

MEDICAL CONTESTED CASE HEARING NO. 13021

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 November 1, 2012 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to a follow-up office visit with Dr. R W for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by SL, ombudsman.
Respondent/Carrier was represented by GM, attorney.

BACKGROUND INFORMATION

On (Date of Injury), Claimant sustained a compensable injury when he was walking down a flight of stairs and tripped over some wires. As a result of the compensable injury, Claimant had surgery to his left ankle and right knee. Claimant testified that he continues to have pain and that it is necessary for him to see his treating physician in order to refill his prescription medication to control the pain and inflammation to his knee and ankle. The request for the follow-up office visit was denied by the Carrier and referred to an IRO who upheld the Carrier's denial.

The IRO reviewer, a physician Board Certified in Orthopedic Surgery, noted the medical records he reviewed. The reviewer noted that the Official Disability Guidelines (ODG) recommends 6 office visits and that the type of injury sustained by the Claimant did not require ongoing use of narcotic medication.

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 in making decisions about the care of individual patients. 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 requested office visit, the ODG states as follows:

Recommended as determined to be medically necessary. Evaluation and management (E&M) outpatient visits to the offices of medical doctor(s) play a critical role in the proper diagnosis and return to function of an injured worker, and they should be encouraged. The need for a clinical office visit with a health care provider is individualized based upon a review of the patient concerns, signs and symptoms, clinical stability, and reasonable physician judgment. The determination is also based on what medications the patient is taking, since some medicines such as opiates, or medicines such as certain antibiotics, require close monitoring. As patient conditions are extremely varied, a set number of office visits per condition cannot be reasonably established. The determination of necessity for an office visit requires individualized case review and assessment, being ever mindful that the best patient outcomes are achieved with eventual patient independence from the health care system through self care as soon as clinically feasible. The ODG Codes for Automated Approval (CAA), designed to automate claims management decision-making, indicates the number of E&M office visits (codes 99201-99285) reflecting the typical number of E&M encounters for a diagnosis, but this is not intended to limit or cap the number of

E&M encounters that are medically necessary for a particular patient. Office visits that exceed the number of office visits listed in the CAA may serve as a “flag” to payors for possible evaluation, however, payors should not automatically deny payment for these if preauthorization has not been obtained. *Note:* The high quality medical studies required for treatment guidelines such as ODG provides guidance about specific treatments and diagnostic procedures, but not about the recommended number of E&M office visits. Studies have and are being conducted as to the value of “virtual visits” compared with inpatient visits, however the value of patient/doctor interventions has not been questioned. (Dixon, 2008) (Wallace, 2004) Further, ODG does provide guidance for therapeutic office visits not included among the E&M codes, for example Chiropractic manipulation and Physical/Occupational therapy.

Claimant relied on his testimony and various medical reports in support of his position that the follow-up office visit is necessary to obtain prescription medication is reasonable and necessary. The IRO physician opined that the patient’s diagnoses do not require prolonged use of narcotic medication. Based on the evidence presented, Claimant did not meet his burden to establish by a preponderance of evidence-based medical evidence that the health care at issue was reasonably required for his compensable injury of (Date of Injury).

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.
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. The IRO determined that the requested service was not reasonable and necessary health care for the compensable injury of (Date of Injury).

4. The preponderance of the evidence-based medical evidence is not contrary to the IRO decision.

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 Claimant is not entitled to a follow-up office visit with Dr. R W for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to one follow-up office visit with Dr. R W 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

**MAYOR OF THE CITY OF (CITY)
(ADDRESS)
(CITY) (STATE) (ZIP)**

Signed this 6th day of November, 2012.

Teresa G. Hartley
Hearing Officer