

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.

ISSUE

A contested case hearing was held on October 15, 2009 but Claimant was not present. Claimant responded to a 10 day letter and for good cause the MCCH was held on January 11, 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 a second lumbar facet block at L4-L5 for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was assisted by LD, ombudsman. Respondent/Carrier appeared and was represented by DG, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on _____ when she slipped and fell down stairs. She injured her lumbar spine, right elbow, and right knee. On June 8, 2009 Dr. B diagnosed Claimant with facet syndrome of the lumbar spine. For the low back pain Claimant received conservative treatment in the form of physical therapy and medications. She underwent a bilateral facet injection at L4-L5 on February 24, 2009. Dr. B recommended a second diagnostic bilateral lumbar facet block at L4-L5 that was denied. The reconsideration for services was also denied by the Carrier and then referred to an IRO who determined that the recommended treatment was not medically necessary.

The IRO reviewer, a licensed pain management physician, specializing in anesthesiology, upheld the previous adverse determination noting that the request for L4-L5 block does not meet Official Disability Guidelines (ODG) guidelines. The IRO reviewer specifically stated that the provider reported 65% pain relief from the first injection which is below the 70% threshold required for a second block.

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."

Pursuant to the ODG, the criteria for facet joint diagnostic blocks (injections) are as follows:

“Criteria for the use of diagnostic blocks for facet “mediated” pain:

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

1. One set of diagnostic medial branch blocks is required with a response of $\geq 70\%$. The pain response should be approximately 2 hours for Lidocaine.
2. Limited to patients with low-back pain that is non-radicular and at no more than two levels bilaterally.
3. There is documentation of failure of conservative treatment (including home exercise, PT and NSAIDs) prior to the procedure for at least 4-6 weeks.
4. No more than 2 facet joint levels are injected in one session (see above for medial branch block levels).
5. Recommended volume of no more than 0.5 cc of injectate is given to each joint.
6. No pain medication from home should be taken for at least 4 hours prior to the diagnostic block and for 4 to 6 hours afterward.
7. Opioids should not be given as a “sedative” during the procedure.
8. The use of IV sedation (including other agents such as midazolam) may be grounds to negate the results of a diagnostic block, and should only be given in cases of extreme anxiety.
9. The patient should document pain relief with an instrument such as a VAS scale, emphasizing the importance of recording the maximum pain relief and maximum duration of pain. The patient should also keep medication use and activity logs to support subjective reports of better pain control.
10. Diagnostic facet blocks should not be performed in patients in whom a surgical procedure is anticipated. (Resnick, 2005)
11. Diagnostic facet blocks should not be performed in patients who have had a previous fusion procedure at the planned injection level.”

Facet joint injections, multiple series, are referred to in the ODG as follows:

“Therapeutic injections: With respect to facet joint intra-articular therapeutic injections, no more than one therapeutic intra-articular block is suggested. If successful (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). See Facet joint intra-articular injections (therapeutic blocks). There is no peer-reviewed literature to support a “series” of therapeutic fact blocks.”

Petitioner, Dr. B, testified that Claimant has failed conservative treatment and because the first injection produced significant initial relief another injection is medically necessary to treat Claimant's injury. In evidence was a June 8, 2009 medical report from Dr. B in which the Claimant stated that the facet injection helped approximately 65% for a 4-week period and then started to wear off. No pain diary was in evidence to show whether the initial pain relief was over 70% or whether the threshold of 50% pain relief for at least six weeks was met. Also Dr. B testified that Claimant was a surgical candidate, which is a criterion for not performing the block per the ODG. Petitioner failed to present an evidence-based medical opinion from a competent source to overcome the IRO's decision regarding the requested procedure of a second lumbar facet block at L4-L5. Therefore, Petitioner has not met his burden of proof to show that the preponderance of evidence based medicine was 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) 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 injury to her lumbar spine on _____.
 - D. The Independent Review Organization determined that Claimant is not entitled to a second lumbar facet block at L4-L5.
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. Medical records fail to document the required pain relief response from the first lumbar facet block at L4-L5 as recommended in the ODG in order to proceed with another one.

4. The requested second lumbar facet block at L4-L5 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 a second lumbar facet block at L4-L5 is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to a second lumbar facet block at L4-L5 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 **SENTRY INSURANCE A MUTUAL COMPANY** and the name and address of its registered agent for service of process is:

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201**

Signed this 14th day of January, 2010.

Judy L. Ney
Hearing Officer