

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 16, 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 left shoulder arthroscopy and manipulation under anesthesia for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by MV, ombudsman.
Respondent/Carrier was represented by RJ, attorney.

BACKGROUND INFORMATION

The Claimant sustained a compensable left shoulder injury on _____ when he fell from a step ladder. In July of 2008, Claimant underwent surgery to his left shoulder. Subsequently, Claimant underwent physical therapy and work hardening. In October of 2008, medical records noted that Claimant was developing adhesive capsulitis of the left shoulder. Claimant's treating physician has requested that Claimant undergo surgery to correct the "frozen shoulder."

The IRO reviewer, a board certified orthopedic surgeon, determined that Claimant's range of motion to the left shoulder was inconsistent and not supportive of an adhesive capsulitis diagnosis.

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* recognizes the role of manipulation under anesthesia (MUA) as an option for adhesive capsulitis. The *ODG* notes the use of MUA for "frozen shoulder" as follows:

Under study as an option in adhesive capsulitis. In cases that are refractory to conservative therapy lasting at least 3-6 months where range-of-motion remains significantly restricted (abduction less than 90°), manipulation under anesthesia may be considered. There is some support for manipulation under anesthesia in adhesive capsulitis, based on consistent positive results from multiple studies, although these studies are not high quality. (Colorado, 1998) (Kivimaki, 2001) (Hamdan, 2003) Manipulation under anesthesia (MUA) for frozen shoulder may be an effective way of shortening the course of this apparently self-limiting disease and should be considered when conservative treatment has failed. MUA may be recommended as an option in primary frozen shoulder to restore early range of movement and to improve early function in this often protracted and frustrating condition. (Andersen, 1998) (Dodenhoff, 2000) (Cohen, 2000) (Othman, 2002) (Castellarin, 2004) Even though manipulation under anesthesia is effective in terms of joint mobilization, the method can cause iatrogenic intraarticular damage. (Loew, 2005) When performed by chiropractors, manipulation under anesthesia may not be allowed under a state's Medical Practice Act, since the regulations typically do not authorize a chiropractor to administer anesthesia and prohibit the use of any drug or medicine in the practice of chiropractic. (Sams, 2005) This case series concluded that MUA combined with early physical therapy alleviates pain and facilitates recovery of function in patients with frozen shoulder syndrome. (Ng, 2009) This study concluded that manipulation under anesthesia is a very simple and noninvasive procedure for shortening the course of frozen shoulder, an apparently self-limiting disease, and can improve shoulder function and symptoms within a short period of time, but there was less improvement in post-surgery frozen shoulders. (Wang, 2007) See also the Low Back Chapter, where MUA is not recommended in the absence of vertebral fracture or dislocation.

The IRO reviewer noted that under the *ODG* support for MUA is met with an established diagnosis of adhesive capsulitis. He noted that the diagnosis of adhesive capsulitis typically includes markedly reduced abduction as the primary indication for a potential MUA. The

reviewer noted that the Claimant's "range of motion had been inconsistent, medical records were lacking consistent mechanical abnormalities on examination, and lacking documented pathological imaging studies" to support the need for MUA and arthroscopic surgery to the left shoulder. It should be noted that the diagnosis of "adhesive capsulitis" was given just three months after the July 2008 surgery and Claimant was still undergoing conservative treatment. On September 10, 2008, the medical records noted that Claimant was still undergoing physical medicine rehabilitation and that he had attended 12 sessions of physical therapy. The medical report noted that the Claimant's pain had decreased significantly, but that he was still unable to raise his arm away from his body. The physical examination noted that "the left shoulder presents with passive assistive forward flexion of 130 degrees; active flexion of 40 degrees. The patient can hold the left arm above shoulder level." There was no mention that Claimant's abduction was markedly reduced. Similarly, the November 20, 2008 medical report noted that Claimant's range of motion was increasing. The medical records failed to establish that Claimant's abduction to his left shoulder was markedly reduced as required by the *ODG*. The evidence, presented by the Claimant and his treating physician, failed to establish that the Claimant has complied with the *ODG* and established a definitive diagnosis of adhesive capsulitis. Claimant has failed to establish justification under the *ODG* for MUA to the left shoulder.

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), and sustained a compensable injury.
 - C. The IRO determined that the requested services were not reasonable and necessary health care services 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. The *ODG* requires a clear diagnosis of adhesive capsulitis to justify the medical procedure of left shoulder arthroscopy and manipulation under anesthesia.
4. Claimant failed to establish that he has markedly reduced abduction to his left shoulder.
5. The left shoulder arthroscopy and manipulation under anesthesia 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 left shoulder arthroscopy and manipulation under anesthesia is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to left shoulder arthroscopy and manipulation under anesthesia 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 **NEW HAMPSHIRE INSURANCE COMPANY** 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 78701-3232**

Signed this 18th day of February, 2010.

Teresa G. Hartley
Hearing Officer