

**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 October 22, 2010, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to physical therapy 3 times a week for 4 weeks for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

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

**BACKGROUND INFORMATION**

The claimant sustained a compensable injury to the right hip for which she was diagnosed with trochanteric bursitis. The claimant underwent a bursectomy on December 2, 2005, which the medical records reveal was successful. Sometime in January 2010, the treating doctor, Dr. M, first diagnosed the claimant with right hip abductor weakness. Dr. M eventually requested physical therapy for this weakness, but did not cite the frequency or duration in his request. The request was eventually clarified to be three weekly visits for four weeks. An initial utilization review on March 23, 2010 noted that the bursectomy had occurred in the distant past, no records were presented documenting a new neurological deficit and as such, the medical necessity for the request was not established. Upon reconsideration, a review undertaken on April 9, 2010 notes that an attempt to get clarification telephonically from the requestor was declined. Pursuant to an appeal, the Independent Review Organization (IRO) reviewed the documentation and upheld the adverse determination on a report dated May 28, 2010. Upon a request for clarification to the IRO due to citing an inaccurate requested service, the IRO again reviewed the provided documentation and issued an amended report dated June 28, 2010. In its amended report, the IRO referenced the remoteness of the initial injury and surgery, did not have a problem with a request for physical therapy in and of itself, but noted that evidence was not provided to indicate that the claimant could not experience the same substantial improvement on an unsupervised program of therapy.

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 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 (sic) 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."

#### Physical Therapy Preface:

There are a number of overall physical therapy philosophies that may not be specifically mentioned within each guideline: (1) As time goes by, one should see an increase in the active regimen of care, a decrease in the passive regimen of care, and a fading of treatment frequency; (2) The exclusive use of "passive care" (e.g., palliative modalities) is not recommended; (3) Home programs should be initiated with the first therapy session and must include ongoing assessments of compliance as well as upgrades to the program; (4) Use of self-directed home therapy will facilitate the fading of treatment frequency, from several visits per week at the initiation of therapy to much less towards the end; (5) Patients should be formally assessed after a "six-visit clinical trial" to see if the patient is moving in a positive direction, no direction, or a negative direction (prior to continuing with the physical therapy); & (6) When treatment duration and/or number of visits exceeds the guideline, exceptional factors should be noted.

The ODG cites the criteria for hip PT, and provides as follows:

Recommended as indicated below. A physical therapy program that starts immediately following hip injury or surgery allows for greater improvement in muscle strength, walking speed and functional score. (Jan, 2004) (Jain, 2002) (Penrod, 2004) (Tsauo, 2005) (Brigham, 2003) (White, 2005) (National, 2003) A weight-bearing exercise program can improve balance and functional ability to a greater extent than a non-weight-bearing program. (Expert, 2004) (Binder, 2004) (Bolglia, 2005) (Handoll, 2004) (Kuisma, 2002) (Lauridsen, 2002) (Mangione, 2005) (Sherrington, 2004) Patients with hip fracture should be offered a coordinated a (sic) multidisciplinary rehabilitation program with the specific aim of regaining sufficient function to return to their pre-fracture living arrangements. (Cameron, 2005) A physical therapy consultation focusing on appropriate exercises may benefit patients with OA, although this recommendation

is largely based on expert opinion. The physical therapy visit may also include advice regarding assistive devices for ambulation. (Zhang, 2008) Accelerated perioperative care and rehabilitation intervention after hip and knee arthroplasty (including intense physical therapy and exercise) reduced mean hospital length of stay (LOS) from 8.8 days before implementation to 4.3 days after implementation. (Larsen, 2008) Behavioral graded activity (BGA) is an individually tailored exercise program in which the most difficult physical activities are gradually increased over time and the exercises are specifically designed to improve impairments limiting the performance of these activities. In the long-term, both BGA and usual PT care were associated with beneficial effects in patients with hip and knee OA. In patients with knee OA, there were no between-group differences at short-, mid-long, and long-term follow-up. In contrast, patients with hip OA had significant differences favoring BGA. (Pisters, 2010).

#### **ODG Physical Medicine Guidelines –**

Allow for fading of treatment frequency (from up to 3 visits per week to 1 or less). Also see other general guidelines that apply to all conditions under Physical Therapy in the ODG Preface.

#### **Sprains and strains of hip and thigh (ICD9 843):**

9 visits over 8 weeks

#### **Dislocation of hip (ICD9 835):**

9 visits over 8 weeks

#### **Fracture of neck of femur (ICD9 820):**

Medical treatment: 18 visits over 8 weeks

Post-surgical treatment: 24 visits over 10 weeks

#### **Fracture of pelvis (ICD9 808):**

Medical treatment: 18 visits over 8 weeks

Post-surgical treatment: 24 visits over 10 weeks

#### **Osteoarthritis and allied disorders (ICD9 715):**

Medical treatment: 9 visits over 8 weeks

Post-injection treatment: 1-2 visits over 1 week

Post-surgical treatment: 18 visits over 12 weeks

#### **Arthropathy, unspecified (ICD9 716.9):**

Post-injection treatment: 1-2 visits over 1 week

Post-surgical treatment, arthroplasty/fusion, hip: 24 visits over 10 weeks

#### **Work conditioning (See also Procedure Summary entry):**

9 visits over 8 weeks

In addition, active self-directed home PT may include Simple Hip-Strengthening Exercises:

Hip-flexors — Standing beside a chair, without bending at the waist, bend one knee up as close to chest as possible. Lower leg to floor. Repeat with other leg.

Hip abductors — Standing erect and holding onto the back of a chair, without bending at the waist or knee, move one leg straight out to the side, making sure that the toes point forward. Lower the leg and repeat on other side.

Hip-extensors — Stand holding onto the back of a chair, and bend forward about 45 degrees at the hips. Lift one leg straight out behind you as high as possible without bending the knee or moving the upper body. Lower leg and repeat on other side.

Dr. M did not provide testimony or a written opinion regarding the necessity of the request. His medical reports appear to show that the request would be for the diagnosis of right hip abductor weakness rather than the initial diagnosis of trochanteric bursitis. The ODG allows for fading in the frequency of physical therapy. The claimant's last surgical procedure occurred on December 2, 2005 and appears to have been successful. Other than the diagnosis of right hip abductor

weakness, the medical records did not document a new neurological deficit. The requestor did not provide evidence based medical evidence to show how the claimant could not experience the same substantial improvement on an unsupervised program of therapy.

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), and sustained a compensable injury.
  - C. The Independent Review Organization determined that the claimant is not entitled to physical therapy three times a week for four weeks for the compensable injury of \_\_\_\_\_.
2. Carrier delivered to Claimant and Provider 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 did not provide evidence based medical evidence to establish the necessity of the requested supervised physical therapy.
4. Physical therapy three times a week for four weeks 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 physical therapy three times a 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 a week for four weeks 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 **NEW HAMPSHIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

Signed this 27th day of October, 2010.

Virginia Rodríguez-Gómez  
Hearing Officer