

**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 19, 2009, to decide the following disputed issues:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to a cervical epidural steroid injection for the compensable injury of \_\_\_\_\_?
2. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to physical therapy x12 visits, 3 visits per week for 4 weeks, cervical spine to include 97110, 97012 and 97014 for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was represented by SB, attorney. Respondent/Carrier appeared and was represented by RJ.

**BACKGROUND INFORMATION**

Claimant's doctor has recommended a cervical epidural steroid injection (ESI) and physical therapy for his cervical injury. The IRO for the cervical ESI request was a M.D. who is a board certified orthopedic surgeon. The IRO doctor upheld Carrier's denial based upon the Official Disability Guidelines, which state there must be confirmed radiculopathy for the use of an ESI. The IRO doctor noted in this situation there is no documentation of confirmed cervical radiculopathy and the request did not meet the Official Disability Guidelines. The IRO doctor for the physical therapy of the cervical spine was also a M.D., who is a board certified orthopedic surgeon. The IRO doctor upheld Carrier's denial based upon the Official Disability Guidelines, noting Claimant already has had 14-18 sessions of physical therapy and any further requests would exceed the guidelines. Without Claimant's doctor justifying the need for additional physical therapy, the IRO doctor found medical necessity did not exist for the requested treatment.

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 a cervical epidural steroid injection, the following recommendation is made:

**Criteria for the use of Epidural steroid injections, therapeutic:**

*Note: The purpose of ESI is to reduce pain and inflammation, thereby facilitating progress in more active treatment programs, and avoiding surgery, but this treatment alone offers no significant long-term functional benefit.*

- (1) Radiculopathy must be documented by physical examination and corroborated by imaging studies and/or electrodiagnostic testing.
- (2) Initially unresponsive to conservative treatment (exercises, physical methods, NSAIDs and muscle relaxants).
- (3) Injections should be performed using fluoroscopy (live x-ray) for guidance
- (4) If used for diagnostic purposes, a maximum of two injections should be performed. A second block is not recommended if there is inadequate response to the first block. Diagnostic blocks should be at an interval of at least one to two weeks between injections.
- (5) No more than two nerve root levels should be injected using transforaminal blocks.
- (6) No more than one interlaminar level should be injected at one session.
- (7) In the therapeutic phase, repeat blocks should only be offered if there is at least 50% pain relief for six to eight weeks, with a general recommendation of no more than 4 blocks per region per year.
- (8) Repeat injections should be based on continued objective documented pain and function response.
- (9) Current research does not support a "series-of-three" injections in either the diagnostic or therapeutic phase. We recommend no more than 2 ESI injections.

(10) It is currently not recommended to perform epidural blocks on the same day of treatment as facet blocks or stellate ganglion blocks or sympathetic blocks or trigger point injections as this may lead to improper diagnosis or unnecessary treatment.

(11) Cervical and lumbar epidural steroid injection should not be performed on the same day.

**Criteria for the use of Epidural steroid injections, diagnostic:**

To determine the level of radicular pain, in cases where diagnostic imaging is ambiguous, including the examples below:

(1) To help to evaluate a pain generator when physical signs and symptoms differ from that found on imaging studies;

(2) To help to determine pain generators when there is evidence of multi-level nerve root compression;

(3) To help to determine pain generators when clinical findings are suggestive of radiculopathy (e.g. dermatomal distribution) but imaging studies are inconclusive;

(4) To help to identify the origin of pain in patients who have had previous spinal surgery.

As for the cervical ESI, the recommendations in the Official Disability Guidelines require radiculopathy must be documented by physical examination and corroborated by imaging studies and/or electrodiagnostic testing. The Claimant's medical records fail to show Claimant has documented radiculopathy and therefore the request exceeds the recommendations in the Official Disability Guidelines. Based on the evidence presented, Claimant did not meet his burden to present evidence based medicine evidence contrary to the IRO's determination.

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

**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, including assessment after a "six-visit clinical trial".

**Cervicalgia (neck pain); Cervical spondylosis (ICD9 723.1; 721.0):**

9 visits over 8 weeks

**Sprains and strains of neck (ICD9 847.0):**

10 visits over 8 weeks

**Displacement of cervical intervertebral disc (ICD9 722.0):**

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 (fusion, after graft maturity): 24 visits over 16 weeks

**Degeneration of cervical intervertebral disc (ICD9 722.4):**

10-12 visits over 8 weeks

See 722.0 for post-surgical visits

**Brachia neuritis or radiculitis NOS (ICD9 723.4):**

12 visits over 10 weeks

See 722.0 for post-surgical visits

**Post Laminectomy Syndrome (ICD9 722.8):**

10 visits over 6 weeks

**Fracture of vertebral column without spinal cord injury (ICD9 805):**

Medical treatment: 8 visits over 10 weeks

Post-surgical treatment: 34 visits over 16 weeks

**Fracture of vertebral column with spinal cord injury (ICD9 806):**

Medical treatment: 8 visits over 10 weeks

Post-surgical treatment: 48 visits over 18 weeks

**Work conditioning** (See also Procedure Summary entry):

10 visits over 8 weeks

As for physical therapy of the cervical spine, the recommendations in the Official Disability Guidelines for physical therapy for the cervical spine range from 8-12 visits over 8-10 weeks for injuries that did not require surgery, which Claimant has not undergone. The Claimant's doctor has recommended additional physical therapy, however, the evidence failed to explain the need for additional therapy exceeding the recommendations in the Official Disability Guidelines. Based on the evidence presented, Claimant did not meet his 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).
  - C. On \_\_\_\_\_, Claimant sustained a compensable injury.
  - D. The Independent Review Organization determined Claimant should not have a cervical epidural steroid injection (ESI).
  - E. The Independent Review Organization determined Claimant should not have physical therapy x12 visits, 3 visits per week for 4 weeks, cervical spine to include 97110, 97012 and 97014.
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. A cervical epidural steroid injection is not health care reasonably required for the compensable injury of \_\_\_\_\_.
4. Physical therapy x12 visits, 3 visits per week for 4 weeks, cervical spine to include 97110, 97012 and 97014 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 cervical epidural steroid injection is not health care reasonably required for the compensable injury of \_\_\_\_\_.
4. The preponderance of the evidence is not contrary to the decision of the IRO that physical therapy x12 visits, 3 visits per week for 4 weeks, cervical spine to include 97110, 97012 and 97014 is not health care reasonably required for the compensable injury of \_\_\_\_\_.

## DECISION

Claimant is not entitled to a cervical epidural steroid injection for the compensable injury of \_\_\_\_\_.

Claimant is not entitled to physical therapy x12 visits, 3 visits per week for 4 weeks, cervical spine to include 97110, 97012 and 97014 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 **LM INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
701 BRAZOS STREET, SUITE 1050  
AUSTIN, TX 78701-3232.**

Signed this 27th day of January, 2010.

KEN WROBEL  
Hearing Officer