

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 27, 2011 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to an outpatient low pressure lumbar discogram at L4/L5, with control level at L3/L4 for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Provider Dr. B, M.D. appeared without representation. Claimant appeared and was assisted by SG, ombudsman. Respondent/Carrier appeared and was represented by JL, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury to his back on _____ when he was involved in a motor vehicle accident. Claimant has a history of lumbar surgeries. A bilateral L5/S1 partial laminectomy was performed on April 20, 2007. A redo bilateral L5/S1 discectomy was performed on November 9, 2007. Claimant continued to have persistent abnormalities and was treated with medications, injections, and an implant, then removal of, a spinal cord stimulator. A December 23, 2008 lumbar MRI test report revealed bulges with impingement at L5/S1, showing degenerative disk disease. In June 2010 Dr. B diagnosed a failed laminectomy x2 along with mechanical low back pain, L5-S1 HNP, left sided radiculopathy, along with SI joint pain. Dr. B proposed a discogram as a pre-operative adjunctive diagnostic. After Dr. B requested pre-authorization for the discogram, two utilization reviews were conducted. Both utilization reviews denied the request because the Official Disability Guidelines (ODG) does not recommend discography. Dr. B appealed the Carrier's decision to an Independent Review Organization (IRO). The IRO upheld the Carrier's decision and provided the same reason as the utilization reviews. Dr. B appealed the decision of the IRO to a Medical Contested Case Hearing.

DISCUSSION

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(22-a) 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(18-a) 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 individual patients. The Commissioner of the Division of Workers' Compensation is required to adopt treatment guidelines that are evidence-based, scientifically valid, and 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. 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 (sic) considered parties (sic) 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."

With regard to lumbar discogram, the ODG provides as follows:

"Discography is Not Recommended in ODG.

Patient selection criteria for Discography if provider & payor agree to perform anyway:

- o Back pain of at least 3 months duration
- o Failure of recommended conservative treatment including active physical therapy
- o An MRI demonstrating one or more degenerated discs as well as one or more normal appearing discs to allow for an internal control injection (injection of a normal disc to validate the procedure by a lack of a pain response to that injection)
- o Satisfactory results from detailed psychosocial assessment (discography in subjects with emotional and chronic pain problems has been linked to reports of significant back pain for prolonged periods after injection, and therefore should be avoided)
- o Intended as a screen for surgery, i.e., the surgeon feels that lumbar spine fusion is appropriate but is looking for this to determine if it is not indicated (although discography is not highly predictive) (Carragee, 2006) NOTE: In a situation where the selection criteria and other surgical indications for fusion are conditionally met, discography can be considered in preparation for the surgical procedure. However, all of the qualifying conditions must be met prior to proceeding to discography as discography should be viewed as a non-diagnostic but confirmatory study for selecting operative levels for the proposed surgical

procedure. Discography should not be ordered for a patient who does not meet surgical criteria.

- o Briefed on potential risks and benefits from discography and surgery
- o Single level testing (with control) (Colorado, 2001)
- o Due to high rates of positive discogram after surgery for lumbar disc herniation, this should be potential reason for non-certification"

With regard to the low back, the ODG, under Discography, identifies numerous medical articles and studies that were conducted from 1997 through 2009, and provides that discography is not recommended. The ODG cites patient selection criteria for discography if the provider and the payor agree to perform anyway. One of the criteria is that the patient be a candidate for a spinal fusion. But Dr. B did not show that Claimant met the requirements for a spinal fusion since the flexion-extension studies did not show significant instability. Therefore, if the patient is not a candidate for a spinal fusion, then there is no need for a discogram. The preponderance of the evidence is not contrary to the decision of the IRO that an outpatient low pressure lumbar discogram at L4/L5 with control level at L3/L4 is not health care reasonably required 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. The Texas Department of Insurance, Division of Workers' Compensation has jurisdiction in this matter.
 - B. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - C. On _____, Claimant was the employee of (Self-Insured), Employer.
 - D. Claimant sustained a compensable injury on _____.
 - E. The Independent Review Organization determined that the claimant should not have an outpatient low pressure lumbar discogram at L4/L5 with control level at L3/L4.
2. Carrier delivered to Claimant and Petitioner 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. An outpatient low pressure lumbar discogram at L4/L5 with control level at L3/L4 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 low pressure lumbar discogram at L4/L5 with control level at L3/L4 is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to an outpatient low pressure lumbar discogram at L4/L5 with control level at L3/L4 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 self-insured is **(SELF-INSURED)** and the name and address of its registered agent for service of process is:

(SELF-INSURED)
(STREET ADDRESS)
(CITY), TX (ZIP CODE)

Signed this 3rd day of February, 2011.

Judy L. Ney
Hearing Officer