MEDICAL CONTESTED CASE HEARING NO. 10110
M6-10-23834-01

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 January 29, 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 trigger point injections, electrical stimulation, massage, and paravertebral injections with 12 visits over the next 3 months for the compensable injury of _____?

PARTIES PRESENT

Petitioner appeared without representation. Claimant appeared and was assisted by NP, ombudsman. Respondent/Carrier appeared and was represented by JF, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury to her neck and right shoulder on _____. She has had a lot of treatment from several physicians, including right shoulder surgery performed on January 18, 2008, but continued to complain of pain. In May 2009 she came under the care of Dr. R.

Dr. R diagnosed Claimant with "complex myofascial pain syndrome" and "early RSD". In 31 sessions from May 2009 through January 2010 he performed two or three cervical facet injections and over 200 "trigger point injections", about half of them into paravertebral muscles and about half into other muscles. Dr. R said he usually injected a mixture of anesthetic and salt water, and sometimes a "micromini" amount of a steroid, but about 10% were dry needle, with nothing injected. Dr. R also treated Claimant with electrical stimulation, by sticking a needle deep into a muscle and hooking the needle up to an "estim machine", and with "spray and stretch", by spraying a muscle with refrigerant followed by stretching.

Dr. R requested approval for trigger point injections, electrical stimulation, massage, and paravertebral injections with 12 visits over the next 3 months. The IRO doctor, a DO board certified anesthesiologist specializing in pain management, upheld the previous adverse determination.

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 provides concerning trigger point injections for a neck/upper back injury:

> Not recommended in the absence of myofascial pain syndrome. See the Pain Chapter for Criteria for the use of Trigger point injections. The effectiveness of trigger point injection is uncertain, in part due to the difficulty of demonstrating advantages of active medication over injection of saline. Needling alone may be responsible for some of the therapeutic response. The only indication with some positive data is myofascial pain; may be appropriate when myofascial trigger points are present on examination. Trigger point injections are not recommended when there are radicular signs, but they may be used for cervicalgia.
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> **Criteria for the use of Trigger point injections:**
> Trigger point injections with a local anesthetic with or without steroid may be recommended for the treatment of chronic low back or neck pain with myofascial pain syndrome when all of the following criteria are met: (1) Documentation of circumscribed trigger points with evidence upon palpation of a twitch response as well as referred pain; (2) Symptoms have persisted for more than three months; (3) Medical management therapies such as ongoing stretching exercises, physical therapy, NSAIDs and muscle relaxants have failed to control pain; (4) Radiculopathy is not present (by exam, imaging, or neuro-testing); (5) Not more than 3-4 injections per session; (6) No repeat injections unless a greater than 50% pain relief with reduced medication use is obtained for six weeks after an injection and there is documented evidence of functional improvement; (7) Frequency should not be at an interval less than two months; (8) Trigger point

injections with any substance (e.g., saline or glucose) other than local anesthetic with or without steroid are not recommended; (9) There should be evidence of continued ongoing conservative treatment including home exercise and stretching. Use as a sole treatment is not recommended; (10) If pain persists after 2 to 3 injections the treatment plan should be reexamined as this may indicate an incorrect diagnosis, a lack of success with this procedure, or a lack of incorporation of other more conservative treatment modalities for myofascial pain. It should be remembered that trigger point injections are considered an adjunct, not a primary treatment.

The ODG provides concerning neuromuscular electrical stimulation (NMES devices):

Not recommended. NMES is used primarily as part of a rehabilitation program following stroke and there is no evidence to support its use in chronic pain. There are no intervention trials suggesting benefit from NMES for chronic pain. (Moore, 1997) (Gaines, 2004) The scientific evidence related to electromyography (EMG)-triggered electrical stimulation therapy continues to evolve, and this therapy appears to be useful in a supervised physical therapy setting to rehabilitate atrophied upper extremity muscles following stroke and as part of a comprehensive PT program. Neuromuscular Electrical Stimulation Devices (NMES), NMES, through multiple channels, attempts to stimulate motor nerves and alternately causes contraction and relaxation of muscles, unlike a TENS device which is intended to alter the perception of pain. NMES devices are used to prevent or retard disuse atrophy, relax muscle spasm, increase blood circulation, maintain or increase range-of-motion, and re-educate muscles. Functional neuromuscular stimulation (also called electrical neuromuscular stimulation and EMG-triggered neuromuscular stimulation) attempts to replace stimuli from destroyed nerve pathways with computer-controlled sequential electrical stimulation of muscles to enable spinal-cord-injured or stroke patients to function independently, or at least maintain healthy muscle tone and strength. Also used to stimulate quadriceps muscles following major knee surgeries to maintain and enhance strength during rehabilitation. (BlueCross BlueShield, 2005) (Aetna, 2005)

