

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 January 11, 2011 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 additional physical therapy/occupational therapy three times per week for seven weeks for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by RR, ombudsman.
Respondent/Carrier appeared and was represented by CF, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable crush injury and laceration to the index finger on his left hand on _____. Claimant underwent a debridement and repair on August 14, 2009 and he subsequently developed complex regional pain syndrome (CRPS) of the left index finger. In March 2010, Claimant underwent an endocapsular release and he had 33 sessions of post-surgical physical therapy. Claimant has been treated with multiple medications, stellate ganglion blocks and approximately 62 sessions of physical and occupational therapy since the date of the injury. Claimant testified that he continues to suffer from stiffness and pain in his left index finger and loss of function in his left hand. Claimant's treating doctors have recommended additional physical therapy/occupational therapy for treatment of the CRPS. This request was denied by the Carrier and referred to an IRO. The IRO reviewer, a board certified orthopedic surgeon specializing in hand injuries and CRPS, noted that the Claimant had already undergone a very extensive regimen of physical and occupational therapy which resulted in periodic improvement but that it appeared the Claimant had achieved as much benefit from a supervised physical therapy/occupational therapy program as can possibly be achieved. The IRO reviewer concluded that the physical therapy/occupational therapy would have little likelihood of being successful where previous regimens had failed and that the prior denials were appropriate and should be upheld.

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 Physical/Occupational Therapy Guidelines

Allow for fading of treatment frequency (from up to 3 visits or more per week to 1 or less), plus active self-directed home PT. More visits may be necessary when grip strength is a problem, even if range of motion is improved. Also see other general guidelines that apply to all conditions under Physical Therapy in the ODG Preface.

9 visits over 8 weeks

Crushing injury of hand/finger (ICD9 927.2 & 927.3):

9 visits over 8 weeks

Reflex sympathetic dystrophy (CRPS) (ICD9 337.2):

26 visits over 16 weeks

As noted above, the ODG sets out criteria for physical therapy/occupational therapy. The Claimant has already undergone 33 sessions of physical therapy/occupational therapy for treatment of his diagnosed CRPS. Dr. V, Claimant's pain management physician, testified that patients with CRPS need constant activity to maintain muscle strength, function and range of motion. Dr. V testified that the physical therapy/occupational therapy is always necessary for patients with CRPS and should continue until the symptoms of CRPS resolve. Dr. V testified that the Claimant's condition will deteriorate to the point that he will lose function of his finger unless he continues with the supervised physical therapy. Dr. V testified that home exercise would be helpful but is not as beneficial as the prescribed physical therapy/occupational therapy. Dr. V testified that he disagreed with the recommendations in the ODG and made vague references to pain management literature supporting the need for continued physical therapy for CRPS patients. Dr. V offered an opinion regarding the necessity for the additional physical therapy/occupational therapy; however, he failed to present evidence-based medicine to support his opinion that the Claimant requires additional physical therapy exceeding the

recommendations in the ODG. Based on the evidence presented, the Claimant does not meet the criteria set out in the ODG for additional physical therapy/occupational therapy and the Claimant failed to provide an evidence-based medical opinion contrary to the determination of the IRO. The preponderance of the evidence is not contrary to the IRO decision that Claimant is not entitled to additional physical therapy/occupational therapy three times per week for seven weeks for 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. Claimant does not meet the requirements of the ODG for additional physical therapy/occupational therapy three times per week for seven weeks for the compensable injury of _____ and he failed to present other evidence-based medicine supporting the necessity for additional physical therapy/occupational therapy exceeding the recommendations in the ODG.
4. Additional physical therapy/occupational therapy three times per week for seven 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 additional physical therapy/occupational therapy three times per week for seven weeks is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to additional physical therapy/occupational therapy three times per week for seven 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 **FIDELITY & GUARANTY 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 78701-3232**

Signed this 11th day of January, 2011.

Carol A. Fougerat
Hearing Officer