

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.

ISSUE

A contested case hearing was held on November 4, 2010, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that physical therapy three times per week for two weeks to the left knee, left foot, and lumbar spine is not reasonably required health care for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was assisted by LS, ombudsman. Self-insured Carrier appeared and was represented by RJ, attorney.

BACKGROUND INFORMATION

On _____, Claimant sustained a compensable injury to her left knee, left foot and lumbar spine when she tripped and fell. Previously, Claimant has received physical therapy, and now seeks additional physical 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. 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 IRO relied upon "Physical medicine treatment" in the Pain section of the ODG, which provides as follows:

Recommended as indicated below. Passive therapy (those treatment modalities that do not require energy expenditure on the part of the patient) can provide short term relief during the early phases of acute pain treatment or acute exacerbations of chronic pain and are directed at controlling symptoms such as pain, inflammation and swelling and to improve the rate of healing soft tissue injuries. They can be used sparingly with active therapies to help control swelling, pain and inflammation during the rehabilitation process. Active therapy is based on the philosophy that therapeutic exercise and/or activity are beneficial for restoring flexibility, strength, endurance, function, range of motion, and can alleviate discomfort. Active therapy requires an internal effort by the individual to complete a specific exercise or task. This form of therapy may require supervision from a therapist or medical provider such as verbal, visual and/or tactile instruction(s). Patients are instructed and expected to continue active therapies at home as an extension of the treatment process in order to maintain improvement levels. Home exercise can include exercise with or without mechanical assistance or resistance and functional activities with assistive devices. (Colorado, 2002) (Airaksinen, 2006) As far as medical necessity considerations for exercise equipment, see the Knee Chapter, Durable medical equipment (DME), & the Low Back Chapter, Exercise. Patient-specific hand therapy is very important in reducing swelling, decreasing pain, and improving range of motion in CRPS. (Li, 2005) The use of active treatment modalities (e.g., exercise, education, activity modification) instead of passive treatments is associated with substantially better clinical outcomes. In a large case series of patients with low back pain treated by physical therapists, those adhering to guidelines for active rather than passive treatments incurred fewer treatment visits, cost less, and had less pain and less disability. The overall success rates were 64.7% among those adhering to the active treatment recommendations versus 36.5% for passive treatment. (Fritz, 2007)

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.

Myalgia and myositis, unspecified (ICD9 729.1):

9-10 visits over 8 weeks

Neuralgia, neuritis, and radiculitis, unspecified (ICD9 729.2)

8-10 visits over 4 weeks
Reflex sympathetic dystrophy (CRPS) (ICD9 337.2):
26 visits over 16 weeks
Arthritis (ICD9 715):
Medical treatment: 9 visits over 8 weeks
Post-injection treatment: 1-2 visits over 1 week
Post-surgical treatment (see body-part chapters): 18 visits over 12 weeks

Claimant's chiropractor who recommended the disputed physical therapy testified that the ODG does not cover chronic cases like Claimant's long term problems. The chiropractor also testified that he needs to conduct physical therapy as a diagnostic tool for making recommendations for home exercises and other treatment. Neither Claimant nor her chiropractor offered evidence-based medicine to contradict the findings of the IRO. Therefore, Claimant is not entitled to the health care requested.

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 (Self-Insured), Employer, when she sustained a compensable injury.
2. Self-insured 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. Physical therapy three times per week for two weeks to the left knee, left foot, and lumbar spine is not reasonably required health care 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 per week for two weeks to the left knee, left foot, and lumbar spine is not reasonably required health care for the compensable injury of _____.

DECISION

Claimant is not entitled to physical therapy three times per week for two weeks to the left knee, left foot, and lumbar spine for the compensable injury of _____.

ORDER

Self-insured 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 self-insured insurance carrier is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

**TW
(STREET ADDRESS)
(CITY), TEXAS (ZIP CODE)**

Signed this 5th day of November, 2010.

Charles T. Cole
Hearing Officer