

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 August 24, 2010 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to atlanto/occipital joint MUA, cervical spine MUA, thoracic spine MUA, lumbar spine MUA, and right and left hip MUA for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Sub-Claimant appeared without representation. Respondent/Carrier appeared and was represented by EL, adjuster. Claimant appeared and was assisted by RB, ombudsman.

BACKGROUND INFORMATION

On _____ Claimant sustained a compensable injury when she slipped and fell. Petitioner Dr. P requested approval for manipulation under anesthesia (MUA) of the atlanto/occipital joint, the cervical, thoracic, and lumbar spine, and both hips. The IRO doctor, a board certified orthopedic surgeon, upheld the previous denial of the requested treatment.

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."

The ODG provides as follows concerning manipulation of the back under anesthesia:

Not recommended for back conditions in the absence of vertebral fracture or dislocation. In the appendicular skeleton, manipulation with the patient under anesthesia (MUA) may be performed as a treatment of arthrofibrosis, particularly of the shoulder (i.e., frozen shoulder) or knee. In the spine, manipulation under anesthesia may be performed as a closed treatment of vertebral fracture or dislocation. In the absence of vertebral fracture or dislocation, MUA, performed either with the patient sedated or under general anesthesia, is intended to overcome the conscious patient's protective reflex mechanism, which may limit the success of prior attempts of spinal manipulation or adjustment in the conscious patient. Manipulation under anesthesia (MUA) cannot be recommended at the present time. Existing studies are not high quality and the outcomes were not great, plus the procedure is expensive and has risks. There is a need for high quality studies before recommending this. (Haldeman, 1993) (Ben-David, 1994) (Aspegren, 1997) (Palmieri, 2002) (West, 1999) (Kohlbeck, 2002) (Kohlbeck, 2005) It is also not generally recommended under group health plans. (BlueCross BlueShield, 2007) (Aetna, 2004) There is not enough evidence to support or deny the value of medicine-assisted manipulation (MAM), but patient satisfaction and the clinician's belief that the treatment has a positive benefit is not enough in today's evidence-based medicine. MAM refers to the use of spinal manipulation after any type of pain control has been given. The pain control may be from pills or injections. When intravenous sedation is used, the procedure is referred to as manipulation under anesthesia (MUA); when injections are used (i.e., facet joint intra-articular anesthetic or epidural steroid injection) the procedure can be referred to as MUJA (manipulation under joint anesthesia) or MUEA (manipulation under epidural anesthesia). MAM is used with patients who have loss of motion and who have not responded to other conservative methods of treatment. (Dagenais, 2008) Barring the inability to render manipulative treatment due to intense pain levels or spasm, in general, four to eight weeks of spinal manipulation and other conservative care should be attempted before giving consideration to MUA. Patients who have had a failed back surgery or who have nerve entrapment or muscle contracture may be good candidates for this treatment; however, these indications for MUA have yet to be verified via controlled trials. (Dagenais2, 2008) See also the Shoulder Chapter, where MUA is under consideration as an option in adhesive capsulitis.

The ODG provides as follows concerning manipulation of the hip under anesthesia:

Under study for adhesive capsulitis of the hip. There are no quality studies. Adhesive capsulitis of the hip is a supposedly rare but probably underestimated condition that predominantly affects middle-aged women. The first-line treatment consists of sustained-release corticosteroid intra-articular injections and physical therapy. Arthroscopy and manipulation under anaesthesia may be useful in cases that are refractory to treatment. (Joassin, 2008) When prolonged frozen hip was treated with manipulation under anesthesia, after one year the hip was symptomless. (Luukkainen, 2008) See also entries in the Low Back, Shoulder, & Knee Chapters.

The IRO doctor noted that, according to the ODG, MUA is not medically necessary for back conditions in the absence of vertebral fracture or dislocation. Claimant did not have either of those conditions and did not have adhesive capsulitis of either hip. Dr. P testified that in his experience MUA works, although he was unable to explain why it works. Based on the evidence presented there are no high quality studies of MUA. The articles Dr. P offered consisted mostly of summaries of accounts written by physicians describing their own experience with using MUA on their patients.

Petitioner failed to overcome the IRO decision by the preponderance of 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 was the employee of (Employer).
 - C. On _____ Claimant sustained a compensable injury.
 - D. The Independent Review Organization determined Claimant should not have the requested treatment.
2. Carrier delivered to Petitioner and 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. Atlanto/occipital joint MUA, cervical spine MUA, thoracic spine MUA, lumbar spine MUA, and right and left hip MUA 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 atlanto/occipital joint MUA, cervical spine MUA, thoracic spine MUA, lumbar spine MUA, and right and left hip MUA is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to atlanto/occipital joint MUA, cervical spine MUA, thoracic spine MUA, lumbar spine MUA, or right or left hip MUA 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 Section 408.021 of the Act.

The true corporate name of the insurance carrier is **SENTINEL 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**

Signed this 24th day of August, 2010.

Thomas Hight
Hearing Officer