

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 February 2, 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 an office visit with a pain management doctor for the compensable injury of _____

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by PB, ombudsman.
Respondent/Carrier appeared and was represented by JG, attorney.

BACKGROUND INFORMATION

Claimant, a housekeeper, sustained a left wrist injury while getting up from a kneeling position after cleaning a bathtub on _____. Claimant has received extensive treatment for her injury including, three surgeries, occupational therapy, a nerve block, a spinal cord stimulator trial, and medication. Claimant also tried a multidisciplinary pain clinic for two weeks. Claimant has been diagnosed with chronic left hand pain and reactive depression per her treating doctor, Dr. N. Dr. N is recommending that the claimant see a pain management doctor for help with alleviating the hand pain and controlling the depression. The doctor's request was denied twice by the carrier's utilization review agents (URA) and their denial was upheld by the Independent Review Organization (IRO). The IRO concluded that the requested office visit does not meet the Official Disability Guidelines (ODG) because "the medical records indicate a preponderance of subjective complaints with no clear objective signs of a complex regional pain syndrome and essentially no improvement with all previous types of care, including pain management."

DISCUSSION

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. A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division is 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. (Division Rule 133.308 (t).)

With regard to office visits (chronic pain), the ODG provides as follows:

Recommended as determined to be medically necessary. Evaluation and management (E&M) outpatient visits to the offices of medical doctor(s) play a critical role in the proper diagnosis and return to function of an injured worker, and they should be encouraged. The need for a clinical office visit with a health care provider is individualized based upon a review of the patient concerns, signs and symptoms, clinical stability, and reasonable physician judgment. The determination is also based on what medications the patient is taking, since some medicines such as opiates, or medicines such as certain antibiotics, require close monitoring. As patient conditions are extremely varied, a set number of office visits per condition cannot be reasonably established. The determination of necessity for an office visit requires individualized case review and assessment, being ever mindful that the best patient outcomes are achieved with eventual patient independence from the health care system through self care as soon as clinically feasible. The ODG Codes for Automated Approval (CAA), designed to automate claims management decision-making, indicates the number of E&M office visits (codes 99201-99285) reflecting the typical number of E&M encounters for a diagnosis, but this is not intended to limit or cap the number of E&M encounters that are medically necessary for a particular patient. Office visits that exceed the number of office visits listed in the CAA may serve as a “flag” to payors for possible evaluation, however, payors should not automatically deny payment for these if preauthorization has not been obtained. *Note:* The high quality medical studies required for treatment guidelines such as ODG provides guidance about specific treatments and diagnostic procedures, but not about the recommended number of E&M office visits. Studies have and are being conducted as to the value of “virtual visits” compared with inpatient visits, however the value of patient/doctor interventions has not been questioned. (Dixon, 2008) (Wallace, 2004) Further, ODG does provide guidance for therapeutic office visits not included among the E&M codes, for example Chiropractic manipulation and Physical/Occupational therapy.

To try to meet her burden of proof, Claimant presented her testimony, a medical narrative from Dr. N, and all of her medical records. Claimant testified that her pain is worse after having three surgeries, but she continues to try to work despite the pain. Claimant testified that she wants to see a pain management specialist to find out if there are any other options to help her with her pain. She stated that all of her prescription medications are being denied and she is currently taking over the counter medication to alleviate some of her pain complaints.

In a narrative report dated January 18, 2010, Dr. N acknowledges that the Claimant has not had any significant improvement with prior treatments, but he feels there has been some marginal level of pain control. Dr. N states that although the Claimant did not get better with the ODG treatment scheme, he believes her condition is not that simple and the ODG is a guideline at best. Dr. N indicated in his report that he was not aware of any evidence based medicine studies that correlate to the Claimant's case that can be used to deny or justify treatment. Dr. N did not provide scientific and medical evidence formulated from credible sources to support the necessity of the requested office visit. The claimant failed to show by a preponderance of evidence based medicine that the requested office visit is healthcare reasonably required for the compensable injury.

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 _____2006, Claimant was the employee of (Employer).
 - C. Claimant sustained a compensable injury on _____.
 - D. The IRO determined that the Claimant is not entitled to an office visit with a pain management doctor 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. An office visit with a pain management doctor 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 an office visit with a pain management doctor is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to an office visit with a pain management doctor 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 SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TX 78701-3218**

Signed this 11th day of February, 2010.

Jacquelyn Coleman
Hearing Officer