

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 21, 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 (three times a week for four weeks) of physical therapy for treatment of the compensable injury of _____?

PARTIES PRESENT

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

BACKGROUND INFORMATION

The Claimant sustained a compensable cervical, thoracic and lumbar spine injury on _____. Claimant underwent extensive physical therapy after the injury which improved her condition. The Claimant has continued to receive treatment sporadically since the 1998 injury and she also sustained a new injury in 2003. On October 21, 2009, Claimant was examined by Dr. C, her current treating doctor, who diagnosed cervicalgia, lower back pain syndrome and a thoracic sprain. Dr. C has recommended an additional 12 sessions of physical therapy. The request for physical 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, determined that the ODG (Official Disability Guidelines) recommend physical therapy for acute care, but this injury is over ten years old. The IRO reviewer noted that the medical records indicate that the Claimant, who is 73 years old, was neurologically intact with symmetrical reflexes, strength and sensation of the bilateral upper extremities. The diagnostic studies reported degenerative changes at C3-C4, C4-C5 and C5-C6 with osteophytes formation and disc height narrowing with degenerative scoliosis at L5-S1 and degenerative disc disease. The IRO reviewer determined that these conditions are pre-existing and have absolutely no relationship to the acute work injury. The IRO reviewer concluded that there were no indications for further physical therapy for the work related injury.

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 Physical Therapy Guidelines:

Allow for fading of treatment frequency (from up to 3 or more 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, including assessment after a "six-visit clinical trial".

Lumbar sprains and strains (ICD9 847.2):

10 visits over 8 weeks

Sprains and strains of unspecified parts of back (ICD9 847):

10 visits over 5 weeks

Sprains and strains of sacroiliac region (ICD9 846):

Medical treatment: 10 visits over 8 weeks

Lumbago; Backache, unspecified (ICD9 724.2; 724.5):

9 visits over 8 weeks

Cervicalgia (neck pain); Cervical spondylosis (ICD9 723.1; 721.0):

9 visits over 8 weeks

Sprains and strains of neck (ICD9 847.0):

10 visits over 8 weeks

The ODG recognizes the role of physical therapy in the management of cervical and lumbar pain and it also describes the transfer of treatment from a passive program to a more active self-directed program. The Claimant sustained sprain/strain injuries to her cervical, thoracic and lumbar spine on _____ and she participated in extensive physical therapy after the

1998 injury. In October 2009, the Claimant's treating doctor recommended additional physical therapy. The IRO reviewer and two URA doctors have opined that the additional physical therapy is not reasonable and necessary for the treatment of the _____ injury. The Claimant offered no medical opinion contrary to the IRO's determination. Although the Claimant testified that she would like to have some physical therapy to improve her strength in her neck and back, she failed to offer evidence based medical evidence to establish that the requested treatment which exceeds the 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 the (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 sessions of physical therapy is not consistent with the recommendations in the ODG.
4. Twelve sessions of physical therapy 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 12 sessions (three times a week for four weeks) of physical therapy is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to 12 sessions (three times a week for four weeks) 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:

**MAYOR OF (CITY)
(STREET ADDRESS), (FLOOR)
(CITY), TX (ZIP CODE)**

Signed this 21st day of April, 2010.

Carol A. Fougerat
Hearing Officer