

MEDICAL CONTESTED CASE HEARING NO. 11104
M6-11-30187-01

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 January 26, 2011, 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 (3 times a week for 4 weeks) to the lumbar spine for the compensable injury of _____?

PARTIES PRESENT

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

BACKGROUND INFORMATION

On _____, Claimant sustained a compensable injury to her lumbar spine. Carrier has accepted a compensable lumbar sprain/strain. As a result of the compensable injury, Claimant has undergone approximately 27 sessions of physical therapy. Claimant's treating physician has recommended an additional 12 sessions of physical therapy. The request for additional therapy was denied by the Carrier and referred to an IRO who upheld the Carrier's denial.

The IRO reviewer, a Board Certified physician in Physical Medicine and Rehabilitation, noted that Claimant had already undergone at least 14 sessions of physical therapy in 2007 and had also undergone work conditioning in 2007. The reviewer concluded that the requested additional physical therapy did not meet the criteria as set out in the Official Disability Guidelines (ODG).

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 *ODG* recognizes the role of physical therapy in the management of lumbar injuries and notes the duration of physical therapy for the lumbar spine as follows:

ODG Physical Therapy Guidelines –

Allow for fading of treatment frequency (from up to 3 or more 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".

Lumbar sprains and strains (ICD9 847.2):

10 visits over 8 weeks

Sprains and strains of unspecified parts of back (ICD9 847):

10 visits over 5 weeks

Sprains and strains of sacroiliac region (ICD9 846):

Medical treatment: 10 visits over 8 weeks

The *ODG* recommends 10 visits of physical therapy for a lumbar sprain/strain over an eight week period. The evidence established that Claimant underwent well over the recommended physical therapy visits for the compensable injury. Claimant was also released to a home exercise program and underwent a work conditioning program. Claimant provided her testimony that she still is in pain and that physical therapy is necessary. However, Claimant did not provide the opinion of a qualified expert, relying on evidence-based medicine, contrary to the determination of the IRO. Based on the evidence presented, the Claimant did not meet her burden to present evidence based medical evidence contrary to the IRO's determination.

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 the (Employer).
 - C. On _____, Claimant 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 IRO determined that the requested services were not reasonable and necessary health care services for the compensable injury of _____.
4. Claimant failed to present evidence based medical evidence contrary to the IRO decision.
5. 12 sessions of physical therapy (3 times a week for 4 weeks) to the lumbar spine 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 Claimant is not entitled to 12 sessions of physical therapy (3 times a week for 4 weeks) to the lumbar spine for the compensable injury of _____.

DECISION

Claimant is not entitled to 12 sessions of physical therapy (3 times a week for 4 weeks) to the lumbar spine for three 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 **(SELF-INSURED)**, and the name and address of its registered agent for service of process is

**MAYOR OF THE CITY OF (CITY)
(ADDRESS)
(CITY), TEXAS (ZIP CODE)**

Signed this 31st day of January, 2011.

Teresa G. Hartley
Hearing Officer