

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 scheduled for October 9, 2008 but reset to and held on August 17, 2009 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to a chronic pain management program x 30 sessions for the compensable injury of _____?

PARTIES PRESENT

Petitioner did not appear at either contested case hearing although duly notified of all settings. Claimant appeared and was assisted by NG, ombudsman. Respondent/Carrier appeared and was represented by RM, attorney.

BACKGROUND INFORMATION

The Claimant sustained a compensable repetitive trauma injury to her right upper extremity on _____. Claimant testified that she underwent surgery to her right shoulder and wrist as a result of this injury and she has undergone physical therapy. Claimant has also treated with medications, trigger point injections, an ESI and she underwent a psychological evaluation. Claimant's treating doctor has recommended that the Claimant not undergo an FCE due to her physical condition. Claimant testified that she is not currently taking medications since her prescriptions have been denied by the Carrier. Claimant testified that she has also been diagnosed with RSD; however, the medical records contain conflicting opinions regarding that diagnosis. Claimant's treating doctor recommended 30 sessions of chronic pain management which was denied by the Carrier and referred to an IRO who determined that the Claimant did not meet the guidelines for a 30 session chronic pain management program according to the Official Disability Guidelines (ODG) Admission Criteria.

The IRO reviewer noted, "Specifically, the request exceeds the recommended number of treatments and cited the ODG criteria that, "Total treatment duration should generally not exceed 20 full-day sessions (or the equivalent in part-day sessions if required by part-time work, transportation, childcare, or comorbidities). Treatment duration in excess of 20 sessions requires a clear rationale for the specified extension and reasonable goals to be achieved. Longer durations require individualized care plans and proven outcomes, and should be based on chronicity of disability and other known risk factors for loss of function." The IRO reviewer concluded that medical necessity does not exist for 30 sessions of chronic pain management.

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 401.011 (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 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 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. Also, in accordance with Division Rule 133.308 (t), "A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division are considered parties to an appeal. 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."

The ODG provides, in pertinent part:

Total treatment duration should generally not exceed 20 full-day (160 hours) sessions (or the equivalent in part-day sessions if required by part-time work, transportation, childcare, or comorbidities). (Sanders, 2005) Treatment duration in excess of 160 hours requires a clear rationale for the specified extension and reasonable goals to be achieved. Longer durations require individualized care plans explaining why improvements cannot be achieved without an extension as well as evidence of documented improved outcomes from the facility (particularly in terms of the specific outcomes that are to be addressed).

Claimant's treating doctor has recommended 30 sessions of chronic pain management for treatment of the Claimant's compensable injury. The ODG recommends that the total treatment duration should generally not exceed 20 full-day (160 hours) sessions. The Claimant offered her testimony and her treating doctor's medical records to support her position that she meets the ODG criteria for 30 sessions of chronic pain management. Claimant failed to present an evidence-based medical opinion from a competent source to overcome the IRO's decision. The Claimant did not present evidence-based medicine justifying departure from the ODG and has, therefore, not met the requisite evidentiary standard required to overcome the IRO decision. The Claimant is not entitled to chronic pain management x 30 sessions for the compensable injury of _____.

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 the (Employer).
 - C. 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. The Claimant did not present evidence-based medicine justifying departure from the ODG for participation in an interdisciplinary chronic pain management program for 30 sessions.
 4. The requested 30 sessions chronic pain management 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 the IRO that the Claimant is not entitled to a chronic pain management program x 30 sessions for the compensable injury of _____.

DECISION

Claimant is not entitled to 30 sessions of chronic pain management program 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 **HARTFORD INSURANCE COMPANY OF THE MIDWEST** and the name and address of its registered agent for service of process is

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

Signed this 17th day of August, 2009.
Carol A. Fougerat
Hearing Officer