MEDICAL CONTESTED CASE HEARING NO. 10006
M6-09-19867-01

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 benefit contested case hearing was held on August 6, 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 selective nerve root block at L5 right, epidurogram, and anesthesia for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was assisted by SB, ombudsman. Carrier appeared and was represented by attorney, CM.

BACKGROUND INFORMATION

It is undisputed that Claimant sustained a compensable low back injury. He has treated conservatively for years and has not undergone surgery. Claimant's treating doctor, Dr. E, ultimately referred Claimant to Dr. H for pain management. Dr. E's most recent records document physical examinations revealing equal calf circumference; positive straight leg raise test on the right; and, decreased sensation to the right L5 and S1 dermatomes.

Dr. H has treated Claimant with various injections since January of 2007. A December 1, 2008 clinic note following a selective nerve root block at L5 on the right performed on October 22, 2008, revealed good relief of 65%, which had begun to wane in December. On January 27, 2009, Dr. H performed another selective nerve root block at L5 on the right, which yielded 50% relief, but began to wane in March of 2009. On March 24, 2009, Dr. H requested another selective right L5 nerve root block, epidurogram and anesthesia for treatment of Claimant's returning chronic low back pain.

The carrier's first utilization reviewer, a board certified physical medicine and rehabilitation doctor, denied the requested treatment citing the *Official Disability Guidelines (ODG).* That reviewer reviewed the office notes from Dr. H and an RME report dated January 20, 2009, from Dr. F. The reviewer denied the requested selective nerve root block because it was being requested for pain management but there was no documented electrodiagnostic study indicating objective lumbar radiculopathy. The reviewer also opined that selective nerve root block treatment is not indicated for long term pain relief, rather for diagnostic purposes in identifying a pain generator.

The second utilization review doctor, a board certified physical medicine and rehabilitation and pain medicine doctor, who reviewed the request on reconsideration also denied the requested selective

nerve root block. He also cited the *ODG* and noted that Claimant had undergone a total of 19 epidural steroid injections as of January of 2009. He further noted that Claimant had undergone a series of five facet injections and two radiofrequency neurotomies. The reviewer also stated that the only objective sign of nerve root irritation was a positive sciatic referral pattern on physical examination. The reviewer concluded that given the number of injections Claimant had undergone over the years and the absence clinically significant and sustainable therapeutic benefits from those injections, the medical necessity for further injections could not be established.

An IRO reviewer, a board certified physical medicine and rehabilitation doctor with board certified subspecialties in pain management and electrodiagnostic medicine, upheld the carrier's denial of the requested selective nerve root block, epidurogram and anesthesia. The reviewer cited the AMA Guides and the *ODG* and opined that the criteria for using selective nerve root blocks require the presence of radiculopathy. The reviewer opined that in Claimant's case, the evidence of radiculopathy was inconclusive. The reviewer cited an abnormal EMG performed in 2008 as the only possible documented evidence of radiculopathy. The reviewer also noted that the records indicated no neurological loss and previous injections had been administered too frequently and without sufficient benefit. The IRO reviewer upheld the Carrier's denial of the requested selective nerve root block, epidurogram and anesthesia.

DISCUSSION

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. **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 under Division **Rule 137.100**. That rule directs health care providers to provide treatment in accordance with the current edition of the *Official Disability Guidelines (ODG),* and treatment provided pursuant to those guidelines is presumed to be health care reasonably required as mandated by the above-referenced sections of the **Texas Labor Code**.

ODG

The initial inquiry, therefore, in any dispute regarding medical necessity, is whether the proposed care is consistent with the *ODG*. Further, 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."

As the IRO doctor in the instant case stated, the *ODG* allows for selective nerve root blocks for the treatment of low back injuries and sets out the circumstances under which such treatment is recommended as reasonable and necessary.

The *ODG* Treatment Guidelines for selective nerve root blocks for the treatment of the low back refer the reader to "epidural steroid injections, diagnostic," which the *ODG* discuss as follows:

> Recommended as indicated below. Diagnostic epidural steroid transforaminal injections are also referred to as selective nerve root blocks, and they were originally developed as a diagnostic technique to determine the level of radicular pain….

The records of Dr. H show that he is not seeking to use the selective nerve root blocks for diagnostic purposes. Rather, he is seeking to use the nerve root blocks therapeutically.

The *ODG* discuss therapeutic epidural steroid injections, in relevant part, as follows:

> *Use for chronic pain:* Chronic duration of symptoms (> 6 months) has also been found to decrease success rates with a threefold decrease found in patients with symptom duration > 24 months. The ideal time of either when to initiate treatment or when treatment is no longer thought to be effective has not been determined. (Hopwood, 1993) (Cyteval, 2006) Indications for repeating ESIs in patients with chronic pain at a level previously injected (> 24 months) include a symptom-free interval or indication of a new clinical presentation at the level.
>
> **Criteria for the use of Epidural steroid injections:**
>
> *Note: The purpose of ESI is to reduce pain and inflammation, thereby facilitating progress in more active treatment programs, and avoiding surgery, but this treatment alone offers no significant long-term functional benefit.*
>
> (1) Radiculopathy must be documented. Objective findings on examination need to be present. For unequivocal evidence of radiculopathy, see AMA Guides, 5th Edition, page 382-383. (Andersson, 2000)
> (2) Initially unresponsive to conservative treatment (exercises, physical methods, NSAIDs and muscle relaxants).
> (3) Injections should be performed using fluoroscopy (live x-ray) and injection of contrast for guidance.
> (4) *Diagnostic Phase:* At the time of initial use of an ESI (formally referred to as the "diagnostic phase" as initial injections indicate whether success will be obtained with this treatment intervention), a maximum of one to two injections should be performed. A repeat block is not recommended if there is inadequate response to the first block (< 30% is a standard placebo response). A second block is also not indicated if the first block is accurately placed unless: (a) there is a question of the pain generator; (b) there was possibility of inaccurate placement; or (c) there is evidence of multilevel pathology. In these cases a different level or approach might

