

MEDICAL CONTESTED CASE HEARING NO 12017
M6-11-34838-01

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 September 21, 2011 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that Claimant is not entitled to an office visit with Dr. R for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by JT, ombudsman.
Respondent/Carrier was represented by RJ, attorney, who appeared via telephone.

BACKGROUND INFORMATION

On April 11, 2011, Dr. R diagnosed Claimant with discomfort in both shoulders that followed a hemiarthroplasty on the left shoulder in 1997 and right shoulder in 2003. The doctor wrote that the pain was caused in part because Claimant had not been doing a lot of exercises. He recommended that Claimant perform stretching and return for an evaluation in 8 weeks.

Claimant has not yet returned to Dr. R. Two utilization reviewers and an Independent Review Organization (IRO) determined that there was no medical necessity for the examination. Dr. P reviewed Claimant's medical records and wrote on April 14, 2011 that he relied on the *Official Disability Guidelines* (ODG) which would recommend another visit if the visit were medically necessary. He found that Dr. R had not documented the medical necessity for the follow-up on Claimant who is not a candidate for surgery and is already receiving medical and chiropractic management.

Dr. B, relying on the ODG, concurred with Dr. P. He wrote on May 5, 2011 that an assistant to Dr. W agreed that the visit was not medically necessary. Dr. W, who treated Claimant, wrote on May 26, 2011 that Claimant wanted to see Dr. R on a quarterly basis.

On June 2, 2011, an IRO issued a determination upholding the previous adverse determinations. The IRO report indicates that its reviewer is a Texas physician who is certified in physical

medicine and rehabilitation. The reviewer, relying on the ODG, wrote that the request for the visit with Dr. R was not medically necessary as documentation did not support the request.

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 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 for office visits concerning the shoulder:

Recommended as determined to be medically necessary. Evaluation and management (E&M) outpatient visits to the offices of medical doctor(s) play a critical role in the proper diagnosis and return to function of an injured worker, and they should be encouraged. The need for a clinical office visit with a health care provider is individualized based upon a review of the patient concerns, signs and symptoms, clinical stability, and reasonable physician judgment. The determination is also based on what medications the patient is taking, since some

medicines such as opiates, or medicines such as certain antibiotics, require close monitoring. As patient conditions are extremely varied, a set number of office visits per condition cannot be reasonably established. The determination of necessity for an office visit requires individualized case review and assessment, being ever mindful that the best patient outcomes are achieved with eventual patient independence from the health care system through self care as soon as clinically feasible. The ODG Codes for Automated Approval (CAA), designed to automate claims management decision-making, indicates the number of E&M office visits (codes 99201-99285) reflecting the typical number of E&M encounters for a diagnosis, but this is not intended to limit or cap the number of E&M encounters that are medically necessary for a particular patient. Office visits that exceed the number of office visits listed in the CAA may serve as a “flag” to payors for possible evaluation, however, payors should not automatically deny payment for these if preauthorization has not been obtained. *Note:* The high quality medical studies required for treatment guidelines such as ODG provides guidance about specific treatments and diagnostic procedures, but not about the recommended number of E&M office visits. Studies have and are being conducted as to the value of “virtual visits” compared with inpatient visits, however the value of patient/doctor interventions has not been questioned. (Dixon, 2008) (Wallace, 2004) Further, ODG does provide guidance for therapeutic office visits not included among the E&M codes, for example Chiropractic manipulation and Physical/Occupational therapy.

The ODG Codes for Automated Approval are the following:

Codes for Automated Approval

Note: Ideally each claim should be managed based on the details of the case using the Procedure Summary. The codes below are provided for payors without the resources to manage each case, who want to auto-pay the more routine claims based only on the diagnosis and procedure codes.

