

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 November 03, 2009, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to physical therapy for the lumbar spine three times a week for four weeks for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was represented by LW, attorney. Respondent/ Carrier appeared and was represented by TW, attorney.

BACKGROUND INFORMATION

Claimant is a police officer who, as a pedestrian, was struck by a truck and sustained multiple injuries including multiple fractures, a concussion, lacerations and neck and back injuries. His doctor first focused on his neck injuries. This resulted in a cervical fusion. Claimant's doctor then additionally diagnosed him with disc herniations at L3/4 and L4/5 and wishes to undertake conservative treatment. Claimant's Treating Doctor is recommending physical therapy three times per week for four weeks. Carrier denied the request for physical therapy and the request ultimately was sent to an IRO doctor. The IRO doctor wrote there is no indication for physical therapy at this time because it has been over a year after the original injury, there is no indication why Claimant cannot do home therapy and, since Claimant is a bicycle patrol officer and riding his bike is part of his work duties, medical necessity for physical therapy is not established.

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. The Commissioner of the Division of Workers' compensation is required to adopt treatment guidelines that are evidence-based, scientifically valid, and outcome-focused and designed to reduce excessive or

inappropriate medical care while safeguarding necessary medical care. Texas Labor Code Section 413.011(e). Medical services consistent with the medical policies and fee guidelines adopted by the commissioner are presumed reasonable in accordance with Texas Labor Code Section 413.017(1).

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."

Under the Official Disability Guidelines in reference to physical therapy for the lumbar spine, the following recommendation is made:

ODG Physical Therapy Guidelines

Allow for fading of treatment frequency (from up to 3 or more visits per week to 1 or less), plus active self-directed home PT.

Intervertebral disc disorders without myelopathy (ICD9 722.1; 722.2; 722.5; 722.6; 722.8):

Medical treatment: 10 visits over 8 weeks

Post-injection treatment: 1-2 visits over 1 week

Post-surgical treatment (discectomy/laminectomy): 16 visits over 8 weeks

Post-surgical treatment (arthroplasty): 26 visits over 16 weeks

Post-surgical treatment (fusion, after graft maturity): 34 visits over 16 weeks

The Official Disability Guidelines recognizes the role of physical therapy in the management of back pain and it also describes the transfer of treatment from a passive program to a more active self-directed program. The recommendations in the Official Disability Guidelines for physical therapy of the low back are 10 visits over 8 weeks, allowing for fading of treatment frequency from up to three visits per week to one or less, plus active self-directed home physical therapy.

Claimant has lumbar intervertebral disc disorders. The Official Disability Guidelines allows for ten visits over eight weeks for this diagnosis. Claimant's surgeon is requesting 12 visits over four weeks. Claimant did not provide sufficient evidence or other evidence-based medical literature or other current scientifically based texts and treatment and practice guidelines to support why he needed physical therapy that exceeded the number of visits recommended by the Official Disability Guidelines. Claimant did not meet his burden of proof.

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 (Self-Insured), Employer.
 - C. On _____, Claimant sustained a compensable injury.
 - D. The Independent Review Organization determined Claimant should not have physical therapy for the lumbar spine three times a week for four weeks.
- 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. Physical therapy for the lumbar spine three times a week for four weeks 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 physical therapy for the lumbar spine three times a week for four weeks is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to physical therapy for the lumbar spine three times a week for four weeks for the compensable injury of _____.

ORDER

Carrier is 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 **(EMPLOYER), SELF-INSURED** and the name and address of its registered agent for service of process is

**SA, CITY SECRETARY
(STREET ADDRESS)
CITY, TX (ZIP CODE)**

Signed this 05th day of November, 2009.

KEN WROBEL
Hearing Officer