

MEDICAL CONTESTED CASE HEARING NO 12044
M6-11-33443-01

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 August 1, 2011 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the IRO decision that Claimant is not entitled to a laryngoscopy, flexible fiberoptic, diagnostic, for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by LM, ombudsman. Respondent/Carrier appeared and was represented by RJ, attorney.

BACKGROUND INFORMATION

Claimant suffered a chemical inhalation injury in the course and scope of her employment on (Date of Injury). Dr. C requested a flexible fiberoptic laryngoscopy to evaluate the Claimant's chronic laryngitis. Two utilization reviews were conducted. Both utilization reviews denied the requests. Claimant appealed the Carrier's decision to an Independent Review Organization (IRO). The IRO upheld the Carrier's denial noting, "There is no indication from the clinical notes that the employee has had any significant changes on physical examination that would reasonably require repeat fiberoptic laryngoscopy at this time." Based on this concern, the IRO found that repeat fiberoptic laryngoscopy is not reasonably required. Claimant 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 (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 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. A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division is considered a party 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. (Division Rule 133.308 (t).)

However, the ODG does not address repeat fiberoptic laryngoscopy. The IRO and the Carrier reviewers all agreed that significant clinical change was necessary to approve the procedure.

To overcome the IRO's decision, Claimant's treating provider, otolaryngologist, LC, M.D. wrote a narrative which stated that:

The fiberoptic laryngoscopy is necessary to assess the patient's hoarseness and dysphagia which Ms. H attributes to trichloroethylene exposure in 1998. On her last visit (3/24/10) I felt reflux contributed to her symptoms and increased Omeprazole to 20 mg bid. In past visits indirect laryngoscopy has been impossible due to a hyperactive gag reflex; consequently the need for fiberoptic laryngoscopy. Pre-authorization for fiberoptic laryngoscopy is requested to determine the dosage of Omeprazole and the determination of whether the patient's symptoms are due to reflux or the 1998 inhalation..."

Dr. C further noted that:

Fibrosopic laryngoscopy is and was medically necessary to evaluate Ms. H symptoms of chronic cough and hoarseness since the exposure to trichloroethylene in 1998. The patient was referred to me to evaluate these

complaints. Ms. H has a hyperactive gag reflex. It is impossible to evaluate her pharyngolarynx without performing fiberoptic laryngoscopy. The ENT exam would have been worthless without it. Did the IRO just want me to look at her throat with a tongue blade and send her away? It is mentioned that fiberoptic laryngoscopy was performed in February and March 2010 without any changes on physical exam to reasonably require a repeat fiberoptic laryngoscopy. This is the point: in order to detect changes on physical exam, you have to do a fibroscopic laryngoscopy. Only with fibroscopic laryngoscopy can her symptoms be evaluated.

Dr. C's written opinion supports the medical necessity of the fibroscopic laryngoscopy. He clearly explained the generally accepted standards of medical practice recognized in the medical community and how the Claimant's continued symptoms required evaluation by fibroscopic laryngoscopy. Dr. C also explained that the only way to determine if there were any changes in the Claimant's condition was to perform a repeat fiberoptic laryngoscopy. The Claimant has shown by a preponderance of the medical evidence that the requested fibroscopic laryngoscopy is health care reasonably required for the compensable injury.

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) East Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - B. On (Date of Injury), Claimant was the employee of (Employer), Employer.
 - C. Claimant sustained a compensable injury on (Date of Injury).
 - D. The Independent Review Organization determined that the requested services were not reasonable and necessary health care services 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. Laryngoscopy, flexible fiberoptic, diagnostic is 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) East Field Office.
3. The preponderance of the evidence is contrary to the decision of the IRO that laryngoscopy, flexible fiberoptic, diagnostic is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is entitled to laryngoscopy, flexible fiberoptic, diagnostic for the compensable injury of (Date of Injury).

ORDER

Carrier is ordered to pay benefits in accordance with this decision, the Texas Workers' Compensation Act, and the Commissioner's Rules. Accrued but unpaid income benefits, if any, shall be paid in a lump sum together with interest as provided by law.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL INSURANCE CORPORATION** and the name and address of its registered agent for service of process is:

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

Signed this 8th day of November, 2011.

Katherine D'Aunno-Buchanan
Hearing Officer