

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 September 29, 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 of physical therapy to the cervical spine for treatment of the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by LB, ombudsman.
Respondent/Carrier was represented by RJ, attorney.

BACKGROUND INFORMATION

The Claimant sustained a compensable injury to his cervical spine and right upper extremity on _____. Claimant has undergone treatment in the form of passive physical therapy (heat and massage), medications and an ESI to the cervical spine. Claimant's treating doctor has recommended 12 sessions (three times per week for four weeks) of physical therapy to improve the Claimant's range of motion, decrease pain and allow the Claimant to be more functional. The request for physical therapy was denied by the Carrier and referred to an IRO who upheld the Carrier's denial. The Claimant underwent the requested therapy after the determination of the IRO and he testified that his condition has improved.

The IRO reviewer, board certified in physical medicine and rehabilitation and pain management, upheld the previous adverse determination for 12 sessions of physical therapy. The IRO reviewer noted that the Claimant has been receiving treatments for a minimum of 18 months. The IRO reviewer stated that the ODG (Official Disability Guidelines) was utilized, as well as, the designated doctor's report indicating that a soft tissue injury was the extent of this injury with a zero percent impairment rating prior to the time of this IRO. The IRO reviewer concluded that the soft tissue injury was resolved as of the time of this IRO and a home exercise program should have been initiated well before this time. The IRO reviewer determined that there was no support for the use of the electrical modalities requested for this time period related to a soft tissue 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 in making decisions for the care of individual patients. 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 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."

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 and recommends 10 visits over eight weeks for neck sprain/strains. The Claimant's treating doctor, Dr. C, responded to the denial of the request for additional physical therapy. In a letter dated August 16, 2010, Dr. C stated that he was recommending the Claimant undergo a therapy program three times a week for four weeks in conjunction with the epidural steroid injections that have also been requested. Dr. C noted that the Claimant did have therapy in the past but, according to the Claimant, there were no therapeutic exercises done. The Claimant testified that the only therapy he received was in the form of heat and massages. Dr. C stated that he is recommending a therapeutic exercise program that will allow the Claimant to increase his strength, increase his range of motion, increase his daily function, decrease his pain and allow him to be more functional and to return to gainful employment. Dr. C opines that the requested therapeutic exercise program is necessary to improve the Claimant's physical condition; however, he fails to address the concerns raised by

the IRO and he does not adequately explain the necessity for additional physical therapy that exceeds the recommendations in the ODG. The Claimant testified that he feels much better since he underwent the additional therapy; however, he failed to offer evidence based medical evidence to establish that the requested treatment exceeding ODG recommendations is healthcare reasonably required for 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.

Carrier made the argument that jurisdiction of this appeal would be proper before the State Office of Administrative Hearings (SOAH) rather than the Division of Workers' Compensation. It is undisputed that the procedure in dispute at this hearing was performed after the IRO determination and that the cost exceeded \$3,000.00. The Carrier argued that the requested procedure was not preauthorized; therefore, no dispute remained for adjudication. Carrier argued that, since the provider rendered the service requiring preauthorization prior to receiving preauthorization, the dispute is moot and the Division cannot preauthorize a service that has already been performed. The Carrier argued that this case is now a retrospective medical review in excess of \$3,000.00 and that the proper venue lies with SOAH. Carrier's motion to dismiss was denied. The procedure in dispute had not been performed at the time of the review by the IRO that determines whether a concurrent/prospective review or a retrospective review is involved. Accordingly, under Texas Labor Code 413.0311 review is proper by the Division.

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.
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 for the cervical spine is not consistent with the recommendations in the ODG.
4. Twelve sessions of physical therapy for the cervical spine is not health care reasonably required for the compensable injury of _____.
5. The proceeding is an appeal of an IRO decision involving determination of a concurrent or prospective medical necessity for a health care service.

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 of physical therapy for the cervical spine is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to 12 sessions of physical therapy to the cervical spine 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 **LIBERTY MUTUAL 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, TX 78701-3218**

Signed this 29th day of September, 2010.

Carol A. Fougerat
Hearing Officer