

MEDICAL CONTESTED CASE HEARING NO. 13085

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 April 2, 2013, with the record closing on April 17, 2013, to decide the following disputed issue:

Is the preponderance of the evidence-based medical evidence contrary to the decision of the Independent Review Organization that Claimant is not entitled a continued chronic pain management program, five times per week for two weeks, for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Self-insured appeared, and was represented by Attorney ST. Neither Claimant nor Petitioner either attended the Contested Case Hearing or advised the Division of their intent with regard to this case. When they failed to timely respond to the Division's inquiry of April 2, 2013, the record of the Hearing was closed, and this decision was issued.

BACKGROUND INFORMATION

Claimant sustained a compensable knee injury, and was recommended to undergo a chronic pain management program.

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."

As noted above, the party or parties appealing the IRO decision, Petitioner and Claimant herein, bear the burden of proof. Since they did not present evidence-based medical evidence in support of their position, the Division has no choice but to decide the issue presented in favor of Self-insured Respondent.

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.

FINDINGS OF FACT

1. On (Date of Injury), Claimant was employed by (Self-Insured), Employer.
2. On (Date of Injury), Employer was self-insured for workers' compensation purposes.
3. On (Date of Injury), Claimant's residence was located within seventy-five miles of the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
4. The Division mailed to Claimant and Petitioner a single document stating the true corporate name of Self-insured, and the name and street address of Self-insured's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
5. On (Date of Injury), Claimant sustained damage or harm to the physical structure of his body while he was within the course and scope of his employment with Employer.
6. The injury referenced in the previous Finding of Fact arose out of Claimant's employment with Employer.

7. A continued chronic pain management program, five times per week for two weeks, 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 continued chronic pain management program, five times per week for two weeks, for Claimant's compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to a continued chronic pain management program, five times per week for two weeks, for the compensable injury of (Date of Injury).

ORDER

Self-insured 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 self-insured is **(SELF-INSURED)**. The name and address of Self-insured's registered agent for service of process is:

(SELF-INSURED)
(STREET)
(CITY), TEXAS (ZIP CODE)

Signed this 22nd day of April, 2013.

Ellen Vannah
Hearing Officer