MEDICAL CONTESTED CASE HEARING NO. 13099

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 spinal surgery contested case hearing was May 30, 2013, 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 hardware removal at L5-S1 with decompression laminectomy L4-5 with posterior lateral fusion and instrumentation at L4-5 with three-day inpatient stay for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by ombudsman DM. Respondent/Carrier appeared and was represented by attorney CL.

BACKGROUND INFORMATION

Claimant sustained a compensable injury, which included his low back, on (Date of Injury). He had surgery in 1997 for a herniated disc and in 1998, he had an anterior lumbar interbody fusion. On October 8, 2007, he had a posterolateral instrumentation with pedicle screws L5-S1, posterolateral fusion and repeat posterior decompressive laminectomy L5-S1 on the left. A pain-free state was never achieved and by the end of 2011, he was complaining of increasing low back pain and burning radiation into the right lower extremity and complaint of weakness in the lower extremity.

Claimant's surgeon, Dr. M, M.D., recommended spinal surgery consisting of hardware removal at L5-S1 with decompression laminectomy L4-5 with posterior lateral fusion and instrumentation at L4-5 with three-day inpatient stay.

The IRO reviewer, an M.D., Board Certified Neurological Surgeon upheld the previous adverse determination and found that medical necessity did not exist for hardware removal at L5-S1 with decompression laminectomy L4-5 with posterior lateral fusion and instrumentation at L4-5 with three-day inpatient stay.

EVIDENCE BASED MEDICINE

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 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 IRO doctor’s analysis and explanation for denial of the requested surgical procedures was as follows:

> The Claimant reportedly was injured in (Date of Injury). He has a history of previous L5-S1 fusion. He developed non-union at the L5-S1 level and underwent revision surgery in 2007 with repeat decompressive laminectomy at the L5-S1 level with posterior lateral fusion and posterior lateral instrumentation at L5-S1. He continued to complain of low back pain and buttock or leg pain. The most recent progress note dated 06/21/12 did not include a detailed physical

examination. Most recent imaging study submitted for review was over two years old being performed on 06/11/10. This study revealed post-operative changes at L5-S1. At the L4-5 level there was mild bilateral L4-5 neural foraminal narrowing reported mainly due to moderate bilateral facet disease. No radiology report was submitted of flexion extension films demonstrating motion segment instability at the L4-5 level. The reviewer finds that medical necessity does not exist for hardware removal at L5-S1 with decompression laminectomy L4-5 with posterior lateral fusion and instrumentation at L4-5 w/3 day inpatient stay.

THE ODG APPLICABLE

The Official Disability Guidelines (ODG) states the following regarding lumbar spinal fusion:

Patient Selection Criteria for Lumbar Spinal Fusion:
For chronic low back problems, fusion should not be considered within the first 6 months of symptoms, except for fracture, dislocation or progressive neurologic loss. Indications for spinal fusion may include:

(1) Neural Arch Defect - Spondylolytic spondylolisthesis, congenital neural arch hypoplasia
(2) Segmental Instability (objectively demonstrable) - Excessive motion, as in degenerative spondylolisthesis, surgically induced segmental instability and mechanical intervertebral collapse of the motion segment and advanced degenerative changes after surgical discectomy. [For excessive motion criteria, see AMA Guides, 5th Edition, page 384 (relative angular motion greater than 20 degrees). (Andersson, 2000) (Luers, 2007)]
(3) Primary Mechanical Back Pain (i.e., pain aggravated by physical activity)/Functional Spinal Unit Failure/Instability, including one or two level segmental failure with progressive degenerative changes, loss of height, disc loading capability. In cases of workers' compensation, patient outcomes related to fusion may have other confounding variables that may affect overall success of the procedure, which should be considered. There is a lack of support for fusion for mechanical low back pain for subjects with failure to participate effectively in active rehab pre-op, total disability over 6 months, active psych diagnosis, and narcotic dependence. [For spinal instability criteria, see AMA Guides, 5th Edition, page 379 (lumbar inter-segmental movement of more than 4.5 mm). (Andersson, 2000)]
(4) Revision Surgery for failed previous operation(s) if significant functional gains are anticipated. Revision surgery for purposes of pain relief must be approached with extreme caution due to the less than 50% success rate reported in medical literature.

