

MEDICAL CONTESTED CASE HEARING NO. 13012
M6-12-41122-01

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 October 26, 2012 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to hardwood flooring throughout her home for the compensable injury of (Date of Injury)?

At Claimant's request and with no objection from Carrier the requested medical care was limited to hardwood flooring in the living room, den, and office of Claimant's home.

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by RB, ombudsman. Respondent/Carrier appeared and was represented by PS, attorney.

BACKGROUND INFORMATION

Claimant injured her left knee on (Date of Injury) when she fell on ice. She has continued to have problems using her left knee since then. She uses a walker. She testified she has fallen three times at home because it is difficult to use the walker on the carpets. Dr SF recommended hardwood floors. The IRO upheld the previous denials of this request.

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 durable medical equipment, knee injury:

Recommended generally if there is a medical need and if the device or system meets Medicare's definition of durable medical equipment (DME) below... Medical conditions that result in physical limitations for patients may require patient education and modifications to the home environment for prevention of injury, but environmental modifications are considered not primarily medical in nature.

The term DME is defined as equipment which:

- (1) Can withstand repeated use, i.e., could normally be rented, and used by successive patients;
- (2) Is primarily and customarily used to serve a medical purpose;
- (3) Generally is not useful to a person in the absence of illness or injury; &
- (4) Is appropriate for use in a patient's home. (CMS, 2005)

As the IRO doctor concluded, hardwood flooring in the home does not meet the ODG definition of durable medical equipment. This would apply to a request for hardwood flooring in one, more, or all rooms in the home.

Claimant testified she really needs the hardwood flooring to help her get around using her walker. There were reports from treating physicians supporting Claimant's need for hardwood flooring. There was no showing of evidence based medical evidence to overcome the decision of the IRO.

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 The Travelers Indemnity Company of Connecticut, Carrier.
 - D. On (Date of Injury) Claimant sustained a compensable injury.
 - E. The Independent Review Organization determined Claimant should not have hardwood flooring throughout home 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. Hardwood flooring throughout Claimant's home is not health care reasonably required for the compensable injury of (Date of Injury).
4. Hardwood flooring in the living room, den, or office of Claimant's home 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 hardwood flooring throughout Claimant's home is not health care reasonably required for the compensable injury of (Date of Injury).

4. Hardwood flooring in the living room, den, or office of Claimant's home is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to hardwood flooring in the living room, den, or office of her home 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 **THE TRAVELERS INDEMNITY COMPANY OF CONNECTICUT**, and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
D/B/A CSC – LAWYERS INCORPORATING SERVICE COMPANY
211 EAST 7th STREET, SUITE 620
AUSTIN, TEXAS 78701**

Signed this 26th day of October, 2012.

Thomas Hight
Hearing Officer