

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 July 28, 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 nine (9) units each of ultrasound therapy, therapeutic procedures, manual physical therapy and group therapeutic procedures for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by SL, ombudsman.
Respondent/Carrier was represented by MD, attorney.

BACKGROUND INFORMATION

The Claimant sustained a compensable injury to his lumbar spine on _____ while working as an AC mechanic and installer. Claimant was initially diagnosed with a lumbar sprain/strain and prescribed six sessions of physical therapy which he completed. Claimant began treating with Dr. P in November 2008. An MRI of the lumbar spine was performed on November 23, 2008 and revealed multilevel spondylitic changes, a mild to moderate disc bulge with a small right foraminal extrusion at L4-5 with moderate to severe foraminal narrowing, and a mild disc bulge with a small right lateral protrusion of L5-S1 with moderate right foraminal narrowing. The EMG performed on February 11, 2009 did not suggest radiculopathy or neuropathy. Claimant was recommended for 12 sessions of physical therapy which he completed on January 21, 2009. Claimant's treating doctor has recommended an additional nine sessions each of ultrasound therapy, therapeutic procedures, manual physical therapy and group therapeutic procedures for the compensable injury of _____. The request for additional therapy was denied by the Carrier and referred to an IRO who upheld the Carrier's denial. 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.

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

Sprains and strains of unspecified parts of back (ICD9 847):

10 visits over 5 weeks

Sprains and strains of sacroiliac region (ICD9 846):

Medical treatment: 10 visits over 8 weeks

Lumbago; Backache, unspecified (ICD9 724.2; 724.5):

9 visits over 8 weeks

Intervertebral disc disorders without myelopathy (ICD9 722.1; 722.2; 722.5; 722.6; 722.8):

Medical treatment: 10 visits over 8 weeks

Intervertebral disc disorder with myelopathy (ICD9 722.7)

Medical treatment: 10 visits over 8 weeks

The *ODG* recognizes the role of physical therapy in the management of back pain and it also describes the transfer of treatment from a passive program to a more active self-directed program. The recommendations in the *ODG* for physical therapy for the low back are 10 visits over 8 weeks, allowing for fading of treatment frequency from up to three visits per week to one or less, plus active self-directed home physical therapy. The Claimant has already undergone 18 physical therapy sessions and he testified that he is not doing home exercises but he does do hydrotherapy at the pool. The Claimant testified that his condition improved with the physical therapy sessions; however, he failed to offer an opinion from a qualified physician to explain the need for additional therapy exceeding the recommendations in the *ODG*. Based on the evidence presented, the 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 was the employee of (Employer) when he sustained a compensable injury.
 - C. The IRO determined that the requested services were not reasonable and necessary health care 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. The requested procedures of nine (9) units each of ultrasound therapy, therapeutic procedures, manual physical therapy and group therapeutic procedures are not consistent with the recommendations in the *ODG*.
 4. Nine (9) units each of ultrasound therapy, therapeutic procedures, manual physical therapy and group therapeutic procedures are 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 IRO that Claimant is not entitled nine (9) units each of ultrasound therapy, therapeutic procedures, manual physical therapy and group therapeutic procedures for the compensable injury of _____.

DECISION

Claimant is not entitled to nine (9) units each of ultrasound therapy, therapeutic procedures, manual physical therapy and group therapeutic procedures 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 **REPUBLIC UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MAC SHIPMAN
5525 LBJ FREEWAY
DALLAS, TX 75240-6241**

Signed this 28th day of July, 2009.

Carol A. Fougerat
Hearing Officer