

MEDICAL CONTESTED CASE HEARING NO 12054
M6-11-34931-01

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 November 10, 2011, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to twelve sessions of physical therapy for the cervical spine and left hip for the compensable injury of (Date of Injury)?

PARTIES PRESENT

The petitioner/claimant appeared and was assisted by JM, ombudsman. The respondent/carrier appeared and was represented by JM, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on (Date of Injury) when he had a slip and fall accident at work. Claimant sustained injuries to his cervical spine, left hip, and right hand. In a Decision and Order dated July 26, 2011, the Division found that claimant's injuries extend to include an injury to the left hip consisting of trochanteric bursitis with superficial nerve trauma. Claimant received physical therapy for his cervical spine, consisting primarily of weights/a traction device. According to claimant, he received no treatment for his hip. Claimant has otherwise been treated conservatively for his injuries.

Dr. SY, claimant's treating doctor, requested twelve sessions of physical therapy for claimant's neck and hip, consisting of thermal modalities and deep tissue massage. Physical therapy was denied by the carrier. An Independent Review Organization evaluation was requested.

The Independent Review Organization (IRO), Becket Systems, LLC, upheld the carrier's denial of the physical therapy. According to the IRO report, the IRO reviewer was board certified in Physical Medicine and Rehabilitation. The reviewer indicated that claimant's physician had not provided sufficient reasons why the claimant could not be provided a home therapy program. The reviewer also was unclear how many physical therapy sessions the claimant had to date and

doubted if there would be much functional benefit at this point in his recovery, compared to a daily home exercise program.

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 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 133.208 (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."

On the date of this medical contested case hearing, the ODG provides the following with regard to physical therapy for the cervical spine and hip:

Recommended. Low stress aerobic activities and stretching exercises can be initiated at home and supported by a physical therapy provider, to avoid debilitation and further restriction of motion. For mechanical disorders for the neck, therapeutic exercises have demonstrated clinically significant benefits in terms of pain, functional restoration, and patient global assessment scales. Physical therapy seems to be more effective than general practitioner care on cervical range of motion at short-term follow-up. In a recent high quality study, mobilization appears to be one of the most effective non-invasive interventions for the treatment of both pain and cervical range of motion in the acutely injured WAD patient. A recent high quality study found little difference among

conservative whiplash therapies, with some advantage to an active mobilization program with physical therapy twice weekly for 3 weeks. (Kongstead, 2007) specific physical therapy modalities, as well as exercise.

ODG Physical Therapy Guidelines –

Allow for fading of treatment frequency (from up to 3 visits per week to 1 or less), plus active self-directed home PT. Also see other general guidelines that apply to all conditions under Physical Therapy in the ODG Preface including assessment after a "six-visit clinical trial".

Cervicalgia (neck pain); Cervical spondylosis (ICD9 723.1; 721.0):

9 visits over 8 weeks

Sprains and strains of neck (ICD9 847.0):

10 visits over 8 weeks

ODG Physical Medicine Guidelines –

Allow for fading of treatment frequency (from up to 3 visits per week to 1 or less). Also see other general guidelines that apply to all conditions under Physical Therapy in the ODG Preface.

Sprains and strains of hip and thigh (ICD9 843):

9 visits over 8 weeks

At the CCH, claimant provided no evidence-based medicine in support of his claim. Based on the evidence presented, the claimant failed to meet his burden of overcoming the decision of the IRO by a preponderance of the evidence-based medical evidence and, therefore, the claimant is not entitled to twelve sessions of physical therapy for his cervical spine and left hip for the compensable injury of (Date of 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) Office of the Workers' Compensation Division of the Texas Department of Insurance.
 - B. On (Date of Injury), claimant was the employee of (Employer), Employer.
 - C. On (Date of Injury), claimant sustained a compensable injury.

D. On (Date of Injury), employer provided workers' compensation insurance through Graphic Arts Mutual Insurance Company.

2. The carrier delivered to the claimant a single document stating the true corporate name of the carrier, and the name and street address of the carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. Becket Systems, LLC was appointed to act as Independent Review Organization by the Texas Department of Insurance.
4. The IRO determined that the claimant was not entitled to twelve sessions of physical therapy for the cervical spine and left hip for the compensable injury of (Date of Injury).
5. Twelve sessions of physical therapy for the cervical spine and left hip is not health care reasonably required for the compensable injury of (Date of Injury).

CONCLUSIONS OF LAW

1. The Workers' Compensation Division of the Texas Department of Insurance has jurisdiction to hear this case.
2. Venue is proper in the (City) Office.
3. The preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to twelve sessions of physical therapy for the cervical spine and left hip for the compensable injury of (Date of Injury).

DECISION

The preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to twelve sessions of physical therapy for the cervical spine and left hip 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 **GRAPHIC ARTS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**DAVE CUNNINGHAM
UTICIA MUTUAL INSURANCE COMPANY
2435 N. CENTRAL EXPRESSWAY, SUITE 400
RICHARDSON, TEXAS 75080**

Signed this 5th day of December, 2011.

Carolyn Cheu-Mobley
Hearing Officer