

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 July 27, 2010 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to physical therapy, three times per week for four weeks, for treatment of the compensable right knee injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by SL, ombudsman.
Respondent/Carrier appeared, by telephone, and was represented by BV, attorney.

BACKGROUND INFORMATION

The Claimant sustained a compensable injury to his right knee and left upper extremity on _____. Claimant underwent an allograft reconstruction of the right knee on December 3, 2009 which was followed by 24 sessions of physical therapy. The Claimant testified that, subsequent to the surgery and post-surgery physical therapy, he continues to suffer from functional deficits, pain and instability in his right knee. Claimant's treating doctor has recommended an additional 12 sessions of physical therapy. 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, determined medical necessity does not exist at this time for additional physical therapy. The IRO reviewer noted that the Claimant remains symptomatic with pain in the right knee; however, the records were unclear as to whether the pain was at the operative site, at the joint line, deep in the knee or retropatella. The IRO reviewer stated that the Claimant has no atrophy, good strength and motion and that the Claimant already had 24 sessions of physical therapy over two months. The IRO reviewer cited the Official Disability Guidelines (ODG) which allots 24 sessions of therapy over 16 weeks. The reviewer noted that nothing was provided to explain why there was a reduction in the frequency of the post-surgical therapy and not more emphasis on a home or self-directed program.

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 Medicine 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.

Sprains and strains of knee and leg; Cruciate ligament of knee (ACL tear) (ICD9 844; 844.2):

Medical treatment: 12 visits over 8 weeks

Post-surgical (ACL repair): 24 visits over 16 weeks

The ODG recognizes the role of physical therapy in the management of knee pain and it also describes the transfer of treatment from a passive program to a more active self-directed program. The recommendation in the ODG for physical therapy for the knee following an ACL reconstruction is 24 visits over 16 weeks. The Claimant completed 24 sessions of post-surgical physical therapy where he was also given instruction on a home exercise program. The Claimant's treating doctor recommended additional physical therapy and, subsequent to an FCE performed on April 6, 2010, has also recommended a work hardening program. The Claimant testified that the work hardening program has been delayed due to his left elbow surgery that he underwent in June. The Claimant testified that he needs the additional therapy to improve the strength and function in his right knee.

In response to the adverse determination for additional physical therapy, Dr.S, an orthopedic surgeon, wrote that the FCE clearly demonstrates objective evidence that the Claimant has

continued weakness. Dr. S noted that he has recommended not only more physical therapy but that the Claimant may be considered for a work hardening program. It appears that the FCE results were not reviewed by the IRO reviewer; however, the reviewer did consider Dr.S' medical records and the two adverse determinations by the utilization review doctors who also noted that the medical records failed to justify the request for additional sessions. Although the Claimant testified that he needs the additional therapy, he failed to offer evidence based medical evidence to establish that the requested treatment exceeding ODG recommendations is healthcare reasonably required for treatment of the compensable injury. Based on the evidence presented, the Claimant did not meet his burden to present evidence based medical 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 (Employer) when he sustained a compensable injury to his right knee and left upper extremity.
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 physical therapy, three times per week for four weeks, is not consistent with the recommendations in the ODG.
4. Physical therapy, three times per week for four weeks, is not health care reasonably required for the compensable right knee 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 physical therapy, three times per week for four weeks, is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to physical therapy, three times per week for four weeks, for the compensable right knee 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, TX 78701**

Signed this 27th day of July, 2010.

Carol A. Fougerat
Hearing Officer