be proposed. There should be an interval of at least one to two weeks between injections.
(5) No more than two nerve root levels should be injected using transforaminal blocks.
(6) No more than one interlaminar level should be injected at one session.
(7) *Therapeutic phase:* If after the initial block/blocks are given (see "Diagnostic Phase" above) and found to produce pain relief of at least 50-70% pain relief for at least 6-8 weeks, additional blocks may be required. This is generally referred to as the "therapeutic phase." Indications for repeat blocks include acute exacerbation of pain, or new onset of symptoms. The general consensus recommendation is for no more than 4 blocks per region per year. (CMS, 2004) (Boswell, 2007)
(8) Repeat injections should be based on continued objective documented pain relief, decreased need for pain medications, and functional response.
(9) Current research does not support a routine use of a "series-of-three" injections in either the diagnostic or therapeutic phase. We recommend no more than 2 ESI injections for the initial phase and rarely more than 2 for therapeutic treatment.
(10) It is currently not recommended to perform epidural blocks on the same day of treatment as facet blocks or sacroiliac blocks or lumbar sympathetic blocks or trigger point injections as this may lead to improper diagnosis or unnecessary treatment.
(11) Cervical and lumbar epidural steroid injection should not be performed on the same day. (Doing both injections on the same day could result in an excessive dose of steroids, which can be dangerous, and not worth the risk for a treatment that has no long-term benefit.)

As noted previously herein, "health care reasonably required" means 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 that evidence is not available, generally accepted standards of medical practice recognized in the medical community. Treatment provided pursuant to the *ODG* is presumed to be health care reasonably required.

The board-certified physical medicine and rehabilitation IRO reviewer denied the requested procedure citing the relevant provisions of the *ODG*, specifically the fact that there was inconclusive objective evidence of radicular pain, and the fact that Claimant had no significant improvement with previous injections. Claimant also relied on the *ODG* in disputing the IRO opinion and claimed that he had documented evidence of radiculopathy based on clinical examination and an EMG and had improved with prior injections. Claimant's treating doctor, Dr. E, responded to the carrier's denial and opined that the requested injection met the *ODG* requirements because Claimant's injections often gave him relief from 5 to 7 months and reduced his pain and reliance on medication use. Dr. E also noted that Claimant had continued to work his regular duty job; therefore, the request was justified based on his functional gain.

When both parties cite the *ODG* in support of their position, that position must be supported by sufficient evidence to justify application of the *ODG*. Mere citation to the *ODG* does not carry the day. In the instant case, the IRO report is specific and sets out exactly how Claimant fails to meet the criteria set out in the *ODG*.

The *ODG* contemplate the use of selective nerve root blocks for diagnostic purposes. It is clear that

Dr. H is not seeking to use them for that purpose. According to the *ODG*, repeat therapeutic injections should be based on continued objective documented pain relief, decreased need for pain medications, and functional response; and, no more than four blocks a year should be performed in a given region. The last two injections provided relief for a few weeks, not several months as Dr. E stated. Contrary to Dr. E's opinion, Dr. H's clinical records do not show that Claimant has met the criteria set out in the *ODG* for repeat injections in the therapeutic phase of his treatment. The intended treatment is, therefore, not supported by the *ODG*.

Under the Act, treatment provided pursuant to the *ODG* is presumed to be health care reasonably required as mandated by the above-referenced sections of the **Texas Labor Code**. Claimant failed to present an evidence-based medical opinion from a competent source to overcome the IRO's decision. The preponderance of the evidence is not contrary to the IRO decision and the requested selective nerve root block at L5 right, epidurogram, and anesthesia do not meet the criteria set out in the *ODG*.

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), when he sustained a compensable injury.

   C. The IRO determined that the requested services were not reasonable and necessary health care services for the compensable injury of _____.

2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and name and street address of Carrier's registered agent which was admitted into evidence as Hearing Officer's Exhibit Number 2.

3. Claimant's pain management doctor recommended selective nerve root block at L5 right, epidurogram, and anesthesia for treatment of Claimant's compensable low back injury.

4. For treatment of the low back, the *ODG* sets out the circumstances under which selective nerve root blocks are recommended.

5. Claimant's doctor is not seeking to use the selective nerve root blocks for diagnostic purposes.

6. The medical records do not show that Claimant had the requisite objective documented pain relief, decreased need for pain medications, and functional response following his previous two selective nerve root blocks.

8. The IRO decision upheld the Carrier's denial of the requested selective nerve root block at L5 right, epidurogram, and anesthesia because the requested service did not meet the criteria set out in the *ODG*.

9. The requested service is not consistent with the *ODG* criteria for selective nerve root block at L5 right, epidurogram, and anesthesia.

10. The requested selective nerve root block at L5 right, epidurogram, and anesthesia 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 was proper in the (City) Field Office.

3. The preponderance of the evidence is not contrary to the decision of IRO that selective nerve root block at L5 right, epidurogram, and anesthesia is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to selective nerve root block at L5 right, epidurogram, and anesthesia.

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 Section 408.021.

The true corporate name of the insurance carrier is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

CSC –
(STREET ADDRESS)
(CITY), TEXAS (ZIP CODE)

Signed this 18th day of August, 2009.

Erika Copeland
Hearing Officer