

**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 19, 2010 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is entitled to a nurse practitioner or aide for therapy twice daily in home for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Petitioner/Carrier appeared and was represented by CL, attorney. Respondent Dr. F did not appear. Claimant appeared and was represented by LC, attorney.

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury on \_\_\_\_\_ in the form of a fracture/dislocation of the left shoulder with brachial plexopathy. This occasioned reverse shoulder arthroplasty surgery performed on April 22, 2009 by Dr. K and extensive postoperative therapy. Dr. K requested approval for a nurse practitioner or aide for physical therapy twice daily in home. The IRO doctor, an MD board certified in orthopedic surgery, overturned the denial of the requested health care.

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 home health services:

Recommended only for otherwise recommended medical treatment for patients who are homebound, on a part-time or "intermittent" basis. Medical treatment does not include homemaker services like shopping, cleaning, and laundry, and personal care given by home health aides like bathing, dressing, and using the bathroom when this is the only care needed. (CMS, 2004)

The ODG provides the following guidelines concerning physical therapy for the shoulder:

**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.

**Rotator cuff syndrome/Impingement syndrome (ICD9 726.1; 726.12):**

Medical treatment: 10 visits over 8 weeks

Post-injection treatment: 1-2 visits over 1 week

Post-surgical treatment, arthroscopic: 24 visits over 14 weeks

Post-surgical treatment, open: 30 visits over 18 weeks

**Complete rupture of rotator cuff (ICD9 727.61; 727.6)**

Post-surgical treatment: 40 visits over 16 weeks

**Adhesive capsulitis (IC9 726.0):**

Medical treatment: 16 visits over 8 weeks

Post-surgical treatment: 24 visits over 14 weeks

**Dislocation of shoulder (ICD9 831):**

Medical treatment: 12 visits over 12 weeks

Post-surgical treatment (Bankart): 24 visits over 14 weeks

**Acromioclavicular joint dislocation (ICD9 831.04):**

AC separation, type III+: 8 visits over 8 weeks

**Sprained shoulder; rotator cuff (ICD9 840; 840.4):**

Medical treatment: 10 visits over 8 weeks

Post-surgical treatment (RC repair/acromioplasty): 24 visits over 14 weeks

**Arthritis (Osteoarthritis; Rheumatoid arthritis; Arthropathy, unspecified) (ICD9 714.0; 715; 715.9; 716.9)**

Medical treatment: 9 visits over 8 weeks

Post-injection treatment: 1-2 visits over 1 week

Post-surgical treatment, arthroplasty, shoulder: 24 visits over 10 weeks

**Brachial plexus lesions (Thoracic outlet syndrome) (ICD9 353.0):**

Medical treatment: 14 visits over 6 weeks  
Post-surgical treatment: 20 visits over 10 weeks

**Fracture of clavicle** (ICD9 810):  
8 visits over 10 weeks

**Fracture of humerus** (ICD9 812):  
Medical treatment: 18 visits over 12 weeks  
Post-surgical treatment: 24 visits over 14 weeks

**Work conditioning** (See also Procedure Summary entry):  
10 visits over 8 weeks

The ODG recommends home health services only for otherwise recommended medical treatment for patients who are "homebound". The reviewing physicians denied the requested treatment because they determined Claimant is not homebound. This conclusion was supported by the evidence at the hearing. Claimant has little use of his left arm and cannot drive, however he goes outside his home to his office (he is a lawyer) and works five days per week and goes to physical therapy outside his home two days per week. Also, the ODG physical therapy guidelines have no provision for therapy that is not limited in frequency and duration. The requested treatment cannot be reconciled with the ODG criteria, and the IRO doctor made no attempt to do so. There was no showing of other evidence based medicine to support the IRO decision.

The preponderance of the evidence based medical evidence is contrary to the decision of the IRO.

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 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. A nurse practitioner or aide for therapy twice daily in home 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 contrary to the decision of the IRO that a nurse practitioner or aide for therapy twice daily in home is health care reasonably required for the compensable injury of \_\_\_\_\_.

## DECISION

Claimant is not entitled to a nurse practitioner or aide for therapy twice daily in home for the compensable injury of \_\_\_\_\_.

## ORDER

Carrier is/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 **THE TRAVELERS INDEMNITY COMPANY OF CONNECTICUT**, and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
D/B/A CSC - LAWYERS INCORPORATING SERVICE COMPANY  
701 BRAZOS STREET, SUITE 1050  
AUSTIN, TEXAS 78701**

Signed this 19th day of February, 2010.

Thomas Hight  
Hearing Officer