

**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 February 18, 2009 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to twelve additional physical therapy sessions for the compensable injury of \_\_\_\_\_.

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by PSG, ombudsman.

Respondent/Carrier appeared and was represented by NM, hearing representative.

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury when she was involved in a motor vehicle accident on \_\_\_\_\_. Since that date, she has had neck and shoulder pain. An MRI scan of the cervical area revealed a possible herniated disc at C5/C6; her shoulder MRI was within normal limits. She has been treated conservatively with medication, three epidural steroid injections, and at least twenty-six sessions of physical therapy. Initially, the physical therapy sessions included massage, with some exercises; however, Claimant testified that some of the sessions were prior to her MRI and the therapists were reluctant to do anything which might cause further injury. Physical therapy continued from July, 2006 through October, 2006. Claimant's treating physician, Dr. ACM, M.D., recommended twelve additional physical therapy sessions utilizing the McKenzie Method. The Carrier's Utilization Reviewer denied approval for the physical therapy sessions. A request for an Independent Review Organization (IRO) was filed on August 20, 2008. The IRO upheld the denial on September 16, 2008. Petitioner is seeking reversal of an adverse determination by the IRO that Claimant is not entitled to twelve additional sessions of physical therapy.

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 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 Official Disability Guidelines (ODG).

On the date of this medical contested case hearing, the ODG provides the following with regard to physical therapy for this injury:

Recommended. Low stress aerobic activities and stretching exercises can be initiated at home and supported by a physical therapy provider, to avoid debilitation and further restriction of motion. ([Rosenfeld, 2000](#)) ([Bigos, 1999](#)) For mechanical disorders for the neck, therapeutic exercises have demonstrated clinically significant benefits in terms of pain, functional restoration, and patient global assessment scales. ([Philadelphia, 2001](#)) ([Colorado, 2001](#)) ([Kjellman, 1999](#)) ([Seferiadis, 2004](#)) Physical therapy seems to be more effective than general practitioner care on cervical range of motion at short-term follow-up. ([Scholten-Peeters, 2006](#)) In a recent high quality study, mobilization appears to be one of the most effective non-invasive interventions for the treatment of both pain and cervical range of motion in the acutely injured WAD patient. ([Conlin, 2005](#)) A recent high quality study found little difference among conservative whiplash therapies, with some advantage to an active mobilization program with physical therapy twice weekly for 3 weeks. ([Kongsted, 2007](#)) See also specific physical therapy modalities, as well as [Exercise](#).

**ODG Physical Therapy Guidelines –**

Allow for fading of treatment frequency (from up to 3 visits per week to 1 or less), plus active self-directed home PT. Also see other general guidelines that apply to all conditions under Physical Therapy in the [ODG Preface](#), including assessment after a "six-visit clinical trial".

**Cervicalgia (neck pain); Cervical spondylosis (ICD9 723.1; 721.0):**

9 visits over 8 weeks

**Sprains and strains of neck (ICD9 847.0):**

10 visits over 8 weeks Displacement of cervical intervertebral disc (ICD9 22.0):

Medical treatment: 10 visits over 8 weeks

Post-injection treatment: 1-2 visits over 1 week

Post-surgical treatment (discectomy/laminectomy): 16 visits over 8 weeks

Post-surgical treatment (fusion, after graft maturity): 24 visits over 16 weeks

**Degeneration of cervical intervertebral disc (ICD9 722.4):**

10-12 visits over 8 weeks

See 722.0 for post-surgical visits

At this contested case hearing, the Claimant testified that she had already begun physical therapy sessions with therapists utilizing the McKenzie Method and that she had experienced relief.

However, Claimant did not call any expert witnesses, nor was there a letter from a physician outlining the Claimant's need for additional physical therapy and the reasons why there should be a deviation from the ODG. Claimant did submit a designated doctor's report where the doctor noted, "She does have a disability secondary to the compensable injury so consequently these exercises [McKenzie] would be appropriate for her treatment." This statement alone does not rise to the level of evidence-based medicine.

Carrier argued that Claimant had exceeded the number of physical therapy sessions recommended by the ODG and that she is outside the recommended time limit for successful physical therapy treatment.

The preponderance of the evidence is not contrary to the decision of the IRO that the Claimant is not entitled to twelve additional physical therapy sessions.

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) when she sustained a compensable injury.
2. Carrier delivered to Claimant and Provider/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. Dr. ACM, Claimant's treating physician, recommended twelve additional sessions of physical therapy utilizing the McKenzie Method.
4. Claimant did not provide evidence-based medicine to overcome the decision of the IRO.
5. Twelve additional physical therapy sessions 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 preponderance of the evidence is not contrary to the decision of the IRO that twelve additional physical therapy sessions are not reasonable and necessary health care services for the compensable injury of \_\_\_\_\_

**DECISION**

Claimant is not entitled to twelve additional physical therapy sessions 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 **COMMERCE & INDUSTRY INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY  
701 BRAZOS STREET, SUITE 1050  
(CITY), TEXAS 78701-3232**

Signed this 27th day of February, 2009.

Carolyn Cheu  
Hearing Officer