

MEDICAL CONTESTED CASE HEARING NO. 10150
M6-10-24760-01

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 March 23, 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 physical therapy three times per week for four weeks for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by RR, ombudsman.
Respondent/Carrier was represented by BJ, attorney.

BACKGROUND INFORMATION

On _____, Claimant injured his right knee when he slipped and fell. As a result of the compensable injury, Claimant underwent a chondroplasty and arthroscopic lateral release to his right knee. After the surgery, Claimant underwent physical therapy and had a total of 12 physical therapy sessions. Claimant testified that he continues to experience pain and has trouble bending and straightening out his right knee. Claimant's treating physician, along with the designated doctor, have recommended an additional 12 sessions of physical therapy. The request for additional therapy was denied by the Carrier and referred to an IRO who upheld the Carrier's denial.

The IRO reviewer, a board certified orthopedic surgeon, concluded that ongoing or continued physical therapy would not be appropriate and that there were no indications as to why the Claimant could not perform a daily home exercise program for his ongoing symptomatology.

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 physical therapy in the management of knee injuries and it also describes the transfer of treatment from a passive program to a more active self-directed program. The *ODG* notes the duration of physical therapy for a knee injury with post surgical treatment as follows:

ODG Physical Medicine 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*.

Dislocation of knee; Tear of medial/lateral cartilage/meniscus of knee; Dislocation of patella (ICD9 836; 836.0; 836.1; 836.2; 836.3; 836.5):

Medical treatment: 9 visits over 8 weeks

Post-surgical (Meniscectomy): 12 visits over 12 weeks

The recommendations in the *ODG* for physical therapy for the knee following surgery to the lateral meniscus is 12 visits over 12 weeks, which the Claimant has already undergone. The Claimant's treating doctor has recommended additional physical therapy, however, the evidence failed to explain the need for additional therapy exceeding the recommendations in the *ODG*. Claimant failed to provide evidence based medicine contrary to the decision of the IRO. Based on the evidence presented, the 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) 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. Claimant failed to present evidence based medicine contrary to the IRO decision.
4. Physical therapy three times per week for four weeks 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 Claimant is not entitled physical therapy for three times per week for four weeks for the compensable injury of _____.

DECISION

Claimant is not entitled to physical therapy for three times per week for four weeks 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**RON WRIGHT
6210 EAST HIGHWAY 290
AUSTIN, TX 78723**

Signed this 24th day of March, 2010.

Teresa G. Hartley
Hearing Officer