

MEDICAL CONTESTED CASE HEARING NO. 14005

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 September 23, 2013, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to post acute brain injury rehabilitation 5 days per week, cognitive therapy, 7 days per week behavioral therapy and medical management for 60 days for the compensable injury of (Date of Injury)?

PARTIES PRESENT

The petitioner/claimant and her guardian were excused from appearing. They were represented by GR, attorney. The respondent/carrier appeared and was represented by CA, attorney.

EVIDENCE PRESENTED

Witnesses for Claimant/Petitioner: RT, MD

Witnesses for Carrier/Respondent: DG, D.O.

Hearing Officer's Exhibits HO-1A, HO-1B and HO-2.

Evidence for Claimant/Petitioner: Exhibits CL-1 through CL-15.

Evidence for Carrier/Respondent: Exhibits CR-A through CR-C.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on (Date of Injury), when she was involved in a serious automobile accident. She is currently an inpatient at the (Healthcare Provider). Dr. RT requested post acute brain injury rehabilitation 5 days per week, cognitive therapy, 7 days per week behavioral therapy and medical management for 60 days for the compensable injury of (Date of Injury). Carrier denied the request. Dr. DG, peer review doctor, testified that he attempted to

discuss the requested treatment with Dr. T; however, Dr. T did not return his call. The Independent Review Organization (IRO), Core 400, LLC, upheld the Carrier's denial of the requested health care. According to the IRO report, the IRO reviewer was a board certified neurologist. The reviewer indicated that from the documentation submitted by the treating physician, it was unclear why, in the inpatient setting, Claimant required 60 days of intensive medical management versus a less intensive program. Further, Claimant's behavior was noted to be generally compliant with treatment programs, so five days per week of cognitive therapy was questioned. There was, overall, insufficient documentation to support the need for the treatment programs.

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 (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(s), "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."

At the Contested Case Hearing, Claimant was unable to provide evidence-based medicine in support of her claim. Claimant's physician, Dr. RT, testified that Claimant has problems with thinking, memory and behavioral control. He has recommended the requested therapies in order to help Claimant improve her cognition and behavior so that she is not a danger to herself and others. He was unaware of the Official Disability Guidelines and how they relate to Claimant's diagnoses and requested treatment. Dr. T further indicated that there were evidence-based studies to support this position; however, these were not in evidence and Dr. T was unable to recall any specifically. He was unable to clarify what would be different about these methods from the treatment she is already receiving at her long-term care facility. Based on the evidence presented, the Claimant did not meet her burden of overcoming the decision of the IRO by a preponderance of the evidence-based medical evidence and, therefore, the claimant is not entitled to post acute brain injury rehabilitation 5 days per week, cognitive therapy, 7 days per week behavioral therapy and medical management for 60 days 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 Workers' Compensation Division of the Texas Department of Insurance.
 - B. On (Date of Injury), Claimant was the employee of (Employer).
 - C. On (Date of Injury), Claimant sustained a compensable injury.
 - D. On (Date of Injury), Employer provided workers' compensation insurance to its employees through Security National Insurance Company, Carrier.
2. The Carrier delivered to the Claimant a single document stating the true corporate name of the Carrier, and the name and street address of the Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. Core 400, LLC was appointed to act as Independent Review Organization by the Texas Department of Insurance.
4. The IRO determined that the claimant was not entitled to post acute brain injury rehabilitation 5 days per week, cognitive therapy, 7 days per week behavioral therapy and medical management for 60 days for the compensable injury of (Date of Injury).

5. Claimant did not provide evidence-based medical evidence in support of her requested treatment.
6. Post acute brain injury rehabilitation 5 days per week, cognitive therapy, 7 days per week behavioral therapy and medical management for 60 days is not health care reasonably required for the compensable injury of (Date of Injury).

CONCLUSIONS OF LAW

1. The Workers' Compensation Division of the Texas Department of Insurance 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 Independent Review Organization (IRO) that the claimant is not entitled to post acute brain injury rehabilitation 5 days per week, cognitive therapy, 7 days per week behavioral therapy and medical management for 60 days for the compensable injury of (Date of Injury).

DECISION

The preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to post acute brain injury rehabilitation 5 days per week, cognitive therapy, 7 days per week behavioral therapy and medical management for 60 days for the compensable injury of (Date of Injury).

ORDER

Carrier is not liable for the benefits at issue in this hearing, and it is so ordered. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **SECURITY NATIONAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**RONALD HENRY
12790 MERIT DRIVE, TOWER 9, 3RD FLOOR
DALLAS, TEXAS 75251**

Signed this 23rd day of September, 2013.

Carolyn Cheu Mobley
Hearing Officer