

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 23, 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 an outpatient lumbar transforaminal epidural and selective nerve root block for the compensable injury of _____?

PARTIES PRESENT

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

BACKGROUND INFORMATION

Claimant sustained a compensable injury on _____. Claimant has undergone two MRI's of the lumbar spine and two EMG/NCV studies. The MRI performed on January 30, 2009 revealed a broad-based disc bulge at L4-L5 and a large disc protrusion at L5-S1 contacting the S1 nerve root. Both EMG's were normal and revealed no evidence of radiculopathy. Claimant testified that she has been treated with pain medication but she has not had any physical therapy for her lumbar spine injury. On January 5, 2010, Claimant underwent an L4-L5 epidural steroid injection with nerve root block. Claimant testified that she had approximately five days of relief following this injection. Claimant's treating doctor, Dr. U, has requested an outpatient lumbar transforaminal epidural and selective nerve block. This request was denied by the Carrier and referred to an IRO who determined that the recommended treatment was not medically necessary.

The IRO reviewer, a doctor of osteopathy and board certified anesthesiologist specializing in pain management, upheld the previous adverse determination stating that a transforaminal epidural (TFE) and selective nerve root block (SNB) are essentially the same thing and that there was no indication that the injured individual attempted physical therapy or chiropractics as conservative treatment. The IRO reviewer noted that the Claimant had one TFE in January 2010 and had an orthopedic evaluation in March 2010 where the orthopedist stated that the Claimant had one ESI and one facet injection with temporary benefit. Dr. U's notes indicate the TFE helped the right leg pain but not the back pain; however, the duration of the benefit was unclear as some reports note that it helped for five days, others indicate it helped for up to three months and finally, Dr. U's appeal letter stated it helped eight weeks. The IRO reviewer stated that the lack of consensus and clarity and the lack of corroboration from another provider as to its result do not support repeating it. The IRO reviewer also noted that, although Dr. U reports it (TFE)

helped, there was no indication that Dr. U found that Claimant was more functional or that he reduced her medications.

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 about 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 Criteria for the use of Epidural steroid injections:

Note: The purpose of ESI is to reduce pain and inflammation, thereby facilitating progress in more active treatment programs, and avoiding surgery, but this treatment alone offers no significant long-term functional benefit.

(1) Radiculopathy must be documented. Objective findings on examination need to be present. For unequivocal evidence of radiculopathy, see AMA Guides, 5th Edition, page 382-383. (Andersson, 2000)

(2) Initially unresponsive to conservative treatment (exercises, physical methods, NSAIDs and muscle relaxants).

(3) Injections should be performed using fluoroscopy (live x-ray) and injection of contrast for guidance.

(4) *Diagnostic Phase:* At the time of initial use of an ESI (formally referred to as the "diagnostic phase" as initial injections indicate whether success will be obtained with this treatment intervention), a maximum of one to two injections should be performed. A repeat block is not recommended if there is inadequate response to the first block (< 30%

is a standard placebo response). A second block is also not indicated if the first block is accurately placed unless: (a) there is a question of the pain generator; (b) there was possibility of inaccurate placement; or (c) there is evidence of multilevel pathology. In these cases a different level or approach might be proposed. There should be an interval of at least one to two weeks between injections.

(5) No more than two nerve root levels should be injected using transforaminal blocks.

(6) No more than one interlaminar level should be injected at one session.

(7) *Therapeutic phase:* If after the initial block/blocks are given (see “Diagnostic Phase” above) and found to produce pain relief of at least 50-70% pain relief for at least 6-8 weeks, additional blocks may be required. This is generally referred to as the “therapeutic phase.” Indications for repeat blocks include acute exacerbation of pain, or new onset of symptoms. The general consensus recommendation is for no more than 4 blocks per region per year.

(8) Repeat injections should be based on continued objective documented pain relief, decreased need for pain medications, and functional response.

