

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.

ISSUE

A contested case hearing was held on May 27, 2010 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that physical therapy to the left shoulder three times a week for four weeks is not health care reasonably required for the compensable injury of _____?

PARTIES PRESENT

Claimant/Petitioner appeared and was represented by DR, attorney.
Carrier/Respondent appeared and was represented by BV, attorney.

BACKGROUND INFORMATION

Claimant worked as a truck driver for the Employer. She injured her left shoulder in a lifting incident on _____.

Claimant failed conservative care and had surgery on July 31, 2008 to repair a rotator cuff tear. This surgery was not successful and Claimant had a second left shoulder surgery on July 2, 2009. In August 2009, Claimant started a rehabilitation program that included physical therapy. From August 2009 through December 2009, Claimant received forty six physical therapy sessions. The medical records in December 2009 indicate Claimant had made significant improvement in her left shoulder functions, but still has some pain and limitations with activities. The treating doctor requested twelve more physical therapy sessions which are the subject of this hearing.

The Carrier denied the request for additional physical therapy noting that Claimant had already exceeded the twenty four sessions authorized in the Official Disability Guidelines (ODG) and there was no justification provided by the requesting doctor warranting an exception to the ODG.

Following the Carrier's denial, the Claimant requested review by an Independent Review Organization (IRO). The IRO upheld the Carrier's denial of the additional physical therapy sessions. Claimant appealed the IRO decision to this Medical Contested Case Hearing.

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.

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 Official Disability Guidelines (ODG).

The ODG provides the following physical therapy guidance for rotator cuff injuries:

ODG Physical Therapy 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.

Rotator cuff syndrome/Impingement syndrome (ICD9 726.1; 726.12):

Medical treatment: 10 visits over 8 weeks

Post-injection treatment: 1-2 visits over 1 week

Post-surgical treatment, arthroscopic: 24 visits over 14 weeks

Post-surgical treatment, open: 30 visits over 18 weeks

Claimant did not present evidence based medical evidence to justify the request for the additional physical therapy sessions. The requesting doctor's opinion, without reference to any evidence based medicine, is insufficient to overturn the IRO decision. The preponderance of the evidence is not contrary to the IRO decision and Claimant is not entitled to the additional therapy requested.

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).

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 sustained a compensable left shoulder injury on _____.
4. Following Claimant's second left shoulder surgery on July 2, 2009, Claimant had 46 physical therapy sessions.
5. Claimant's treating surgeon requested additional physical therapy in the amount of three sessions per week for four weeks.
6. The IRO decision upheld the Carrier's denial of the requested additional physical therapy.
7. Claimant did not provide evidence based medical contrary to the IRO decision.
8. Additional physical therapy to the left shoulder 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 additional physical therapy to the left shoulder three times per week for four weeks is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to additional physical therapy to the left shoulder 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 **VANLINER INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**PRENTICE-HALL CORPORATION SYSTEM, INC.
800 BRAZOS
AUSTIN, TEXAS 78701**

Signed this 1st day of June, 2010.

Donald E. Woods
Hearing Officer