

MEDICAL CONTESTED CASE HEARING NO. 09069
M6-08-10623-01

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 contested case hearing was held on 12/16/08 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that repeat cervical epidural steroid injections are not reasonable and necessary health care services for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by CL, ombudsman. Respondent /Carrier appeared by phone and was represented by RJ, attorney.

BACKGROUND INFORMATION

When the Record was opened, Carrier stipulated the Claimant sustained a compensable injury on _____. The hearing was set against Liberty Mutual Insurance. Attorney RJ stipulated **Liberty Mutual Fire Insurance Company** is the correct Carrier for this compensable injury.

On _____, Claimant sustained a compensable injury when a steel tube fell and struck him on the neck and left shoulder. Claimant has been diagnosed with chronic left C-6 radiculopathy, and a supraspinatus tear in the left shoulder. Claimant continues to work as a driver/deliverer for (Employer).

Claimant had a series of three epidural steroid injections in 2002, 2003, 2004. These injections provided temporary relief from his pain. In 2007, Claimant had the first of another series of three injections. Claimant's Treating Doctor, Dr. B, has now recommended the second in a series of three additional cervical epidural steroid injections. Carrier denied the treatment and was successful in the Utilization Review and Independent Review Organization process in its denial of the treatment.

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**. In this case, the Independent Review Organization physician, Board Certified Specialist in Pain Management, denied the additional epidural steroid injection because there was no documentation of significant improvement after the first injection.

The initial inquiry in any dispute regarding medical necessity is whether the proposed care is consistent with the *ODG*. The *ODG* notes the purpose of epidural steroid injections is to reduce pain and states this treatment alone offers no significant long-term functional benefit. The *ODG* states current research does not support a routine use of "series-of-three" injections in either the diagnostic or the therapeutic phase. If the decision is made to use "series-of-three" epidural steroid injections, the *ODG* criteria requires, among other things, a baseline documentation of a 50% to 70% relief of pain after each injection. This means the treating physician must first establish a baseline threshold of pain before the injections begin. After the first injection, there must be at least a 50% decrease in pain from this baseline, and this must be documented timely in the records.

By report dated 04/22/08, Claimant's Treating Doctor states there was a 50% decrease in pain after the injection in 2007. However, there is no record of an established baseline pain threshold and no contemporaneous documentation of 50%--70% pain reduction after the injection. Records from the Treating Doctor reflect Claimant was treated with epidural steroid injections in 2002, 2003, 2004, and 2007. Claimant continued to work at his regular job.

Claimant failed to present evidence-based medical evidence to overcome the Independent Review Organization's decision. The conclusory statements of the Treating Doctor, without sufficient reference to the *ODG*, or other evidence-based medicine justifying departure from the *ODG*, do not meet the evidentiary standard required to overcome the presumption afforded the decision of the Independent Review Organization. The preponderance of the evidence is not contrary to the decision of the Independent Review Organization that the requested repeat cervical epidural steroid injections do not meet the criteria set out in the *ODG*, and are not recommended.

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).
 - C. Claimant sustained a compensable injury on _____.
 - D. The Independent Review Organization determined the requested services were not reasonable and necessary health care services for the compensable injury of _____.
 - E. The correct Carrier for this claim is the Liberty Mutual Fire Insurance Company.
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. The requested repeat cervical epidural steroid injections are not consistent with the criteria as set out in the *ODG* because there was no documentation of a 50% pain reduction from an established base-line pain threshold.
 4. The preponderance of the evidence is not contrary to the decision of the Independent Review Organization that repeat cervical epidural steroid injections are not reasonable and necessary health care services 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 requested repeat cervical epidural steroid injections are not reasonable and necessary health care services for the compensable injury of _____.

DECISION

The preponderance of the evidence is not contrary to the decision of the Independent Review Organization that repeat epidural steroid injections are not reasonable and necessary health care services 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 **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL STREET
DALLAS, TX 75201**

Signed this 13th day of January, 2009.

G. W. Quick
Hearing Officer