

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 May 11, 2009 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that purchase of a handicap ramp is not a medically necessary durable health care good for the compensable injury of _____?

PARTIES PRESENT

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

BACKGROUND INFORMATION

Claimant received a prescription from his treating doctor, Dr. B, MD for a handicap ramp at his home on December 15, 2008. Carrier reviewed the request and denied it on December 24, 2008. In its notice of denial, Carrier provided a copy of the report from Dr. S, D.O., the utilization review agent. Dr. S stated that medical necessity was not established with the application of the Official Disability Guidelines (ODG) because they do not address the issue and he based his decision on submitted clinical information. Claimant appealed Dr. S's determination and was reviewed by Dr. G, D.O. who also denied the request. Dr. G stated that there was no objective documentation that Claimant would require a ramp for home accessibility. Claimant then requested that the question be sent to an Independent Review Organization (IRO). The Texas Department of Insurance selected (Independent Review Organization) as the IRO.

In a report dated February 18, 2009, the IRO physician reviewer upheld Carrier's earlier denials. The physician reviewer reviewed Claimant's clinical history, noted that Claimant's physical examination did not reveal a specific weakness that would cause him to fall, that Claimant was obviously deconditioned, and that the information provided to him failed to reveal whether the steps used by Claimant had a handrail or not. The physician reviewer's report concluded that he did not know if the stairs had a handrail to substitute for the cane normally used by Claimant and without that information, the request for a ramp was not medically necessary.

Claimant argues that the report of the physician reviewer should be read to mean that if handrails are present, then the request for a ramp is medically necessary. Carrier asserts that the report should be read that handrails would substitute for Claimant's cane and that their existence would make the ramp unnecessary. Regardless of which interpretation of the physician reviewer's comments is considered more likely, he determined that a handicap ramp is not medically necessary under the circumstances.

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 (Texas Labor Code §408.021). "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 (Texas Labor Code §401.011(22-a)). "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 (Texas Labor Code §401.011 (18-a)). 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. In the instant case, the ODG does not address the issue.

In accordance with Division Rule 133.308(t), Claimant, as the party appealing the IRO decision, had the burden of overcoming the IRO decision by a preponderance of evidence based medicine evidence. Claimant testified that a ramp would make it easier for him to enter and leave his house. He conceded that neither Dr. B nor a physical therapist had been to his house to evaluate the need for a handicap ramp. In asserting that the IRO decision was incorrect, he relied upon his interpretation of the IRO decision. His testimony does not rise to the level of evidence based medicine and the documentary evidence also fails to establish the need for a handicap ramp at his home as a result of the compensable injury of _____. Without evidence based medicine to overcome the IRO decision, the decision of the IRO will stand.

Carrier argues that the requested handicap ramp does not qualify as durable medical equipment and it is not liable for payment of the cost of supplying the ramp even if it is medically required. Neither utilization review agent questioned the possibility that a handicap ramp could be a durable medical good. The physician reviewer also considered the ramp as durable medical equipment. Carrier argues that a well person could just as easily use the ramp as the injured employee. That argument, however, fails to consider the fact that it is the physical infirmity that prompted the request and that, absent the infirmity, the request would not have been made. The hearing officer finds, to the extent necessary in this matter, that the requested handicap ramp is to be used for a medical reason, is not generally useful absent an infirmity, and is a durable medical good under the circumstances presented herein.

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 (SELF-INSURED EMPLOYER).

- C. The Texas Department of Insurance appointed (Independent Review Organization) to act as the Independent Review Organization (IRO) in this matter.
 - D. Claimant sustained a compensable injury on _____.
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 to refute the determination of the IRO that a handicap ramp is not medically necessary.
 4. A handicap ramp is not a reasonably required accommodation resulting from 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 a handicap ramp is not a medically necessary durable health care good for the compensable injury of _____.

DECISION

The preponderance of the evidence is not contrary to the decision of IRO that a handicap ramp is not a medically necessary durable health care good 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 EMPLOYER)** and the name and address of its registered agent for service of process is

**CT CS
(STREET ADDRESS)
(CITY), TEXAS (ZIP CODE)**

Signed this 12th day of May, 2009.

KENNETH A. HUCTION
Hearing Officer