

**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 April 12, 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 12 sessions of physical therapy for treatment of the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by SS, ombudsman.  
Respondent/Carrier was represented by WS, attorney.

**BACKGROUND INFORMATION**

The Claimant sustained a compensable cervical and lumbar spine injury on \_\_\_\_\_. Claimant has undergone several ESI's and cervical spine surgery. The Claimant testified that she has not had any physical or aquatic therapy for the past two years, including post-ESI therapy, but she has undergone 12-14 sessions of physical therapy approximately four times since her \_\_\_\_\_ injury. Claimant's treating doctor has recommended 12 additional sessions of physical therapy following her most recent ESI which was performed on January 11, 2010. The request for additional therapy was denied by the Carrier and referred to an IRO who upheld the Carrier's denial.

The IRO reviewer, board certified in physical medicine and rehabilitation and pain management, determined that the ODG (Official Disability Guidelines) recommends physical therapy after epidural injections but only "to emphasize the home exercise program, and this requirement would generally be included in the currently suggested maximum visits for the underlying condition, or at least not require more than 2 additional visits to reinforce the home exercise program." The IRO reviewer went on the state that there was no justification provided in the records as to why an additional 12 sessions of therapy are required in this case after the injection. The IRO reviewer concluded that the request exceeds the number of recommended sessions as specified in the ODG physical therapy guidelines and is not medically necessary.

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."

### **ODG Post-Epidural Steroid Injections:**

ESI's may be helpful with radicular symptoms not responsive to 2 to 6 weeks of conservative therapy. (Kinkade, 2007) Epidural steroid injections are an option for short-term pain relief of persistent radiculopathy, although not for nonspecific low back pain or spinal stenosis. (Chou, 2008) As noted above, injections are recommended if they can facilitate a return to functionality (via activity & exercise). If post-injection physical therapy visits are required for instruction in these active self-performed exercise programs, these visits should be included within the overall recommendations under Physical therapy, or at least not require more than 2 additional visits to reinforce the home exercise program. 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.

The ODG recognizes the role of post-ESI physical therapy and recommends only an additional two sessions to reinforce the home exercise program. Claimant's treating doctor, Dr. F, D.C., opined that the Claimant attempted a home exercise program for her condition which was not helping and that due to her muscle weakness, she requires one-on-one training in order to ensure proper technique. Dr. F noted that the Claimant has exacerbations of her spine conditions which are not addressed in the ODG. Dr. F concluded that the new disc injury would require 24 sessions of physical therapy, therefore, the requested 12 sessions is far decreased than the indications by the best use of the ODG. Dr. F also noted that the Claimant has not had any post-ESI therapy and the injections would be beneficial for her healing process. The Claimant's treating doctor recommended the additional physical therapy, however, the request did not include a plan for self-directed home therapy and the medical records in evidence indicate that

prior physical therapy did not improve the Claimant's condition but worsened her pain. The Claimant testified that she needs the supervised therapy to improve her muscle tone; however, she failed to offer evidence based medical evidence to establish that the requested treatment exceeding ODG recommendations is healthcare reasonably required for the compensable injury. Based on the evidence presented, the Claimant did not meet her 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 (Self-Insured) when she sustained a compensable injury.
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 requested 12 additional physical therapy sessions is not consistent with the recommendations in the ODG.
4. Twelve additional sessions of physical therapy are 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 12 sessions physical therapy is not health care reasonably required for the compensable injury of \_\_\_\_\_.

### **DECISION**

Claimant is not entitled to 12 sessions of physical therapy 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 **(SELF-INSURED)** and the name and address of its registered agent for service of process is:

**GBH, JR.**  
**(STREET ADDRESS)**  
**(CITY), TX (ZIP CODE)**

Signed this 12<sup>th</sup> day of April, 2010.

Carol A. Fougerat  
Hearing Officer