Table 1 - Diagnoses

ICD9 Code	Name
<u>726.0</u>	Adhesive capsulitis of shoulder
<u>726.1x</u>	Rotator cuff syndrome of shoulder and allied disorders
<u>726.2</u>	Other affections of shoulder region, not elsewhere classified
<u>727.3</u>	Bursitis
<u>727.61</u>	Complete rupture of rotator cuff
<u>831.04</u>	Acromioclavicular joint dislocation
<u>840.x</u>	Sprains and strains of shoulder and upper arm
<u>923.0x</u>	Contusion, Shoulder and upper arm

Table 2 - Procedures Allowed

CPT® Code	Name	Maximum Occurrences
<u>99202</u>	Office/outpatient visit, new	1
<u>99203</u>	Office/outpatient visit, new	
<u>99204</u>	Office/outpatient visit, new	
<u>99282</u>	Emergency dept visit	1
<u>99283</u>	Emergency dept visit	
<u>99212</u>	Office/outpatient visit, est	6
<u>99213</u>	Office/outpatient visit, est	
<u>99214</u>	Office/outpatient visit, est	
<u>99244</u>	Office consult, mod complexity, specialist	1
<u>73030</u>	X-ray exam, shoulder	1
<u>73221</u>	MRI, upper extremity joint	1
<u>20610</u>	Injection	3
<u>97001</u>	Physical therapy evaluation	1
<u>97110</u>	Physical therapy procedure	6
<u>97002</u>	Physical therapy re-evaluation	1
<u>97530</u>	Therapeutic activities/exercises	8
<u>29826</u>	Arthroscopy, shoulder, w/acromioplasty	1*
<u>23410</u>	Repair of ruptured musculotendinous cuff	

* After 3 months of conservative care combined with objective clinical findings

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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.

For hemiarthroplasty, the ODG refers the reader to arthroplasty (shoulder) which provides the following:

Recommended for selected patients. While less common than knee or hip arthroplasty, shoulder arthroplasty is a safe and effective procedure for patients with osteoarthritis or rheumatoid arthritis. (van de Sande, 2006) Caution is advised in worker's compensation patients since outcomes tend to be worse in these patients. (Chen, 2007) In a review of 994 shoulder arthroplasties compared with 15,414 hip arthroplasties and 34,471 knee arthroplasties performed for osteoarthritis, patients who had shoulder arthroplasties had, on average, a lower

complication rate, a shorter length of stay, and fewer total charges. (Farmer, 2007) The most common indication for total shoulder arthroplasty is osteoarthritis, but for hemiarthroplasty it is acute fracture. There was a high rate of satisfactory or excellent results after total shoulder arthroplasty for osteoarthritis, but hemiarthroplasty offered less satisfactory results, most likely related to the use of this procedure for trauma. (Adams, 2007) At a minimum of two years of follow-up, total shoulder arthroplasty provided better functional outcome than hemiarthroplasty for patients with osteoarthritis of the shoulder. (Bryant, 2005) According to a recent study, total shoulder arthroplasty (TSA) allows many patients to participate in sports without significant restriction of their level of activity. They found that, of the patients who took part in sports before having shoulder disease, 89 percent were still able to participate after a mean follow-up of 2.8 years. In addition, of patients that had given up sports before TSA, 65% resumed activities after joint replacement. No patient had to stop participating in sports because of the TSA. Strength and range of motion, as well as the physical component summary of the SF-36, were significantly better in the sports group after TSA than in the nonsports group. (Schumann, 2010)

For average hospital LOS if criteria are met, see Hospital length of stay (LOS).

Claimant relied on the written opinion of Dr. W to show that the IRO is incorrect in determining that Claimant should not be allowed to have a follow-up visit with Dr. R. Dr. W wrote on August 10, 2011 that Claimant should be allowed to continue to be followed by Dr. R concerning Claimant's shoulder. He wrote that Claimant is an "outlier" for whom the ODG does not apply. He did not offer any explanation concerning the conclusion that Claimant is an "outlier".

Claimant failed to meet his burden of proof to provide sufficient evidence based medical evidence to overcome 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, who was the employee of (Employer), sustained a compensable injury.

- C. The Independent Review Organization determined that the requested service was not a reasonable and necessary health care service for the compensable injury of (Date of 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. An office visit with Dr. R is not health care reasonably required for the compensable injury of (Date of Injury) because it is not medically necessary.

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 Independent Review Organization that an office visit with Dr. R is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to an office visit with Dr. R 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 **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY
211 E. 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701**

Signed this 28th day of September, 2011.

CAROLYN F. MOORE
Hearing Officer