The ODG provides concerning massage, manual therapy and manipulation:

Recommended for chronic pain if caused by musculoskeletal conditions, and manipulation is specifically recommended as an option in the Low Back Chapter and the Neck Chapter. (For more information and references, see those chapters.) Manual Therapy is widely used in the treatment of musculoskeletal pain. The intended goal or effect of Manual Medicine is the achievement of positive symptomatic or objective measurable gains in functional improvement that facilitate progression in the patient's therapeutic exercise program and return to productive activities. Manipulation is manual therapy that moves a joint beyond the physiologic range-of-motion but not beyond the anatomic range-of-motion. See also specific body-part chapters below:

Low back: Recommended as an option. *Therapeutic care* – Trial of 6 visits over 2 weeks, with evidence of objective functional improvement, total of up to 18

visits over 6-8 weeks. *Elective/maintenance care* – Not medically necessary. *Recurrences/flare-ups* – Need to re-evaluate treatment success, if RTW achieved then 1-2 visits every 4-6 months.

Neck and upper back: Recommended as an option. See chapter for specific recommendations according to condition.

Head: Recommended for the prophylactic treatment of headaches (not a chronic pain treatment).

Hip: Recommended as an option. See chapter for specific recommendations according to condition.

Elbow: Recommended only on a short-term limited basis. See chapter for specific recommendations according to condition.

Shoulder: Recommended as an option. See chapter for specific recommendations according to condition.

Ankle & Foot: Not recommended.

Carpal tunnel syndrome: Not recommended.

Forearm, Wrist, & Hand: Not recommended.

Knee: Not recommended.

The ODG provides concerning facet joint therapeutic steroid injections:

While not recommended, criteria for use of therapeutic intra-articular and medial branch blocks, if used anyway:

Clinical presentation should be consistent with facet joint pain, signs & symptoms.

1. There should be no evidence of radicular pain, spinal stenosis, or previous fusion.

2. If successful (initial pain relief of 70%, plus pain relief of at least 50% for a duration of at least 6 weeks), the recommendation is to proceed to a medial branch diagnostic block and subsequent neurotomy (if the medial branch block is positive).

3. When performing therapeutic blocks, no more than 2 levels may be blocked at any one time.

4. If prolonged evidence of effectiveness is obtained after at least one therapeutic block, there should be consideration of performing a radiofrequency neurotomy.

5. There should be evidence of a formal plan of rehabilitation in addition to facet joint injection therapy.

6. No more than one therapeutic intra-articular block is recommended.

Dr. R acknowledged Claimant did not meet the ODG criteria for the requested treatment. He said the ODG treatment guidelines were not adequate for a complex case such as Claimant's. He testified at some length about his methods for treating complex myofascial pain, which he said followed the protocols described in Myofascial Pain and Dysfunction, a book written by Dr.

Janet Travell, Dr. David Simons, and Lois Simons PT, with some additions based on The Gunn Approach to the Treatment of Chronic Pain, a book written by Dr. Chan Gunn. Portions of the books were put in evidence. According to Dr. R these methods included "needle diagnosis" and the treatment of trigger points by using a hard needle to "peck, peck, peck" and "slice, slice, slice" to "mince the muscle". Dr. R admitted the views expressed in these books were not generally accepted by the medical community, and he said he did not know of any treatment guidelines that considered the protocols described in the books to be appropriate.

The preponderance of the evidence based medical evidence was 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) 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 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. Trigger point injections, electrical stimulation, massage, and paravertebral injections over the next 3 months 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) Office.

3. The preponderance of the evidence is not contrary to the decision of the IRO that trigger point injections, electrical stimulation, massage, and paravertebral injections over the next 3 months is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to trigger point injections, electrical stimulation, massage, and paravertebral injections over the next 3 months 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 **ACE AMERICAN INSURANCE COMPANY**, and the name and address of its registered agent for service of process is

ROBIN M. MOUNTAIN
225 EAST JOHN CARPENTER FREEWAY, SUITE 1300
IRVING, TEXAS 75062

Signed this 29th day of January, 2010.

Thomas Hight
Hearing Officer