MEDICAL CONTESTED CASE HEARING NO. 12134
M6-12-40283-01

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 27, 2012 to decide the following disputed issues:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that Claimant is not entitled to continuation of chiropractic manipulative therapy 2 to 3 times per week for 4 weeks, then 1 to 2 times per week for 4 weeks for the compensable injury of (Date of Injury)?

2. Has the Claimant waived the right to dispute the decision of the Independent Review Organization by failing to timely request an appeal of that decision as required by Rule 133.308(t)(1)(B)(i)?

PARTIES PRESENT

Petitioner/Claimant, hereafter referred to as "Claimant" appeared and was represented by JG, attorney. Respondent/Carrier, hereafter referred to as "Carrier", appeared and was represented by DO, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant.

For Carrier: None.

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits HO-1 through HO-3.

Claimant's Exhibits C-1 through C-4.

Carrier's Exhibits CR-A through CR-C.

BACKGROUND INFORMATION

Claimant is a 53-year-old truck driver who was struck in the right side of her head by the hood of her truck while assisting to repair the battery. Claimant said that she sustained neck, shoulder and head injuries. Claimant treated with Concentra Medical Center where she received physical therapy through January 25, 2012 when she was released to return to work. On January 26, 2012 she returned to work, but the bouncing of the cab of the truck caused her additional neck pain and she was seen at the emergency room that day. She changed treating physicians to JL, D.C. and beginning February 1, 2010 and had conservative therapy and chiropractic manipulation for 12 visits for diagnoses of cervical, thoracic and shoulder sprain, and cervicobrachial neuralgia. On March 6, 2012, Dr. L recommended the disputed additional care, which was denied by Carrier's utilization reviewers, and denied by the Independent Review Organization (IRO) by report dated April 19, 2012. Claimant filed an appeal of this denial with the Division on July 12, 2012.

With regard to the timely appeal issue, Claimant acknowledged receipt of the report of the IRO but was unable to say when she received notice of the IRO decision. Division records show that the Decision was issued April 19, 2012. The report is presumed to have been received by Claimant five days later, April 24, 2012 absent evidence to the contrary. Pursuant to Rule 133.308(t)(1)(B)(i), Claimant had twenty days to file an appeal, with the result that the appeal received by the Division on July 12, 2012 was 59 days late. Claimant has accordingly waived the right to appeal the IRO denial by filing to timely file her appeal with the Division.

Even though a timely appeal is not found in this case, the medical necessity issue will also be determined. 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."

With regard to the shoulder, the Official Disability Guidelines regarding chiropractic manipulation provide:

> Recommended as indicated below. There is limited evidence to specifically support the utilization of manipulative procedures of the shoulder, but this procedure is routinely applied by chiropractic providers whose scope allows it, and the success of chiropractic manipulation for this may be highly dependent on the patient's previous successful experience with a chiropractor. In general, it would not be advisable to use this modality beyond 2-3 visits if signs of objective progress towards functional restoration are not demonstrated. A recent clinical trial concluded that manipulative therapy for the shoulder girdle in addition to usual medical care accelerates recovery of shoulder symptoms. A recent meta-analysis concluded that there is limited evidence which supports the efficacy of manual therapy in patients with a shoulder impingement syndrome. There is fair evidence for the treatment of a variety of common rotator cuff disorders, shoulder disorders, adhesive capsulitis, and soft tissue disorders using manual and manipulative therapy (MMT) to the shoulder, shoulder girdle, and/or the full kinetic chain combined with or without exercise and/or multimodal therapy. There is limited and insufficient evidence for MMT treatment of minor neurogenic shoulder pain and shoulder osteoarthritis, respectively. According to this systematic review, manipulation performed about the same as steroid injections for frozen shoulder. See also Physical therapy.

ODG Chiropractic Guidelines-

Sprains and strains of shoulder and upper arm:

Allow for fading of treatment frequency (from up to 3 visits per week to 1 or less), plus active self-directed home therapy 9 visits over 8 weeks

With regard to chiropractic manipulation of the neck, the Official Disability Guides recommend as follows:

