

MEDICAL CONTESTED CASE HEARING NO. 12121
M6-12-39878-01

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 5, 2012 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to additional three months rental of IF 8100 stimulation unit and supplies to include CPT codes E0745, A4556, A4630 for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by NT, ombudsman. Respondent/Carrier appeared and was represented by KP, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury to her right shoulder on (Date of Injury). The injury occasioned surgery, a rotator cuff repair with subacromial decompression and bicipital release. Despite post-operative care including physical therapy and 160 hours of a pain management program she continued to complain of pain. Treating physician Dr. J B requested approval of an extra three months of TENS (transcutaneous electrical nerve stimulation) unit rental starting in December 2012. The IRO upheld the previous denials, and Claimant appealed.

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 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."

The ODG provides the following concerning use of TENS for shoulder injury:

Recommended post-stroke to improve passive humeral lateral rotation, but there is limited evidence to determine if the treatment improves pain. (Price, 2000) For other shoulder conditions, TENS units are not supported by high quality medical studies, but they may be useful in the initial conservative treatment of acute shoulder symptoms, depending on the experience of local physical therapy providers available for referral. (Green-Cochrane, 2003) (Verhagen-Cochrane, 2004) For more information, see the Pain Chapter.

The Pain Chapter provides the following concerning use of TENS for shoulder injury:

Shoulder: Recommended for post-stroke rehabilitation.

The Pain Chapter provides the following concerning the use of TENS to treat chronic pain:

Not recommended as a primary treatment modality, but a one-month home-based TENS trial may be considered as a noninvasive conservative option, if used as an adjunct to a program of evidence-based functional restoration, including reductions in medication use, for the conditions described below. While TENS may reflect the long-standing accepted standard of care within many medical communities, the results of studies are inconclusive; the published trials do not provide information on the stimulation parameters which are most likely to provide optimum pain relief, nor do they answer questions about long-term effectiveness. (Carroll-Cochrane, 2001) Several published evidence-based assessments of transcutaneous electrical nerve

stimulation (TENS) have found that evidence is lacking concerning effectiveness. One problem with current studies is that many only evaluated single-dose treatment, which may not reflect the use of this modality in a clinical setting. Other problems include statistical methodology, small sample size, influence of placebo effect, and difficulty comparing the different outcomes that were measured.

The IRO doctor, a board certified orthopedic surgeon, thought the requested treatment was not medically necessary, referring to the ODG entry concerning use of TENS for shoulder surgery. The ODG doctor noted that Claimant was status post surgical intervention on August 22, 2011, that she had participated in physical therapy with improvement in range of motion, that she did not have any atrophy of the shoulder girdle, that she continued to have “subjective complaints of pain”, and that there was no indication her use of TENS so far had resulted in functional improvement or reduction in the need for oral medications.

Claimant testified the TENS unit increased her function and made her pain go away. She pointed to a “medical necessity letter” dated April 19, 2012 from Dr. Tom Mayer. He quoted a short portion of the ODG entry concerning use of TENS to treat chronic pain, stopping after “reductions in medication use” in the first sentence. He also referred to a “meta analysis” identified as “(Johnson, 2007; Novak, 2007; Furlan, 2007)” indicating TENS was found superior to a placebo in decreasing musculoskeletal pain in 35 out of 38 studies.

Claimant failed to overcome the IRO decision by the preponderance of evidence based medical evidence.

There was no objection to the testimony, reports, or qualifications of any doctor.

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), Employer.
 - C. On (Date of Injury) Employer provided workers’ compensation insurance with Workers Compensation Solutions, Carrier.
 - D. On (Date of Injury) Claimant sustained a compensable injury.

- E. The Independent Review Organization determined Claimant should not have the requested treatment.
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. Additional three months rental of IF 8100 stimulation unit and supplies to include CPT codes E0745, A4556, A4630 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 is not contrary to the decision of the IRO that additional three months rental of IF 8100 stimulation unit and supplies to include CPT codes E0745, A4556, A4630 is not health care reasonably required for the compensable injury I of (Date of Injury).

DECISION

Claimant is not entitled to additional three months rental of IF 8100 stimulation unit and supplies to include CPT codes E0745, A4556, A4630 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 Section 408.021 of the Act.

The true corporate name of the insurance carrier is **WORKERS COMPENSATION SOLUTIONS** and the name and address of its registered agent for service of process is

**JERRY EDWARDS
1004 MARBLE HEIGHT DRIVE
MARBLE FALLS, TEXAS 78654**

Signed this 5th day of July, 2012.

Thomas Hight
Hearing Officer