

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 April 20, 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 triple phase bone scan for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by VM, ombudsman. Respondent/Carrier appeared and was represented by KM, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury including injury to his right hip on _____. Subsequently he had two right hip surgeries: arthroscopic debridement of labral tear and removal of acetabular osteophytes in March 2006 and right hip total replacement in May 2006. He continued to have problems with the hip. Dr. M examined Claimant in December 2010 and recommended a triple phase bone scan. The IRO doctor, a board certified orthopedic surgeon, upheld the previous denials of the procedure.

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 provides the following concerning bone scan for hip injury:

Recommended in the presence of normal radiographs, and in the absence of ready access to MR imaging capability. Radionuclide bone scans are effective for detection of subtle osseous pathology and, when negative, are useful in excluding bone or ligament/tendon attachment abnormalities. (American, 2003) Bone scanning is more sensitive but less specific than MRI. It is useful for the investigation of trauma, infection, stress fracture, occult fracture, Charcot joint, Complex Regional Pain Syndrome, and suspected neoplastic conditions of the lower extremity. (Colorado, 2001) (Verhaegen, 1999) Although the diagnostic performance of the imaging techniques (Plain radiography, arthrography, and bone scintigraphy) was not significantly different, plain radiography and bone scintigraphy are preferred for the assessment of a femoral component because of their efficacy and lower risk of patient morbidity. (Temmerman, 2005) One study found that bone scanning is not indicated to diagnose possible contralateral avascular necrosis if the hip is asymptomatic. (Scheiber, 1999) Bone scanning has its limitations chiefly in its specificity and delayed results. Bone scanning is not typically used for hip fracture. There are several unfavorable aspects to scintigraphy. To begin, its specificity is lower than other modalities. Even when fracture is found, the poor spatial resolution of scintigraphy may not reveal the entire extent of a fracture, possibly leading to inappropriate treatment. The elderly, in particular, have been found to be at risk for incorrect and missed scintigraphic diagnoses. The largest disadvantage, however, is the usual practice whereby patients are not scanned until at least 72 h after injury. (Cannon, 2009)

The IRO doctor thought the bone scan was not medically necessary, noting there was no indication of any significant changes in Claimant's physical examination that would warrant additional diagnostic testing, there was no indication from Claimant's physical examination of any hardware complication, such as catching, grinding, or popping, and the X-rays did not reveal any hardware problem. The IRO decision states that the source of the criteria used to make the decision was the ODG, Hip and Pelvis Chapter.

Dr. M testified for Claimant. He said the total hip replacement, which he performed in 2006, was holding up well as evidenced by X-rays done December 20, 2010. Claimant was complaining of pain in the right thigh below the replacement hardware. Dr. M wanted a triple phase bone scan to help him figure out why Claimant was having femoral pain. Dr. M said he was familiar with the ODG. He said the ODG does not address the medical condition in question, and that appeared to be correct. If it does not, Claimant was required to present evidence based medical evidence

other than the ODG to overcome the IRO, or to show there is no such evidence based medical evidence and proceed to the generally accepted standard of practice. He did not do either one.

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 (City), Employer.
 - C. On _____ Employer provided workers' compensation insurance with Insurance Company of the State of Pennsylvania, Carrier.
 - D. On _____ Claimant sustained a compensable injury.
 - E. The Independent Review Organization determined Claimant should not have the requested treatment.
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. Triple phase bone scan 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 triple phase bone scan is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to triple phase bone scan 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 Section 408.021 of the Act.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA**, and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7th STREET, SUITE 620
AUSTIN, TEXAS 78701**

Signed this 20th day of April, 2011.

Thomas Hight
Hearing Officer