

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 12, 2010, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to physical therapy three times per week for four weeks for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by AC, ombudsman.
Respondent/Carrier was represented by CA, attorney.

BACKGROUND INFORMATION

The Claimant sustained a compensable right ankle injury on _____ when she slipped and fell. As a result of the compensable injury, on _____, Claimant underwent a Brostrom repair to her right ankle. After the surgery, Claimant underwent four months of physical therapy treatments. Claimant continued to suffer from pain and peroneal spasms to her right ankle and her treating doctor has recommended an additional 12 sessions of physical therapy. The request for additional therapy was denied by the Carrier and referred to an IRO who upheld the Carrier's denial.

The IRO reviewer, a board certified orthopedic surgeon, determined that the Claimant had a successful repair of the loose lateral ankle ligaments and that it is unknown as to the cause of the peroneal spasms. The IRO reviewer concluded that ongoing or continued physical therapy would not be appropriate and that there were no indications as to why the Claimant could not perform a daily home exercise program for her ongoing symptomatology.

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, 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."

The *ODG* recognizes the role of physical therapy in the management of ankle injuries and it also describes the transfer of treatment from a passive program to a more active self-directed program. The *ODG* notes the duration of physical therapy for ankle injury with post surgical treatment as follows:

Recommended. Exercise program goals should include strength, flexibility, endurance, coordination, and education. Patients can be advised to do early passive range-of-motion exercises at home by a physical therapist. See also specific physical therapy modalities by name. (Colorado, 2001) (Aldridge, 2004) This RCT supports early motion (progressing to full weightbearing at 8 weeks from treatment) as an acceptable form of rehabilitation in both surgically and nonsurgically treated patients with Achilles tendon ruptures. (Twaddle, 2007)

ODG Physical Therapy Guidelines –

Allow for fading of treatment frequency (from up to 3 visits per week to 1 or less), plus active self-directed home PT. Also see other general guidelines that apply to all conditions under Physical Therapy in the ODG Preface.

Ankle/foot Sprain (ICD9 845):

Medical treatment: 9 visits over 8 weeks

Post-surgical treatment: 34 visits over 16 weeks

The recommendations in the *ODG* for physical therapy for the ankle following surgery is 34 visits over 16 weeks, which the Claimant has already undergone. The Claimant's treating doctor has recommended additional physical therapy, however, the evidence failed to explain the need for additional therapy exceeding the recommendations in the *ODG*. Based on the evidence presented, the Claimant did not meet her burden to present evidence based medicine evidence contrary to the IRO's determination.

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) and sustained a compensable injury.
 - C. The IRO determined that the requested services were not reasonable and necessary health care services for the compensable injury of _____.
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. The requested physical therapy three times per week for four weeks is not consistent with the recommendations in the *ODG*.
4. Physical therapy three times per 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 Claimant is not entitled physical therapy for three times per week for four weeks for the compensable injury of _____.

DECISION

Claimant is not entitled to physical therapy for three times per week for four weeks 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 **TWIN CITY 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
AUSTIN, TX 78701**

Signed this 13th day of January, 2010.

Teresa G. Hartley
Hearing Officer