

MEDICAL CONTESTED CASE HEARING NO. 12136
M6-12-38133-01

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.

ISSUE

A contested case hearing was held on July 26, 2012, with the record closing on August 20, 2012, to decide the following disputed issues:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that Claimant is not entitled to a lumbar medial branch block for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Carrier appeared, and was represented by Attorney BJ. Although Claimant and Petitioner had previously agreed to the setting of the Hearing, they did not attend it. When neither of them responded to the Division's inquiries of August 7, 2012, the record of the Hearing was closed, and this decision was issued.

BACKGROUND INFORMATION

According to her medical records, Claimant sustained a compensable lifting injury to her low back. She has been treated with physical therapy, medication, and epidural steroid injections, and her provider, Petitioner herein, has now recommended that she undergo a lumbar medial branch block, which Provider expects will reduce Claimant's low back pain.

NT, M.D., a doctor retained by Carrier, testified regarding the recommended branch block, noting that it did not meet the ODG standard for performing such a procedure.

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(22-a) 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(18-a) 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, and 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. 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 [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."

With regard to a lumbar medial branch block, the ODG states as follows:

Not recommended except as a diagnostic tool. Minimal evidence for treatment.

Pain Physician 2005: In 2005 *Pain Physician* published an article that stated that there was moderate evidence for the use of lumbar medial branch blocks for the treatment of chronic lumbar spinal pain. (Boswell,2005) This was supported by one study. (Manchikanti, 2001) Patients either received a local anesthetic or a local anesthetic with methyl prednisolone. All blocks included Sarapin. Sixty percent of the patients overall underwent seven or more procedures over the 2½ year study period (8.4 ± 0.31 over 13 to 32 months). There were more procedures recorded for the group that received corticosteroids than those that did not (301 vs. 210, respectively). ["Moderate evidence" is a definition of the quality of evidence to support a treatment outcome according to *Pain Physician*.] The average relief per procedure was 11.9 ± 3.7 weeks.

Pain Physician 2007: This review included an additional randomized controlled trial. (Manchikanti2, 2007) Controlled blocks with local anesthetic were used for the diagnosis (80% reduction of pain required). Four study groups were assigned with 15 patients in each group: (1) bupivacaine only; (2) bupivacaine plus

Sarapin; (3) bupivacaine plus steroid; and (4) bupivacaine, steroid and Sarapin. There was no placebo group. Doses of 1-2ml were utilized. The average number of treatments was 3.7 and there was no significant difference in number of procedures noted between the steroid and non-steroid group. Long-term improvement was only thought to be possible with repeat interventions. All groups were significantly improved from baseline (a final Numeric Rating Scale score in a range from 3.5 to 3.9 for each group). Significant improvement occurred in the Oswestry score from baseline in all groups, but there was also no significant difference between the groups. There was no significant difference in opioid intake or employment status. There was no explanation posited of why there was no difference in results between the steroid and non-steroid groups. This study was considered positive for both short- and long-term relief, although, as noted, repeated injections were required for a long-term effect. Based on the inclusion of this study the overall conclusion was changed to suggest that the evidence for therapeutic medial branch blocks was moderate for both short- and long-term pain relief. (Boswell2, 2007) Psychiatric comorbidity is associated with substantially diminished pain relief after a medial branch block injection performed with steroid at one-month follow-up. These findings illustrate the importance of assessing comorbid psychopathology as part of a spine care evaluation. (Wasan, 2009) The use of the blocks for diagnostic purposes is discussed in Facet joint diagnostic blocks (injections). See also Facet joint intra-articular injections (therapeutic blocks).

Inasmuch as the ODG recommends the proposed block only for diagnostic purposes, and Provider has actually recommended it for the purpose of treatment,¹ it appears that the recommended block does not comport with the ODG, and therefore can not be approved unless Provider's recommendation is supported by the necessary preponderance of evidence-based medical evidence. As the documentation offered on behalf of Petitioner and Claimant consists solely of Claimant's medical records, setting forth her symptoms, diagnoses, and activity limits, and references no persuasive evidence-based study supporting a medial branch block as an effective treatment option, a decision in favor of Carrier will be entered as to the sole issue presented for resolution in this matter.

Even though all the evidence presented may not have been discussed in detail, it was considered; the Findings of Fact and Conclusions of Law are based on all of the evidence presented.

¹ Compare, Claimant's Exhibit 3, p.1 and Claimant's Exhibit 3, p. 2. Notwithstanding the contrary indication on page 2, the initial page indicates that the block is being recommended for treatment purposes. See, also, Claimant's Exhibit 3, p. 4.

FINDINGS OF FACT

1. On (Date of Injury), Claimant was employed by (Employer), Employer.
2. On (Date of Injury), Employer subscribed to a policy of workers' compensation insurance issued by the Texas Mutual Insurance Company, Carrier.
3. On (Date of Injury), Claimant's residence was located within seventy-five miles of the (City) office of the Texas Department of Insurance, Division of Workers' Compensation.
4. The Division mailed Petitioner and 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 1.
5. On (Date of Injury), Claimant sustained damage or harm to the physical structure of her body while she was within the course and scope of her employment with Employer.
6. The injury referenced in the previous Finding of Fact arose out of Claimant's employment with Employer.
7. A lumbar medial branch block is not health care reasonably required for Claimant's 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-based medicine is not contrary to the decision of the Independent Review Organization that a lumbar medial branch block is not health care reasonably required for Claimant's compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to a lumbar medial branch block for her 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 the **TEXAS MUTUAL INSURANCE COMPANY**. The name and address of Carrier's registered agent for service of process is:

**RON O. WRIGHT, PRESIDENT
TEXAS MUTUAL INSURANCE COMPANY
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723**

Signed this 7th day of September, 2012.

Ellen Vannah
Hearing Officer