

**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.

**ISSUE**

A contested case hearing was held on July 9, 2009, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to a one-year spa membership with swimming pool access for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Respondent/Carrier appeared by telephone, and was represented by Attorney WS. Although Petitioner/Claimant was advised of the date, time, and location of the hearing, she elected not to appear, having previously notified the Office of Injured Employee Counsel of her intent in this matter.

**BACKGROUND INFORMATION**

Claimant's treating doctor recommended that she be allowed a spa membership for weight loss purposes. The Independent Review Organization denied the requested membership, citing the utility of a home exercise program that would provide similar health benefits.

**DISCUSSION**

Section 408.021 of the Texas Labor Code 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. Section 401.011(22-a) defines health care reasonably required 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: (A) evidence based medicine; or (B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community." "Evidence based medicine" is further defined, by Section 401.011(18-a) as 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 making decisions about the care of individual patients.

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 ODG.

With regard to aquatic therapy, the ODG sets forth the following:

Recommended as an optional form of exercise therapy, where available, as an alternative to land-based physical therapy. Aquatic therapy (including swimming) can minimize the effects of gravity, so it is specifically recommended where reduced weight bearing is desirable, for example extreme obesity. There may be advantages to weightless running in back pain recovery.

However, the ODG also recommends non-aquatic exercise and physical therapy. As Claimant has presented no evidence-based medical opinion to justify choosing aquatic therapy over equally effective methods available to her, a decision in Carrier's favor is appropriate with respect to the sole issue presented for resolution 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. On \_\_\_\_\_, Claimant was employed by (Employer).
2. On \_\_\_\_\_, Employer subscribed to a policy of workers' compensation insurance issued by the Continental Insurance Company.
3. On \_\_\_\_\_, Claimant sustained an injury arising out of the course and scope of her employment with Employer.
4. The Division 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.
5. Claimant's treating doctor, R. CP, M.D., recommended that Claimant obtain a one-year spa membership, with swimming pool access, for purposes of weight reduction.
6. The Independent Review Organization (IRO) determined that the requested spa membership was not reasonable and necessary health care for Claimant's compensable injury of \_\_\_\_\_.
7. A one-year spa membership with swimming pool access is not health care reasonably required for Claimant's 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 IRO's decision that a one-year spa membership with swimming pool access is not health care reasonably required for the compensable injury of \_\_\_\_\_.

### **DECISION**

Claimant is not entitled to a one-year spa membership with swimming pool access for her 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 **CONTINENTAL INSURANCE COMPANY**, and the name and address of its registered agent for service of process is

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

Signed this 16<sup>th</sup> day of July, 2009.

Ellen Vannah  
Hearing Officer