

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 14, 2009 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that 12 sessions of physical therapy are not reasonably required health care services for the compensable injury of _____?

PARTIES PRESENT

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

BACKGROUND INFORMATION

Claimant sustained a compensable injury to his low back on _____ when he was carrying an igniter that got caught on a cable causing him to jerk back and fall to the ground. Claimant was diagnosed with an acute back strain. An MRI of the lumbar spine was performed on August 28, 2008 revealing findings of multilevel diffuse disc herniations causing mild narrowing of the spinal canal and bilateral neural foramina and a grade I anterolisthesis with diffuse disc herniation was noted at L5-S1. Claimant received treatment in the form of pain medications, a back brace for lumbar support and a physical therapy program. The Claimant was referred for 12 sessions of physical therapy and he underwent 11 sessions of aquatic therapy for the period from November 7, 2008 through December 1, 2008. Claimant testified that the initial therapy sessions were to designed to strengthen his left lateral muscle and that the therapist was unable to transition him to independent home exercises because the additional therapy was denied. The Claimant's treating doctor, Dr. S, has recommended an additional 12 sessions of physical therapy which was denied by the Carrier and referred to an IRO. Claimant now appeals the IRO decision, asserting that the preponderance of the evidence is contrary to the IRO decision upholding Carrier's denial of his doctor's request for additional therapy.

The IRO reviewer, a board certified orthopedic surgeon, determined that 12 sessions of physical therapy are not necessary and appropriate in this 58 year old male who was injured on _____ and who has already had at least eight visits of physical therapy. The IRO reviewer noted that the Official Disability Guidelines (ODG) recommend 10 visits over eight weeks for this type of injury and the Claimant has passed the eight week point. The IRO reviewer went on to note that there was no evidence of radicular involvement in spite of the Claimant having a decreased motor effort globally. The IRO reviewer concluded that, based on the medical records, further physical therapy is not indicated or appropriate.

Pursuant to Texas Labor Code Ann. §408.021, 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 defined 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, generally accepted standards of medical practice recognized in the medical community. "Evidence based medicine" means 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, Rule 137.100 directs health care providers to provide treatment in accordance with the current edition of the ODG, and such treatment is presumed to be reasonably required.

Regarding physical therapy for back and neck injuries, the ODG provides as follows:

ODG Physical Therapy Guidelines

Allow for fading of treatment frequency (from up to 3 or more 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".

Lumbar sprains and strains (ICD9 847.2): 10 visits over 8 weeks

In this case, the compensable injury accepted by the Carrier is a lumbar sprain/strain and the Claimant has already undergone at least 11 sessions of aquatic therapy. Although the Claimant testified that he never received instruction on independent home exercises, the request by his treating doctor is for additional aquatic and manual therapy. The Claimant offered no evidence in response to the denial by the IRO or any evidence based medicine to contradict the determination of the IRO. The treatment proposed by the Claimant's treating doctor is not consistent with the directives contained in the current edition of the ODG and Dr. S failed to support his request for additional therapy with evidence based medicine. Therefore, the Claimant has failed to provide evidence based medicine contrary to the opinion of the IRO and the preponderance of the evidence is not contrary to the IRO decision.

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 IRO determined that 12 sessions physical therapy is not health care reasonably necessary for treatment of 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. Claimant failed to offer evidence based medicine contrary to the IRO decision.
 4. Twelve sessions of physical therapy is not reasonably required medical treatment 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 IRO that 12 sessions of physical therapy are not reasonably required medical services for the compensable injury of _____.

DECISION

Claimant is not entitled to 12 sessions of physical therapy for treatment of 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 **LIBERTY INSURANCE CORPORATION** 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 14th day of April, 2009.

CAROL A. FOUGERAT
Hearing Officer