(9) Current research does not support a routine use of a “series-of-three” injections in either the diagnostic or therapeutic phase. We recommend no more than 2 ESI injections for the initial phase and rarely more than 2 for therapeutic treatment.

(10) It is currently not recommended to perform epidural blocks on the same day of treatment as facet blocks or sacroiliac blocks or lumbar sympathetic blocks or trigger point injections as this may lead to improper diagnosis or unnecessary treatment.

(11) Cervical and lumbar epidural steroid injection should not be performed on the same day. (Doing both injections on the same day could result in an excessive dose of steroids, which can be dangerous, and not worth the risk for a treatment that has no long-term benefit.)

ODG Criteria for the use of epidural steroid injections, diagnostic:

ODG Recommended as indicated below. Diagnostic epidural steroid transforaminal injections are also referred to as selective nerve root blocks, and they were originally developed as a diagnostic technique to determine the level of radicular pain. In studies evaluating the predictive value of selective nerve root blocks, only 5% of appropriate patients did not receive relief of pain with injections. No more than 2 levels of blocks should be performed on one day. The response to the local anesthetic is considered an important finding in determining nerve root pathology. (CMS, 2004) (Benzon, 2005) When used as a diagnostic technique a small volume of local is used (<1.0 ml) as greater volumes of injectate may spread to adjacent levels. When used for diagnostic purposes the following indications have been recommended:

- 1) To determine the level of radicular pain, in cases where diagnostic imaging is ambiguous, including the examples below:
- 2) To help to evaluate a pain generator when physical signs and symptoms differ from that found on imaging studies;
- 3) To help to determine pain generators when there is evidence of multi-level nerve root compression;
- 4) To help to determine pain generators when clinical findings are consistent with radiculopathy (e.g., dermatomal distribution) but imaging studies are inconclusive;
- 5) To help to identify the origin of pain in patients who have had previous spinal surgery.

In response to the IRO's denial for the requested procedure, Dr. U writes, in a report dated June 9, 2010, that the Claimant has already had a prior epidural injection actually proving the fact that she has significant pathology and the need for the procedure. Dr. U's report notes that the last injection given on January 5, 2010 provided 70% relief of her symptoms; therefore, she has previously met this criteria and it would be illogical to believe she does not need it at this point. Dr. T testified that transforaminal nerve root blocks are selective and localized procedures to an isolated nerve. Dr. T testified that the ODG requires documented radiculopathy and the Claimant's clinical findings and diagnostic studies failed to establish that she has radiculopathy. Dr. T also testified that the ODG criteria for *therapeutic phase* require pain relief of at least 50-70% for at least six-eight weeks after the initial block is given. The Claimant testified that she received about five days of pain relief following her January 5, 2010 injection and Dr. U's records give inconsistent data regarding the duration of the Claimant's relief following the first injection. The Claimant has the burden of proof to overcome the IRO determination and the Claimant failed to present an evidence based medical opinion contrary to the determination of the IRO that the Claimant is not entitled to an outpatient lumbar transforaminal epidural and selective nerve root block for treatment of the compensable injury of _____.

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. Claimant sustained a compensable injury on _____.
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 Claimant failed to prove that she meets the requirements in the ODG for an outpatient lumbar transforaminal epidural and selective nerve root block and the requested procedure is not consistent with the recommendations in the ODG.
4. The preponderance of the evidence is not contrary to the decision of the IRO that the requested outpatient lumbar transforaminal epidural and selective nerve root block 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 an outpatient lumbar transforaminal epidural and selective nerve root block is not health care reasonable required for the compensable injury of _____.

DECISION

Claimant is not entitled to an outpatient lumbar transforaminal epidural and selective nerve root block 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**RON O. WRIGHT
6210 EAST HIGHWAY 290
AUSTIN, TX 78723**

Signed this 24th day of September, 2010.

Carol A. Fougerat
Hearing Officer