

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 15, 2010 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that Claimant is not entitled to right T2-T3 sympathetic radiofrequency thermocoagulation for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by YG, ombudsman.
Respondent/Carrier was represented by BP, attorney.

BACKGROUND INFORMATION

Dr. S diagnosed Claimant with reflex sympathetic dystrophy, also known as complex regional pain syndrome, in both an upper and lower limb. He treated the disease with a sympathetic nerve block. When Claimant's pain returned, he requested radiofrequency thermocoagulation of the nerves on the right at T2-T3.

The IRO reviewer, a doctor of osteopathy who is a board certified anesthesiologist, denied the request. The reviewer, relying on the Official Disability Guidelines (ODG), noted that the ODG does not recommend the practice of sympathectomy which is cited under complex regional pain syndrome.

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 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 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."

The ODG provides the following for complex regional pain syndrome, sympathectomy:

Not recommended. The practice of surgical and chemical sympathectomy is based on poor quality evidence, uncontrolled studies and personal experience. Furthermore, complications of the procedure may be significant, in terms of both worsening the pain or producing a new pain syndrome; and abnormal forms of sweating (compensatory hyperhidrosis and pathological gustatory sweating). Therefore, more clinical trials of sympathectomy are required to establish the overall effectiveness and potential risks of this procedure. (Furlan, 2000) (Mailis-Cochrane, 2003) Sympathectomy is destruction of part of the sympathetic nervous system, and it is not generally accepted or widely used. Long-term success with this pain relief treatment is poor. Indications: Single extremity CRPS-I or SMP; distal pain only (should not be done if the proximal extremity is involved). Local anesthetic Stellate Ganglion Block or Lumbar Sympathetic Block consistently gives 90 to 100 percent relief each time a technically good block is performed (with measured rise in temperature). The procedure may be considered for individuals who have limited duration of relief from blocks. Permanent neurological complications are common. (State, 2002)

Dr. S wrote that the requested procedure's effectiveness would be seen after it was performed. He described the procedure as a non surgical method that is performed with needles and fluoroscopes. Included with his letter were summaries of several articles on sympathetic pain, on complex regional pain syndrome, and on radiofrequency ablation. In addition, he included a curriculum vitae on Dr. D and an article that Dr. D helped to write on treatment of complex regional syndrome with a block and fusion.

Claimant's evidence did not show that the IRO was incorrect in citing that the ODG does not recommend the requested procedure. In addition Claimant did not show with evidence based medical evidence that the requested procedure is clinically appropriate and considered effective nor that it is a reasonable and necessary health care service for Claimant's 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 _____, Claimant was the employee of (Employer), sustained a compensable injury.
 - C. The IRO determined the requested service was not a reasonable and necessary health care service for the compensable injury of _____.
 - D. The diagnosis of reflex sympathetic dystrophy and complex regional pain syndrome can be used interchangeably.
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 right T2-T3 sympathetic radiofrequency thermocoagulation 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 right T2-T3 sympathetic radiofrequency thermocoagulation is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to right T2-T3 sympathetic radiofrequency thermocoagulation 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 **AMERICAN PROTECTION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS SUITE 1050
AUSTIN, TEXAS 78701**

Signed this 6th day of April, 2010.

CAROLYN F. MOORE
Hearing Officer