

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 October 19, 2009 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to a spa shower tub for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant did not appear at the hearing. His wife AT appeared as his lay representative. Respondent/Carrier appeared and was represented by EL, adjuster. Claimant's appearance was waived.

BACKGROUND INFORMATION

Claimant did not appear at the hearing. His wife AT, who has his power of attorney, appeared as his lay representative. Claimant's appearance was waived. Claimant through his wife waived ombudsman assistance.

Claimant sustained a compensable injury on _____ including severe traumatic brain injury. He has residual left hemiparesis and bilateral brachial plexi injuries with dysphasia. He has difficulty walking and chronic pain. The IRO doctor, board certified in physical medicine and rehabilitation and in pain management, observes in his decision that "the injury this man sustained is one of those catastrophic injuries that are managed by life planners." The IRO doctor upheld the previous denial of the requested treatment technology, a spa shower tub.

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 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. 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 does not address the specific treatment technology in dispute. Some summaries of medical articles dealing with spa therapy for various medical problems were offered on Claimant's behalf and admitted. There was a letter from the treating physician and requesting doctor, Dr. W, in which she stated Claimant would benefit from daily hydro spa therapy and needed protection against falling. There was no testimony other than from Claimant's wife.

The reviewers saw the requested spa shower tub as a luxury or convenience item and not medical treatment. The IRO doctor disagreed. The IRO doctor thought Claimant needed as appropriate treatment technology a shower equipped with a low step, a chair, grab bars, and a shower jet for massage. These features are present in the requested High Boy spa shower tub but could also be furnished by adding features to an existing shower stall with a low step. The IRO doctor upheld the denial of the High Boy because necessary information was not provided. The IRO doctor states in his decision that installation of the requested bathing/shower device would be appropriate if there is not a shower stall large enough to allow a chair. Based on Mrs. T's testimony there is a shower stall with a low step large enough to allow a chair.

Claimant failed to offer evidence based medicine or standards in the medical community to dispute the findings of the IRO. The preponderance of the evidence is not contrary to the IRO decision.

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).
 - C. On _____ Claimant sustained a compensable injury.
 - D. The Independent Review Organization determined Claimant should not have the requested treatment.

2. Carrier delivered to Claimant's representative, his wife, 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. A spa shower tub 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 a spa shower tub is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to a spa shower tub 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 Section 408.021 of the Act.

The true corporate name of the insurance carrier is **HARTFORD FIRE INSURANCE COMPANY**, and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
DALLAS, TEXAS 78701**

Signed this 19th day of October, 2009.

Thomas Hight
Hearing Officer