008.

One of the criteria outlined in the ODG is that the Claimant must initially be unresponsive to conservative treatment. There was no evidence that Claimant had received conservative treatment, much less that he had failed conservative treatment. The requesting doctor must address the specific criteria listed in the ODG. His assertion that Claimant complies with the ODG is insufficient to meet the Claimant's burden of proof.

Division Rule 134.600(o)(4) provides that a request for pre-authorization for the same health care shall only be re-submitted when the requestor provides objective clinical documentation to support a substantial change in the employee's medical condition. Claimant's request in the present case is the third submission of the same request. Therefore, Claimant must show that there has been a substantial change of medical condition. Claimant testified that he was getting worse. His pain level had increased and he was experiencing weakness in his upper extremities. That may be true, but that does not meet the above standard of providing "objective clinical documentation" to support a substantial change of his medical condition. Claimant is not entitled to the epidural steroid injections in question because this procedure has previously been submitted and denied by the Carrier.

Division Rule 133.800(i) sets out the requirement that a Claimant must give the Carrier an opportunity to reconsider its denial of medical treatment prior to filing a request for an independent review. A request that did not go through the Carrier's reconsideration process is to be dismissed. In this case, the request for epidural steroid injection to the C6-7 level was the only medical treatment procedure that was properly submitted for Carrier reconsideration. Epidural steroid injections at the C4-5 level were not submitted for reconsideration and will be dismissed.

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 the (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. Epidural steroid injection at the L4-5 level was not submitted to the Carrier for reconsideration and will be dismissed per Division Rule 133.800(i).
4. Epidural steroid injections at the L6-7 level had previously been submitted and denied by the Carrier.
5. Claimant did not provide objective clinical documentation to support a substantial change in his medical conditions for the resubmission of epidural steroid injections at C6-7.
6. Claimant failed to provide evidence-based medical evidence contrary to the IRO decision.
7. Outpatient cervical epidural steroid injections at C4-5 and C6-7 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 IRO decision that Claimant is not entitled to outpatient cervical epidural steroid injections at C4-5, 6-7 for the compensable injury of _____.

DECISION

Claimant is not entitled to outpatient cervical epidural steroid injections at C4-5, 6-7 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:

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE)

Signed this 18th day of November, 2008.

Donald E. Woods
Hearing Officer