

MEDICAL CONTESTED CASE HEARING NO. 13017
M6-12-41640-01

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 November 02, 2012, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO board certified physician in Physical Medicine and Rehabilitation that Claimant is not entitled to physical therapy 3x/week for 4-6 weeks for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by EJ, ombudsman.
Respondent/Carrier appeared and was represented by HF, attorney.

BACKGROUND INFORMATION

On (Date of Injury), Claimant was rear-ended while driving in the course and scope of her employment. Claimant has undergone conservative treatment including several weeks of physical therapy, trigger point injections and epidural steroid injections for her cervical injury. Her current Treating Doctor, CM, M.D., has recommended additional physical therapy 3x/week for 4-6 weeks for the compensable injury of (Date of Injury). Carrier denied the treatment and the dispute was sent to the IRO. The IRO doctor who is board certified in Physical Medicine and Rehabilitation determined physical therapy at 3x/week for 4-6 weeks is not health care reasonably required for the compensable injury of (Date of Injury). Claimant is disputing the IRO doctor's determination.

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. 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, 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. (Division Rule 133.308 (t).)

Under the Official Disability Guidelines in reference to physical therapy for a cervical injury, the following recommendation is made:

ODG Physical Therapy Guidelines –

Allow for fading of treatment frequency (from up to 3 visits per week to 1 or less), plus active self-directed home PT. Also see other general guidelines that apply to all conditions under Physical Therapy in the ODG Preface, including assessment after a "six-visit clinical trial".

Cervicalgia (neck pain); Cervical spondylosis (ICD9 723.1; 721.0):

9 visits over 8 weeks

Sprains and strains of neck (ICD9 847.0):

10 visits over 8 weeks

Displacement of cervical intervertebral disc (ICD9 722.0):

Medical treatment: 10 visits over 8 weeks

Post-injection treatment: 1-2 visits over 1 week

Post-surgical treatment (discectomy/laminectomy): 16 visits over 8 weeks

Post-surgical treatment (fusion, after graft maturity): 24 visits over 16 weeks

Degeneration of cervical intervertebral disc (ICD9 722.4):

10-12 visits over 8 weeks

The extent of the accepted cervical injury is not documented in any of the evidence but Dr. M diagnoses “Cervical disc, C3-C6, worse at C5-6.” Claimant has not had surgery. She has had epidural steroid injections. She testified she had about a week of physical therapy with Concentra; “quite a few weeks” with her next treating doctor, Dr. SR; and then two more weeks of physical therapy with Dr. M when he became her Treating Doctor.

The IRO doctor noted this request for physical therapy at 3x a week for 4-6 weeks well exceeds the recommended number of visits for degeneration of the cervical disc which recommends 10-12 visits over eight weeks. Claimant has had well over that amount of physical therapy to this point.

Dr. M wrote in his medical record of October 04, 2012, why Claimant should receive these treatments and notes two articles and one book to support his opinion. Since his report is written three months after the IRO report (July 12, 2012) it cannot be considered per pertinent medical contested case hearing decisions. Even if it could be considered, the medical articles mentioned by Dr. M do not discuss why Claimant should have more physical therapy than what is recommended in the Official Disability Guidelines. The use of these articles he relied upon is not persuasive and did not overcome the decision of the IRO.

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 the City of (City), Employer.
 - C. On (Date of Injury), Employer provided workers’ compensation insurance as a Self-Insurer.
 - D. On (Date of Injury), Claimant sustained a compensable injury.
 - E. The Independent Review Organization board certified physician in Physical Medicine and Rehabilitation determined Claimant should not have physical therapy 3x/week for 4-6 weeks.
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. Physical therapy 3x/week for 4-6 weeks 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 board certified physician in Physical Medicine and Rehabilitation that physical therapy 3x/week for 4-6 weeks is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to physical therapy 3x/week for 4-6 weeks 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 §408.021.

The true corporate name of the insurance carrier is **CITY OF (CITY), SELF-INSURED** and the name and address of its registered agent for service of process is

(NAME)
CITY SECRETARY, CITY OF (CITY)
(ADDRESS)
(CITY) (TEXAS) (ZIP)

Signed this 5th day of November, 2012.

KEN WROBEL
Hearing Officer