Recommended as an option. In limited existing trials, cervical manipulation has fared equivocally with other treatments, like mobilization, and may be a viable option for patients with mechanical neck disorders. However, it would not be advisable to use beyond 2-3 weeks if signs of objective progress towards functional restoration are not demonstrated. Further, several reports have, in rare instances, linked chiropractic manipulation of the neck in patients 45 years of age and younger to dissection or occlusion of the vertebral artery. The rarity of cerebrovascular accidents makes any association unclear at this time and difficult to study. A Cochrane Review concluded that there was strong evidence of benefit favoring “multimodal care”, and the common elements in this care strategy were mobilization and/or manipulation plus exercise. In a recent high quality study, no recommendations were made for or against chiropractic manipulation for WAD patients due to limited evidence, in the form of three non-RCTs published since 1993. Overall, mobilization appears to be the most effective non-invasive form of intervention for the treatment of both pain and cervical range of motion in the acutely injured WAD patient. The best evidence synthesis suggests that therapies involving manual therapy and exercise are more effective than alternative strategies for patients with neck pain. Manipulation and home exercises are more effective than medication for relieving neck pain, both in the short and long term, according to results from a new RCT. The manipulation group was assigned to visit a chiropractor for roughly 20-minute sessions throughout the course of the study, making an average of 15 visits. The medication group was assigned to take NSAIDS, acetaminophen, plus opioids and muscle relaxants as necessary. The exercise group met on two occasions with physical therapists who gave them instructions on simple, gentle exercises for the neck that they could do at home, for 5 to 10 repetitions of each exercise up to eight times a day. Researchers were surprised to see that home exercises were about as effective as the chiropractic sessions. In addition to their limited pain relief, the medications had another downside, people in the medication group kept on using a higher amount of medication more frequently throughout the follow-up period, up to a year later, with more systemic side effects. Plus those on medications were not as empowered or active in their own care as those in the other groups. But the UK evidence report concluded that thoracic manipulation/ mobilization is effective for acute/ subacute neck pain, while the evidence

is inconclusive for cervical manipulation/ mobilization alone for neck pain of any duration. *Adverse effects:* Recent evidence casts some doubt concerning a causal relationship for stroke, and there is a similar association between chiropractic services and subsequent vertebrobasilar artery stroke as also observed among patients receiving general practitioner services. Previous studies had suggested more caution concerning the risks of cerebrovascular accidents. Adverse reactions to chiropractic care for neck pain may be common and they appear more likely to follow cervical spine manipulation than mobilization. A recent structured review concluded that the exact incidence of vertebral artery dissection (VAD) and stroke following cervical spine manipulation therapy (CSMT) is unknown, but findings in different studies suggest that these complications are more common than reported in the literature. Since there is a large amount of evidence from many reports regarding an association between neurologic damage and cervical manipulation, and because there are no identifiable risk factors, anyone who receives CSMT can be at risk of neurologic damage. It is important for patients to be well informed before undergoing this kind of procedure and for physicians to recognize the early symptoms of this complication so that catastrophic consequences can be avoided. The most serious problems, which some experts now describe as ‘well-recognized’, are vertebral artery dissections due to intimal tearing as a result of overstretching the artery during rotational manipulation. Most of the incidents reported in case series or surveys had not been previously reported, indicating that under-reporting may frequently be high. These data suggest that spinal manipulation is associated with frequent, mild and transient adverse effects as well as with serious complications that can lead to permanent disability or death. Special caution should be exercised when performing firstline cervical manipulation, and easily understandable information about risks should be included when informed consent is obtained. Therapists should avoid manipulative techniques at all levels of the cervical spine in the presence of any indirect sign of arteriosclerotic disease or in the presence of calcified arterial walls or tortuosities of the vessel. There was an association between chiropractic services and subsequent vertebrobasilar artery stroke in persons under 45 years of age, but a similar association was also observed among patients receiving general practitioner services. This is likely explained by patients with vertebrobasilar artery dissection-related neck pain or headache seeking care before having their stroke.

Intensity of care: There was an independent association between the type and intensity of initial clinical care and time to recovery. Increasing the intensity of care beyond 2 visits to general practitioners, beyond 6 visits to chiropractors, or adding chiropractic to medical care was associated with slower recovery from whiplash injuries even after controlling for initial injury severity. (Cote, 2005) A single cervical manipulation visit may be sufficient in reducing neck pain at rest and in increasing active cervical range of motion, in subjects suffering from mechanical neck pain. Successful outcomes from manipulation are shown in the

