

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 August 28, 2009, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that replacement of Claimant's intrathecal morphine pump and catheter is not medical treatment reasonably necessary for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by TM, ombudsman.
Respondent/Carrier appeared and was represented by TS, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on _____. On August 15, 2001, an intrathecal morphine pump was implanted to provide pain relief for the lumbar spine component of Claimant's injury. The pump was taken out on February 24, 2003, due to an infection and a second pump was implanted on November 17, 2003. Claimant's doctor, (Dr. C) requested permission to remove and replace the pump. Dr. C's rationale for the procedure is that the pump has an expected life span of from four and a half to six and a half years and that replacing the pump now, before it fails, eliminates the probability that Claimant will experience opiate withdrawal that could occur when the pump ceases to operate.

The utilization review agents that have considered the request for the removal of the pump and the physician reviewer for the Independent Review Organization all concur that there is no medical necessity for the replacement of the pump at this time. The physician reviewer stated that there is "... absolutely no medical reason, necessity or justification for implanting (sic) the pump when there is no evidence of its dysfunction, regardless of the age of the pump."

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.

Dr. C testified that he has extensive experience with these devices and Claimant's pump needs to be replaced now because it is six years old and can fail at any time with the attendant risk of Claimant suffering opiate withdrawal. In determining the weight to be given to expert testimony, a trier of fact must first determine if the expert is qualified to offer it. The trier of fact must then determine whether the opinion is relevant to the issues at bar and whether it is based upon a solid foundation. An expert's bald assurance of validity is not enough. See Black vs. Food Lion, Inc., 171 F.3rd 308 (5th Cir. 1999); E.I. Du Pont De Nemours and Company, Inc. v. Robinson, 923 S.W.2d 549 (Tex. 1995). Evidence is considered in terms of (1) general acceptance of the theory and technique by the relevant scientific community; (2) the expert's qualifications; (3) the existence of literature supporting or rejecting the theory; (4) the technique's potential rate of error; (5) the availability of other experts to test and evaluate the technique; and (7) the experience and skill of the person who applied the technique on the occasion in question. Kelly v. State, 792 S.W.2d 579 (Tex.App.-Fort Worth 1990). Dr. C is eminently qualified to testify in this matter and has considerable skill and experience in this area. His belief that the morphine pump must be replaced before it fails is not shared by the URA doctors or the IRO physician reviewer and Claimant offered no literature regarding scientific and medical evidence supporting Dr. C's recommendation. The removal of Claimant's first morphine pump more than a year and a half after its implantation and the almost nine month hiatus in the use of that device before another pump was implanted argues against Dr. C's hypothesis.

The party appealing an 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 has failed to adduce evidence to show that replacement of his morphine pump at this time is clinically appropriate and considered effective for his injury and provided in accordance with best practices consistent with 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.

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 sustained a compensable injury while employed by (Employer).
 - C. (IRO), the Independent Review Organization appointed by the Texas Department of Insurance in this matter, determined that there is no medical reason or necessity for the current intrathecal pump or catheter to be replaced.

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. Claimant failed to offer evidence based medicine that tended to show that replacement of the current intrathecal pump prior to any malfunction or dysfunction is reasonably necessary medical care for the treatment of the compensable injury of _____.
4. Claimant's current intrathecal morphine pump is still functioning properly and there has been no indication that it may or will fail within the immediate future.
5. Claimant's current intrathecal morphine pump is equipped with an alarm that should provide advance warning to Claimant and his medical care providers of a problem with the operation of that device.
6. Replacement of Claimant's intrathecal morphine pump 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 replacement of Claimant's intrathecal morphine pump and catheter is not medical treatment reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to replacement of Claimant's intrathecal morphine pump and catheter 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 **ONEBEACON INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 N. ST. PAUL STREET
DALLAS, TX 75201.**

Signed this 28th day of August, 2009
KENNETH A. HUCTION
Hearing Officer