

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 June 10, 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 Claimant is not entitled to nasal endoscopy, surgical, with frontal sinus exploration with or without removal of tissue from frontal sinus for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was represented by FC, attorney. Respondent/Carrier appeared and was represented by RJ, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on _____ when he fell and fractured his skull. Claimant has on going symptoms of vertigo, tinnitus, and sinusitis. An MRI of the brain on January 8, 2009 showed a slight non-specific asymmetry in the right transverse sinus flow-void. A CT scan of the maxillofacial area on January 8, 2009 revealed a moderate paranasal sinus disease. Claimant has been diagnosed with chronic bilateral maxillary, ethmoid left frontal sinusitis, bilateral ethmoid sinusitis and deviated septum. On January 16, 2009 Dr. MK recommended bilateral endoscopic sinus surgery with septoplasty and turbinate resection. On January 29, 2009 Dr. DB felt the surgery was neither reasonable nor necessary. Upon reconsideration, Dr. SL agreed with Dr. B. Claimant appealed the denial and the matter was submitted to (IRO), an independent review organization (IRO) selected by the Texas Department of Insurance. The IRO upheld Carrier's denial of the surgical nasal endoscopy, with frontal sinus exploration with or without removal of tissue from frontal sinus.

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 Official Disability Guidelines (ODG), and such treatment is presumed to be reasonably required.

The ODG does not address surgical treatment for chronic sinusitis. Dr. B, the physician reviewer for the pre-authorization request, reported that no medical therapy has been prescribed to resolve Claimant's problems. Yet in evidence was a long list of sinus medications prescribed by Dr. GB and Dr. AZ. Claimant also testified that he was given not only sinus medication but also oral antibiotics and intravenous IV medication for his sinus problems. Both physician reviewers, on the reconsideration request and the IRO determination, addressed whether Claimant's sinusitis/loss of smell was caused by the skull fracture, rather than determining if the requested procedure was medically necessary or reasonable. Per Texas Labor Code Rule 134.600(h)(1), the carrier shall approve or deny requests based solely upon the "medical necessity of the health care required to treat the injury, regardless of unresolved issues of compensability, extent or relatedness to the compensable injury". Both parties questioned the decision of the IRO since it appeared to have been determined from a differential diagnosis, addressing the question of extent and not solely the medical necessity of the procedure.

In a Contested Case Hearing (CCH), the party appealing the IRO decision has the burden of overcoming the decision issued by an IRO by a preponderance of evidence-based medical evidence (Rule 133.308(t)). Claimant presented the medical opinion of Dr. K, treating doctor, and a general article from www.HealthCentral.com under chronic pain that explains candidate qualifications for the functional endoscopic sinus surgery. Even though Dr. K gave his opinion he failed to present evidence-based medical evidence as to the appropriateness of the proposed procedure, and he failed to establish that the proposed procedure meets generally accepted standards of medical practice recognized in the medical community. Claimant has not produced sufficient evidence based medicine to refute 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 Texas Department of Insurance appointed (IRO) as the independent review organization (IRO) in this matter.
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 IRO determined that nasal endoscopy, surgical, with frontal sinus exploration with or without removal of tissue from frontal sinus was not medically necessary because it is not recommended treatment for a basal skull fracture.
4. The ODG is silent as to surgical treatment of chronic sinusitis.
5. A nasal endoscopy, surgical, with frontal sinus exploration with or without removal of tissue from frontal sinus 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 IRO that nasal endoscopy, surgical, with frontal sinus exploration with or without removal of tissue from frontal sinus is not health care reasonably required for the compensable injury of _____.

DECISION

Nasal endoscopy, surgical, with frontal sinus exploration with or without removal of tissue from frontal sinus is not reasonably required medical treatment 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 **LM INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET SUITE 1050
AUSTIN, TEXAS 78701.**

Signed this 15th day of June, 2009.

Judy L. Ney
Hearing Officer