first few weeks of treatment, without further improvement after additional treatment: the mean effect size at 6 weeks is 1.63; 1.56 at 12 weeks; and 1.22 from 52 to 104 weeks. A recent high quality study concluded that, although there are few effective treatments of whiplash, increasing evidence suggests that the delivery of intensive healthcare shortly after the injury may lead to iatrogenic disability. Patients who visited general practitioners more than 2 times, visited chiropractors more than 6 times, received combined care from general practitioners and chiropractors, and consulted general practitioners and specialists, all had a longer recovery than patients who visited general practitioners once or twice. Median time to recovery was 323 days in the general medical group, 517 days in the high-utilization general practitioner group, 516 days in the low-utilization general practitioner plus chiropractic group, and 689 days in the high-utilization general practitioner plus chiropractic group. Active Treatment versus Passive Modalities: Manipulation is a passive treatment, but many chiropractors also perform active treatments, and these recommendations are covered under Physical therapy (PT), as well as Education and Exercise. The use of active treatment modalities instead of passive treatments is associated with substantially better clinical outcomes. Active treatments also allow for fading of treatment frequency along with active self-directed home PT, so that fewer visits would be required in uncomplicated cases.

Prevention: An RCT of preventive spinal manipulation with and without a home exercise program compared to no treatment found no differences in outcomes among the three groups.

ODG Chiropractic Guidelines –

Regional Neck Pain:

9 visits over 8 weeks

Cervical Strain (WAD):

Mild (grade I - Quebec Task Force grades): up to 6 visits over 2-3 weeks

Moderate (grade II): Trial of 6 visits over 2-3 weeks

Moderate (grade II): With evidence of objective functional improvement, total of up to 18 visits over 6-8 weeks, avoid chronicity

Severe (grade III & auto trauma): Trial of 10 visits over 4-6 weeks

Severe (grade III & auto trauma): With evidence of objective functional improvement, total of up to 25 visits over 6 months, avoid chronicity

For Whiplash grade III, see also Cervical Nerve Root Compression with Radiculopathy

Cervical Nerve Root Compression with Radiculopathy:

Patient selection based on previous chiropractic success --

Trial of 6 visits over 2-3 weeks

With evidence of objective functional improvement, total of up to 18 visits over 6-8 weeks, if acute, avoid chronicity and gradually fade the patient into active self-directed care

Post Laminectomy Syndrome:

14-16 visits over 12 weeks

The IRO concluded that the request for additional chiropractic therapy exceeded the treatment recommendations established by evidence based medicine as set out in the ODG. As shown in the sections of the ODG set out here, the recommendations are 9 visits for shoulder strain, and 10 for severe neck strain. Claimant has already received 12 chiropractic visits. Although Claimant testified that her pain levels improved, there was no evidence of medically documented functional improvement. No evidence based medical evidence was submitted by Claimant contrary to the recommendations of the ODG. Claimant has failed to show that the preponderance of the evidence is contrary to the findings of the IRO in this situation.

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).

   C. On (Date of Injury), Employer provided workers' compensation insurance through United States Fire Insurance Company.

D. This claim is not covered by a workers compensation healthcare network.

E. Claimant sustained a compensable injury on (Date of Injury).

F. The Independent Review Organization determined that Claimant is not entitled to continuation of chiropractic manipulative therapy 2 to 3 times per week for 4 weeks, then 1 to 2 times per week for 4 weeks 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. Claimant received notice of the IRO decision on April 23, 2012.

4. Claimant filed her appeal of the IRO decision with the Division on July 12, 2012, which was not within 20 days of the date of her receipt of the decision.

5. Continuation of chiropractic manipulative therapy 2 to 3 times per week for 4 weeks, then 1 to 2 times per week for 4 weeks for the compensable injury of (Date of Injury) is not healthcare 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. Claimant waived the right to dispute the decision of the Independent Review Organization by failing to timely request an appeal of that decision as required by Rule 133.308(t)(1)(B)(i).

4. The preponderance of the evidence is not contrary to the decision of he IRO that continuation of chiropractic manipulative therapy 2 to 3 times per week for 4 weeks, then 1 to 2 times per week for 4 weeks for the compensable injury of (Date of Injury) is not healthcare reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to continuation of chiropractic manipulative therapy 2 to 3 times per week for 4 weeks, then 1 to 2 times per week for 4 weeks for the compensable injury of (Date of Injury). Claimant waived the right to dispute the decision of the Independent Review Organization by failing to timely request an appeal of that decision as required by Rule 133.308(t)(1)(B)(i)

ORDER

Carrier is not liable for the benefits at issue in this hearing, and it is so ordered. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **UNITED STATES FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

PAUL DAVID EDGE
6404 INTERNATIONAL PARKWAY, SUITE 1000
PLANO, TEXAS 75093

Signed this 28th day of August, 2012.

Warren E. Hancock, Jr.
Hearing Officer