

**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 April 2, 2009, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that Claimant is not entitled to preauthorization of physical therapy comprising of therapeutic exercises (97110) and massage therapy (97124) for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by AW, ombudsman.  
Respondent/Carrier was represented by RD, attorney.

**BACKGROUND INFORMATION**

In evidence are decisions and orders that show Claimant received a 4% impairment rating for his compensable injury of \_\_\_\_\_ and that the injury includes the cervical area and right shoulder. Claimant has received treatment for his injury for many years.

In November of 2008, Dr. C, treating doctor, diagnosed Claimant with neck sprain-strain (diagnostic code 847.0) and shoulder pain (diagnostic code 719.41). She requested preauthorization for Claimant to have 8 sessions of physical therapy on his neck and 8 sessions of physical therapy on his shoulder. The specific services requested for both the neck and shoulder were for massage (CPT Code 97124) and for therapeutic exercises and treatment for strength and movement (CPT Code 97110).

Claimant testified that Dr. C wants to perform the initial physical therapy in her office to show Claimant how to perform the therapy at home and that Dr. C will use massage to alleviate his pain. He stated that in 1992 he learned exercises that helped him but that now he needs to learn new techniques.

Claimant testified that in the past he had physical therapy and exercises which helped him for a couple of months. He said that massage therapy had been approved in April of 2008 for 6 visits.

Claimant testified that the requested services were acceptable under *Spinal Guidelines* that were in existence when he was injured in 1991. He did not tender the guidelines into evidence. Claimant did not present evidence from Dr. C, other than her writings for the requested services and her notation that indicated Claimant had good results with massage in the past.

None of the reviewers of the requested services agreed that the services were necessary to treat Claimant's compensable injury. Each reviewer relied on the *Official Disability Guidelines* (ODG) in making a decision to reject the requested sessions.

Dr. R, writing in November of 2008, remarked that the documentation for the requested services did not indicate the number of physical sessions previously completed and did not explain when the sessions were given or the progress made in the previous sessions. The doctor also commented that the documentation did not explain whether Claimant had difficulty with activities of daily living and did not provide objective functional goals to support the medical necessity of additional physical therapy.

Dr. B, writing in December of 2008, also noted that the request did not have objective documentation to support that Claimant had improved with previous physical or massage therapy. She wrote that the studies for massage for shoulder pain were conflicting and that there was little scientific evidence to support the use of massage therapy for the neck.

The Independent Review Organization issued an opinion on December 23, 2008 by a physical medicine and rehabilitation specialist. That reviewer, a Fellow of the American Academy of Physical Medicine and Rehabilitation, wrote that the previous adverse determination should be upheld. The reviewer's summary of the documentation presented to the reviewer showed that the reviewer had read medical information concerning Claimant going back to the year 1991. The reviewer opined that the requested services were not reasonable and were not supported by, and exceeded, the recommendations in the ODG.

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.

On the date of the hearing, the ODG guidelines for physical therapy for the neck were 10 visits over 8 weeks, allowing for fading of treatment frequency from up to 3 visits per week to 1 or less, plus active self-directed home physical therapy. The ODG provided guidelines for massage for the neck as an option, explaining there was little information available from trials to support the use of many physical medicine modalities for mechanical neck pain and noting that in

general it would not be advisable to use the modalities beyond 2 to 3 weeks if signs of objective progress toward functional restoration were not demonstrated.

On the date of the hearing, the ODG guidelines did not show that 97124 (massage) was a common treatment procedure for the shoulder. The guidelines provided for 9 visits of physical therapy for the shoulder during 8 weeks to develop strength and endurance, range of motion and flexibility.

Claimant did not meet his burden to present evidence based medicine evidence contrary to the IRO's determination.

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, who was the employee of (Employer), sustained a compensable injury.
  - C. The IRO determined that the requested services were not reasonable and necessary health care services for the compensable injury of \_\_\_\_\_.
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. Physical therapy comprising of therapeutic exercises (97110) and massage therapy (97124) 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 Independent Review Organization that Claimant is not entitled to preauthorization of physical therapy comprising of therapeutic exercises (97110) and massage therapy (97124) for the compensable injury of \_\_\_\_\_.

**DECISION**

Claimant is not entitled to preauthorization of physical therapy comprising of therapeutic exercises (97110) and massage therapy (97124) 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 **ASSOCIATED INDEMNITY CORPORATION** and the name and address of its registered agent for service of process is

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

Signed this 9<sup>th</sup> day of April, 2009.

CAROLYN F. MOORE  
Hearing Officer