

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 January 7, 2010 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 18 visits of physical therapy to the left hand for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by TT, ombudsman.
Respondent/Carrier appeared and was represented by SS, attorney.

BACKGROUND INFORMATION

The petitioner/claimant sustained a left hand crush injury on _____. The claimant was diagnosed with traumatic compartment syndrome of the upper extremity and finger fractures, first, second and fifth digits for which he underwent left hand dorsal compartment fasciotomy and hypothenar fasciotomy on 12/14/08. The claimant was approved for 12 post-operative physical therapy sessions. The documentation which was reviewed by the Independent Review Organization (IRO) was not clear on how many sessions the claimant may have attended as a physical therapy discharge note dated 5/19/09 showed that the claimant did not return or contact the physical therapy facility and therefore, did not include a formal evaluation of the claimant upon discharge. The requesting doctor, Dr. C, on behalf of the claimant requested 18 additional physical therapy visits for the left hand. The IRO upheld the denial of this request stating that the evidence provided did not address the claimant's current status, the progress to date, the physician follow-up visits that have occurred and the claimant's compliance.

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 qualified 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, 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."

ODG Physical/Occupational Therapy Guidelines –

Allow for fading of treatment frequency (from up to 3 visits or more per week to 1 or less), plus active self-directed home PT. More visits may be necessary when grip strength is a problem, even if range of motion is improved. Also see other general guidelines that apply to all conditions under Physical Therapy in the ODG Preface.

Fracture of carpal bone (wrist) (ICD9 814):

Medical treatment: 8 visits over 10 weeks

Post-surgical treatment: 16 visits over 10 weeks

Fracture of metacarpal bone (hand) (ICD9 815):

Medical treatment: 9 visits over 3 weeks

Post-surgical treatment: 16 visits over 10 weeks

Fracture of one or more phalanges of hand (fingers) (ICD9 816):

Minor, 8 visits over 5 weeks

Post-surgical treatment: Complicated, 16 visits over 10 weeks

ODG Preface: Physical Therapy Guidelines

There are a number of overall physical therapy philosophies that may not be specifically mentioned within each guideline: (1) As time goes by, one should see an increase in the active regimen of care, a decrease in the passive regimen of care, and a fading of treatment frequency; (2) The exclusive use of "passive care" (e.g., palliative modalities) is not recommended; (3) Home programs should be initiated with the first therapy session and must include ongoing assessments of compliance as well as upgrades to the program; (4) Use of self-directed home therapy will facilitate the fading of treatment frequency, from several visits per week at the initiation of therapy to much less towards the end; (5) Patients should be formally assessed after a "six-visit clinical trial" to see if the patient is moving in a positive direction, no direction, or a negative direction (prior to continuing with the physical therapy); & (6) When treatment duration and/or number of visits exceeds the guideline, **exceptional factors** should be noted. (Emphasis added.)

The claimant testified that he attended all 12 sessions and had to move out of the State of Texas due to his financial situation. The claimant offered medical records from Dr. C into evidence, but the doctor did not testify. A review of the requesting doctor's notes dated 5/21/09 presented in evidence reveals that the claimant had notified his doctor that he needed to move to the State of Oklahoma. Both of Dr. C's notes from the evaluation dates of 5/21/09 and 7/7/09 state that they were having trouble getting the carrier to pay for the 12 physical therapy visits already undertaken and that the claimant's left hand condition, while improved, still had pain with flexion and extension of the fingers along with residual stiffness in the hand. Osteopenia is noted, but Dr. C did not document if and how this effected the claimant's recovery. A functional capacity evaluation (FCE) undertaken on 5/7/09 revealed a significant loss of function of the hand and a severe limitation in grip strength. The claimant's blood pressure was elevated to the point that testing was stopped for the claimant to go home and return to complete this testing. The physical therapist notes that occupational therapy is warranted, but then notes that early intervention would be the best course of action and the claimant's date of injury is now many months ago. It appears that a fading of therapy is recommended and then transitioned to performing an independent exercise program. In fact, Dr. C notes that once he learned that the claimant would be moving out of State and he figured that approval of the additional requested physical therapy would prove to be difficult, he instructed the claimant on an independent exercise program. The claimant testified that he has undertaken his own home exercise/treatment program. Although the ODG provides for 16 physical therapy sessions for complicated finger fracture, Dr. C did not provide testimony or written clinical documentation for exceptional factors that would justify the high number of additional physical therapy visits, why 18 more visits from the 12 already undertaken rather than the recommended 16 would be warranted and how it would improve the claimant's functional ability at this juncture of his injury and recovery. Thus, the clinical information or lack thereof, does not establish the medical necessity, clinical utility and anticipated potential benefits of additional physical therapy.

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).
2. Carrier delivered to Claimant and Provider 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. There was insufficient factual evidence to support the need for physical therapy in excess of the 16 visits recommended for post-surgical physical therapy.
4. 18 visits of physical therapy to the left hand 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 18 visits of physical therapy to the left hand is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to 18 visits of physical therapy to the left hand 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 **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701**

Signed this 12th day of January, 2010.

Virginia Rodríguez-Gómez
Hearing Officer