

MEDICAL CONTESTED CASE HEARING NO 11162
M6-11-32758-01

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 July 15, 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 the purchase of a Simmons Fayette orthopedic bed, mattress, and box spring for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was represented by AT, attorney.
Respondent/Carrier appeared and was represented by LGM, attorney.

BACKGROUND INFORMATION

The Claimant sustained a compensable injury to his lumbar spine on (Date of Injury). Claimant was diagnosed with disc herniations at L4-5 and L5-S1 and, on July 8, 2010, he underwent lumbar surgery performed by Dr. E. Claimant testified that, as a result of this injury, he has difficulty lying down for more than 15-20 minutes at a time and he is only able to sleep for intermittent periods. Claimant's treating doctor, Dr. L, has recommended the purchase of a Simmons Fayette orthopedic bed, mattress, and box spring to assist the Claimant with sleeping and ambulating on and off the bed. This request was denied by the Carrier and submitted to an IRO who upheld the Carrier's denial.

The IRO reviewer, identified as a board-certified orthopedic surgeon, determined that, pursuant to the Official Disability Guidelines (ODG), there are no high quality studies to support the purchase of any type of specialized mattress or bedding as treatment for low back pain and that mattress selection is subjective and depends on personal preference and individual factors. The IRO reviewer concluded by finding that there is no medical necessity for the purchase of a Simmons Fayette orthopedic bed, mattress, and box spring for treatment of the Claimant's lumbar spine condition.

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 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."

Pursuant to the ODG regarding mattresses for low back conditions:

Not recommended to use firmness as sole criteria. In a recent RCT, a waterbed (Aqva) and a body-contour foam mattress (Tempur) generally influenced back symptoms, function, and sleep more positively than a hard mattress, but the differences were small. The dominant problem in this study was the large amount of dropouts. The predominant reason for dropping out before the trial involved the waterbed, and there was some prejudice towards this type of mattress. The hard mattress had the largest amount of test persons who stopped during the trial due to worsening LBP, as users were more likely to turn around in the bed during the night because of pressures on protruding body parts. (Bergholdt, 2008) Another clinical trial concluded that patients with medium-firm

mattresses had better outcomes than patients with firm mattresses for pain in bed, pain on rising, and disability; a mattress of medium firmness improves pain and disability among patients with chronic non-specific low-back pain. (Kovacs, 2003) There are no high quality studies to support purchase of any type of specialized mattress or bedding as a treatment for low back pain. Mattress selection is subjective and depends on personal preference and individual factors.

The Claimant testified that he conducted his own study to determine which mattress would be the most beneficial for his low back condition. Claimant testified that he went to three stores that sell mattresses and tested approximately 60 different mattresses by lying on each for 30-40 minutes. Claimant testified that this took about three weeks and he determined that the Simmons Fayette orthopedic mattress was the best fit for him. In a letter dated July 1, 2011, Dr. L cited the references to the ODG regarding the recommendation for specialized mattresses and stated, "I do not have any dispute with the statements of the reviewing physicians. My dispute is with the application of the ODG to this case. I have read the studies in the ODG to say: because there is no single orthopedic mattress that works for everyone, no orthopedic mattress should ever be authorized. The benefits that studies show can be gained from using specialized mattresses in cases of low back pain should be disregarded because no single mattress fits every patient."

Dr. L concluded by stating the studies show that specialized mattresses can help in cases of lumbar spine injury and that Mr. C performed an investigation to determine which mattress would help accomplish this goal in his case. Dr. L did not cite the studies that he refers to in drawing this conclusion. Although Dr. L suggests that this particular mattress would significantly relieve the Claimant's symptoms and allow him to have better sleep with fewer interruptions due to the lumbar spine pain, the Claimant failed to offer an opinion supported by evidence-based medicine to justify his recommendation for this specific therapeutic mattress for treatment of the Claimant's compensable low back injury. Based on the evidence presented, Claimant failed to provide an evidence-based medical opinion sufficient to contradict the determination of the IRO and the preponderance of the evidence is not contrary to the decision of the IRO.

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 (Date of Injury), Claimant was the employee of (Employer), when he 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 treating doctor requested the purchase of a Simmons Fayette orthopedic bed, mattress, and box spring for the compensable injury of (Date of Injury).
4. The ODG does not support the purchase of any type of specialized mattress or bedding as treatment for low back pain and the IRO determined that the purchase of a Simmons Fayette orthopedic bed, mattress, and box spring was not medically necessary for the treatment of the Claimant's compensable injury.
5. The Claimant failed to present other evidence based medicine sufficient to overcome the determination of the IRO.
6. The purchase of a Simmons Fayette orthopedic bed, mattress, and box spring is not health care reasonably required for the compensable injury of (Date of Injury).

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-based medical evidence is not contrary to the decision of the IRO that the purchase of a Simmons Fayette orthopedic bed, mattress, and box spring is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to the purchase of a Simmons Fayette orthopedic bed, mattress, and box spring for the compensable injury of (Date of Injury).

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:

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

Signed this 15th day of July, 2011.

Carol A Fougerat
Hearing Officer