

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 May 20, 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 a transforaminal epidural steroid injection with epidurogram and with Wydase at L4 and L5 on the right for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by JT, ombudsman.
Respondent/Carrier was assisted by TW, attorney.

BACKGROUND INFORMATION

Claimant testified that on _____ when he lifted a 110 pound bag onto a pallet he felt pain and numbness in his back. He had a laminectomy on the left at L4-5 and a transforaminal epidural steroid injection with epidurogram. He said that Dr. S wants to perform a second injection with Wydase to help with scar tissue that was shown on a magnetic resonance imaging. Dr. S's request for a second injection with Wydase has been denied by three reviewers.

According to documentary evidence, two utilization reviewers relied on the **Official Disability Guidelines** (ODG) in denying the request for the second injection in March of 2010. They each cited the section in the ODG on epidural steroid injections. The first reviewer wrote that Claimant's benefit from the first injection was minimal and that there was no physical examination to support the need for the second injection. The reviewer, a doctor of osteopathy and an anesthesiologist, also noted that there was neither historical nor clinical support for the second injection. The second reviewer, a doctor of osteopathy working in pain management and anesthesiology, agreed that documentation did not support a second injection.

The reviewer for the Independent Review Organization, a medical doctor who is board certified in physical medicine and rehabilitation, upheld the previous adverse decisions. The reviewer relied on the ODG, citing the section on Adhesiolysis.

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 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 provides the following for Adhesiolysis:

Not recommended due to the lack of sufficient literature evidence (risk vs. benefit, conflicting literature). Also referred to as epidural neurolysis, epidural neuroplasty, or lysis of epidural adhesions, percutaneous adhesiolysis is a treatment for chronic back pain that involves disruption, reduction, and/or elimination of fibrous tissue from the epidural space. Lysis of adhesions is carried out by catheter manipulation and/or injection of saline (hypertonic saline may provide the best results). Epidural injection of local anesthetic and steroid is also performed. It has been suggested that the purpose of the intervention is to eliminate the effect of scar formation, allowing for direct application of drugs to the involved nerves and tissue, but the exact mechanism of success has not been determined. There is a large amount of variability in the technique used, and the technical ability of the physician appears to play a large role in the success of the procedure. In addition, research into the identification of the patient who is best served by this intervention remains largely uninvestigated. Adverse reactions include dural puncture, spinal cord compression, catheter shearing, infection, excessive spinal cord compression, hematoma, bleeding, and dural puncture. Duration of pain relief appears to range from 3-4 months. Given the limited evidence available for percutaneous epidural adhesiolysis it is recommended that this procedure be regarded as investigational at this time. (Gerdesmeyer, 2003) (Heavner, 1999) (Belozer, 2004) (BlueCross BlueShield, 2004) (Belozer, 2004) (Boswell, 2005) (Boswell, 2007) (The Regence Group, 2005) (Chopra, 2005) (Manchikanti1, 2004) (Epter, 2009) This recent RCT found that after 3 months,

the visual analog scale (VAS) score for back and leg pain was significantly reduced in the epidural neuroplasty group, compared to conservative treatment with physical therapy, and the VAS for back and leg pain as well as the Oswestry disability score were significantly reduced 12 months after the procedure in contrast to the group that received conservative treatment. (Veihelmann, 2006)

Preliminary suggested criteria for percutaneous adhesiolysis while under study:

- The 1-day protocol is preferred over the 3-day protocol.
- All conservative treatment modalities have failed, including epidural steroid injections.
- The physician intends to conduct the adhesiolysis in order to administer drugs closer to a nerve.
- The physician documents strong suspicion of adhesions blocking access to the nerve.
- Adhesions blocking access to the nerve have been identified by Gallium MRI or Fluoroscopy during epidural steroid injections.

Claimant argued that the Independent Review Organization should have relied on the ODG's section concerning epidural steroid injections. Claimant also presented a letter from Dr. S dated May 6, 2010 that confirmed that Claimant received only a 20% relief of pain from the first injection. Dr. S wrote that he hoped a second injection, with Wydase, would be more effective than the first which did not have Wydase. Based on the evidence presented, Claimant failed to meet the burden of overcoming the decision of the Independent Review Organization by a preponderance of the evidence-based medical evidence.

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, who was the employee of (Employer), sustained a compensable injury.
 - C. The Independent Review Organization 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. A transforaminal epidural steroid injection with epidurogram and with Wydase at L4 and L5 on the right 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 Independent Review Organization that a transforaminal epidural steroid injection with epidurogram and with Wydase at L4 and L5 on the right is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to a transforaminal epidural steroid injection with epidurogram and with Wydase at L4 and L5 on the right 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 **TWIN CITY FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3232**

Signed this 30th day of June, 2010.

CAROLYN F. MOORE
Hearing Officer