

MEDICAL CONTESTED CASE HEARING NO. 10059  
M6-09-20317-01

**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.

**ISSUES**

A contested case hearing was held on October 6, 2009, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to a preoperative psychosocial screening?

**PARTIES PRESENT**

Claimant appeared and was represented by CT, attorney. Petitioner/Provider, (Healthcare Provider), Dr. B, appeared by telephone. Carrier appeared and was represented by EP, attorney.

**BACKGROUND INFORMATION**

It is undisputed that Claimant sustained a compensable left shoulder and back injury on \_\_\_\_\_. Claimant received conservative medical care, including physical therapy and epidural steroid injections, from Dr. B, M.D. Dr. B diagnosed Claimant with mechanical back pain, disc bulges at L4-L5, and L5-S1, and tendonitis of the left shoulder. During the hearing, Dr. B did not state that surgery was necessary. He ordered a preoperative psychosocial screen to determine whether the pain was caused by psychological or social factors. A preauthorization determination for this examination was denied per the physician advisor because it did not involve a mental health professional.

On June 1, 2009, an Independent Review Organization (IRO) rendered its decision, and determined that the medical necessity for pre-operative psychosocial screening has not been established since no surgical procedure has been identified that will be performed if the patient is cleared psychologically for surgery. The IRO stated that the Official Disability Guidelines (ODG) does not recommend psychosocial screening in the above situation.

**DISCUSSION**

Texas Labor Code §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 §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 (EBM) or, if EBM 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 EBM if that evidence is available. EBM is further defined in Texas Labor Code §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.

With psychological screening, the ODG provides:

Recommended as an option prior to surgery, or in cases with expectations of delayed recovery. Before referral for surgery, clinicians should consider referral for psychological screening to improve surgical outcomes, possibly including standard tests such as MMPI (Minnesota Multiphasic Personality Inventory) and Waddell signs. (Scalzitti, 1997) (Fritz, 2000) (Gaines, 1999) (Gatchel, 1995) (McIntosh, 2000) (Polatin, 1997) (Riley, 1995) (Block, 2001) (Airaksinen, 2006) A recent study concluded that psychological distress is a more reliable predictor of back pain than most diagnostic tests. (Carragee, 2004) The new ACP/APS guideline as compared to the old AHCPR guideline is a bit stronger on emphasizing the need for psychosocial assessment to help predict potentially delayed recovery. (Shekelle, 2008) For more information, see the Pain Chapter and the Stress/Mental Chapter.

In accordance with Division Rule 133.308(t), Petitioner, the party appealing the IRO decision, had the burden of overcoming the IRO decision by a preponderance of evidence-based medicine (EBM). In support of its position, petitioner relied upon Dr. B's medical testimony and an article on Assessments for Clinical and Psychological Use. As well, Dr. B stated he relied on the ODG. The ODG clearly states that psychosocial screening is recommended as an option prior to surgery or in cases with expectations of delayed recovery. It continues to state that, before referral for surgery, clinicians should consider referral for psychological screening to improve surgical outcomes, possibly including standard tests such as the MMPI and Waddell signs. In the case at hand, Dr. B testified that he has not yet recommended surgery. He also has recommended another test administered by his office called a Behavioral Health Inventory (BHI) test.

The IRO decision is in accordance with the ODG. Therefore, the preponderance of EBM evidence is not contrary to the decision of the IRO. Claimant is not entitled to psychosocial screening 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 (Employer).

- C. Claimant sustained a compensable left shoulder and back 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. Dr. B, M.D., recommended that Claimant undergo a psychosocial screening for the compensable injury of \_\_\_\_\_.
  4. Dr. B had not recommended that Claimant undergo lumbar spinal fusion surgery at the time that he requested the psychosocial screening.
  5. The IRO determined that the psychosocial screening was not necessary treatment for Claimant's compensable injury of \_\_\_\_\_ because at this time no surgical procedure is recommended.
  6. The determination of the IRO is not contrary to the criteria as set out in the ODG.

### **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 psychosocial screening for the compensable injury of \_\_\_\_\_.

### **DECISION**

Claimant is not entitled to psychosocial screening 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 of \_\_\_\_\_, in accordance with Texas Labor Code Ann. §408.021.

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

**WILLIAM S. MCINTYRE, IV  
ACIG INSURANCE COMPANY  
12222 MERIT DRIVE, #1660  
DALLAS, TEXAS 75251**

Signed this 6th day of October, 2009.

Susan Meek  
Hearing Officer