

MEDICAL CONTESTED CASE HEARING NO 12055  
M6-11-35749-01

**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 December 16, 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 12 physical therapy visits over four weeks for the compensable lumbar injury of (Date of Injury)?

**PARTIES PRESENT**

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

**BACKGROUND INFORMATION**

Claimant sustained a compensable lumbar spine injury on (Date of Injury). Claimant has undergone four major lumbar surgeries including a spinal fusion in 1994 and removal of hardware in 1995. Claimant has received treatment in the form of physical therapy and medications. Claimant was involved in a motor vehicle accident on March 23, 2011 and she underwent six weeks of physical therapy following this accident. Claimant stated that she did not sustain additional damage to her lumbar spine as a result of the motor vehicle accident. Claimant's treating doctor has recommended 12 physical therapy visits over four weeks for treatment of her (Date of Injury) lumbar injury. This request was denied by the Carrier and referred to an IRO.

The IRO reviewer, identified as board certified in family practice, determined that, given the clinical data, the requested physical therapy is not indicated as medically necessary. The IRO reviewer noted that the Claimant sustained injuries over 18 years ago and yet there is no comprehensive assessment of treatment completed to date or the patient's response thereto submitted for review. The IRO reviewer went on to state that the Claimant reportedly underwent a recent course of physical therapy; however, the patient's objective, functional response to this therapy is not documented nor was the patient's compliance with a home exercise program documented. Additionally, there are no specific, time-limited treatment goals provided.

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. 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.

#### ODG Physical/Occupational Therapy Guidelines

##### ODG Physical Therapy Guidelines –

Allow for fading of treatment frequency (from up to 3 or more 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".

##### **Lumbar sprains and strains (ICD9 847.2):**

10 visits over 8 weeks

##### **Sprains and strains of unspecified parts of back (ICD9 847):**

10 visits over 5 weeks

##### **Sprains and strains of sacroiliac region (ICD9 846):**

Medical treatment: 10 visits over 8 weeks

**Lumbago; Backache, unspecified (ICD9 724.2; 724.5):**

9 visits over 8 weeks

**Intervertebral disc disorders without myelopathy (ICD9 722.1; 722.2; 722.5; 722.6; 722.8):**

Medical treatment: 10 visits over 8 weeks

Post-injection treatment: 1-2 visits over 1 week

Post-surgical treatment (discectomy/laminectomy): 16 visits over 8 weeks

Post-surgical treatment (arthroplasty): 26 visits over 16 weeks

Post-surgical treatment (fusion, after graft maturity): 34 visits over 16 weeks

**Intervertebral disc disorder with myelopathy (ICD9 722.7)**

Medical treatment: 10 visits over 8 weeks

Post-surgical treatment: 48 visits over 18 weeks

**Spinal stenosis (ICD9 724.0):**

10 visits over 8 weeks

See 722.1 for post-surgical visits

See 722.1 for post-surgical visits

**Fracture of vertebral column without spinal cord injury (ICD9 805):**

Medical treatment: 8 visits over 10 weeks

Post-surgical treatment: 34 visits over 16 weeks

**Fracture of vertebral column with spinal cord injury (ICD9 806):**

Medical treatment: 8 visits over 10 weeks

Post-surgical treatment: 48 visits over 18 weeks

**Work conditioning (See also Procedure Summary entry):**

10 visits over 8 weeks

As noted above, the ODG sets out criteria for physical therapy for the lumbar spine. The Claimant's sustained an injury on (Date of Injury) and her last surgery was performed in 1995. Claimant testified that she continues to suffer from chronic low back pain and muscle spasms and her treating doctor has recommended the therapy to strengthen her inner core muscles. Claimant testified that the therapy will help her lose weight and reduce the amount of medications that she is currently taking. Claimant testified that her doctor has not recommended a home therapy program because she needs supervision and the heat/cold therapy. In a letter dated November 8, 2011, Dr. N, Claimant's current treating doctor, opined that the Claimant would greatly benefit from further physical therapy for core muscle strengthening and stabilization and that the therapy would help with future pain control, rehabilitation and quality of life. Dr. N suggests that the physical therapy would be beneficial for the Claimant's (Date of Injury) lumbar spine injury; however, she failed to present evidence-based medicine to support her opinion that the Claimant requires additional physical therapy exceeding the recommendations in the ODG or how the additional therapy would be reasonable and necessary for a (Date of Injury) injury. Based on the evidence presented, the Claimant does not meet the criteria set out in the ODG for additional physical therapy and the Claimant failed to provide an evidence-based medical opinion contrary to the determination of the IRO. The preponderance of

the evidence is not contrary to the IRO decision that Claimant is not entitled to 12 physical therapy visits over four weeks 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 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).
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. Claimant does not meet the requirements of the ODG for 12 physical therapy visits over four weeks for the compensable injury of (Date of Injury) and she failed to present other evidence-based medicine supporting the necessity for physical therapy exceeding the recommendations in the ODG.
4. Twelve physical therapy visits over four weeks 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) Office.
3. The preponderance of the evidence is not contrary to the decision of the IRO that 12 physical therapy visits over four weeks is not health care reasonably required for the compensable injury of (Date of Injury).

### **DECISION**

Claimant is not entitled to 12 physical therapy visits over four weeks 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** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY  
211 EAST 7th STREET, SUITE 620  
AUSTIN, TX 78701-3232**

Signed this 16th day of December, 2011.

Carol A. Fougerat  
Hearing Officer