(5) Infection, Tumor, or Deformity of the lumbosacral spine that cause intractable pain, neurological deficit and/or functional disability.
(6) After failure of two discectomies on the same disc, fusion may be an option at the time of the third discectomy, which should also meet the ODG criteria. (See ODG Indications for Surgery -- Discectomy.)

Pre-Operative Surgical Indications Recommended: Pre-operative clinical surgical indications for spinal fusion should include all of the following:
(1) All pain generators are identified and treated; &
(2) All physical medicine and manual therapy interventions are completed; &
(3) X-rays demonstrating spinal instability and/or myelogram, CT-myelogram, or discography (see discography criteria) & MRI demonstrating disc pathology; &
(4) Spine pathology limited to two levels; &
(5) Psychosocial screen with confounding issues addressed
(6) For any potential fusion surgery, it is recommended that the injured worker refrain from smoking for at least six weeks prior to surgery and during the period of fusion healing. (Colorado, 2001) (BlueCross BlueShield, 2002).

With regard to hardware removal, the ODG provides:

> Hardware implant removal (fixation) – Not recommended the routine removal of hardware implanted for fixation, except in the case of broken hardware or persistent pain, after ruling out other causes of pain such as infection and nonunion. Not recommended solely to protect against allergy, arcinogenesis, or metal detection. Although hardware removal is commonly done, it should not be considered a routine procedure. The decision to remove hardware has significant economic implications, including the costs of the procedure as well as possible work time lost for postoperative recovery, and implant removal may be challenging and lead to complications, such as neurovascular injury, refracture or recurrence of deformity. The routine removal of orthopaedic fixation devices after healing remains an issue of debate, but implant removal in symptomatic patients is rated to be moderately effective.

At the May 30, 2013, CCH, Claimant presented recent imaging studies consisting of March 7, 2013, X-ray lumbar spine. The findings of the five views of the lumbar spine showed anterior and posterior spinal fusion L5-S1 without hardware complications. The anterior and posterior spinal fusion L5-S1 showed "satisfactory alignment and there was no instability with flexion or extension." Claimant presented no evidence that would overcome the findings of the IRO reviewer and the preponderance of the evidence is that the recommended spinal surgery is not health care reasonably necessary for the 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 (Employer), Employer.

   C. On (Date of Injury), Employer provided workers' compensation insurance through Carrier The Travelers Indemnity Company of Connecticut.

   D. Claimant sustained a compensable spinal injury on (Date of Injury).

   E. The Independent Review Organization determined that Claimant should not have spinal surgery in the form of hardware removal at L5-S1 with decompression laminectomy L4-5 with posterior lateral fusion and instrumentation at L4-5 with 3-day inpatient stay.

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 requested spinal surgery in the form of hardware removal at L5-S1 with decompression laminectomy L4-5 with posterior lateral fusion and instrumentation at L4-5 with 3-day inpatient stay 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 Claimant is not entitled to spinal surgery in the form of hardware removal at L5-S1 with decompression laminectomy L4-5 with posterior lateral fusion and instrumentation at L4-5 with 3-day inpatient stay for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to spinal surgery in the form of hardware removal at L5-S1 with decompression laminectomy L4-5 with posterior lateral fusion and instrumentation at L4-5 with 3-day inpatient stay 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 **THE TRAVELERS INDEMNITY COMPANY OF CONNECTICUT,** and the name and address of its registered agent for service of process is:

CORPORATION SERVICE CO. d/b/a
CSC – LAWYERS INCORPORATING SERVICE CO.
211 EAST 7TH STREET
STE. 620
AUSTIN, TX 78701-3218

Signed this 30th day of May, 2013

Cheryl Dean
Hearing Officer