

MEDICAL CONTESTED CASE HEARING 14082

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and the Rules of the Texas Department of Insurance, Division of Workers' Compensation. For the reasons discussed herein, the Hearing Officer determines that Claimant is not entitled to a left C4-7 medial branch block for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On August 21, 2014, Carol A. Fougerat, a Division hearing officer, held a contested case hearing to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to a left C4-7 medial branch block for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared without representation. Respondent/Carrier appeared and was represented by CF, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant

For Carrier: None

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits: HO-1 and HO-2

Claimant's Exhibits: C-1

Carrier's Exhibits: CR-A through CR-J

DISCUSSION

Claimant sustained a compensable injury to her bilateral shoulders/upper extremities and cervical spine on (Date of Injury). Claimant testified that she underwent a cervical fusion at C4-5 in 2002 and C5-6 in 2006. On May 19, 2008, Claimant underwent an MRI of the cervical spine which

revealed findings of discogenic disease with ventral cord impingement and minimal deformity at C3-4 and discogenic disease at C6-7 producing ventral cord impingement without gross deformity. Claimant's treating doctor, Dr. D, has recommended a left C4 through C7 medial branch block. The request was denied by the Carrier and subsequently referred to an IRO. The IRO reviewer, identified as a board certified anesthesiologist, upheld the Carrier's denial. The IRO reviewer noted that Claimant has a 15-year-old injury without prior treatment history and, while physical examination shows that Claimant presents with pain, there is no recent radiographic evidence to support a diagnosis of facet joint pain. The IRO reviewer referred to the Official Disability Guidelines (ODG) criteria for medial branch blocks which indicate there must be documentation of response to previous injections to justify a cervical branch block. The IRO reviewer concluded by stating that the requested procedure was not recommended as medically necessary at this time.

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."

ODG criteria for the use of diagnostic blocks for facet nerve pain:

Clinical presentation should be consistent with facet joint pain, signs & symptoms.

1. One set of diagnostic medial branch blocks is required with a response of $\geq 70\%$. The pain response should be approximately 2 hours for Lidocaine.
2. Limited to patients with cervical pain that is non-radicular and at no more than two levels bilaterally.
3. There is documentation of failure of conservative treatment (including home exercise, PT and NSAIDs) prior to the procedure for at least 4-6 weeks.
4. No more than 2 joint levels are injected in one session (see above for medial branch block levels).
5. Recommended volume of no more than 0.5 cc of injectate is given to each joint, with recent literature suggesting a volume of 0.25 cc to improve diagnostic accuracy.
6. No pain medication from home should be taken for at least 4 hours prior to the diagnostic block and for 4 to 6 hours afterward.
7. Opioids should not be given as a "sedative" during the procedure.
8. The use of IV sedation may be grounds to negate the results of a diagnostic block, and should only be given in cases of extreme anxiety.
9. The patient should document pain relief with an instrument such as a VAS scale, emphasizing the importance of recording the maximum pain relief and maximum duration of pain. The patient should also keep medication use and activity logs to support subjective reports of better pain control.
10. Diagnostic facet blocks should not be performed in patients in whom a surgical procedure is anticipated.
11. Diagnostic facet blocks should not be performed in patients who have had a previous fusion procedure at the planned injection level.
12. It is currently not recommended to perform facet blocks on the same day of treatment as epidural steroid injections or stellate ganglion blocks or sympathetic blocks or trigger point injections as this may lead to improper diagnosis or unnecessary treatment.

Claimant testified that she underwent a medial branch block in 2012, and that this procedure eliminated 85-90% of her pain for almost two years. Claimant testified that oral pain medication was not effective and that the blocks alleviated the necessity for daily pain medication. Claimant testified that she continues to experience cervical pain and upper extremity symptoms as a result of her cervical spine condition. The ODG recommendations indicate that diagnostic facet blocks should not be performed in patients who have had a previous fusion procedure at the planned injection level and Claimant has had fusions at the C4-5 and C5-6 levels. The ODG criteria also recommend that the use of diagnostic blocks for facet nerve pain be limited to patients with cervical pain that is non-radicular and at no more than two levels bilaterally. In this appeal of the IRO, Dr. D requested to inject three levels, C4-C7. The IRO reviewer noted that Claimant has a 15-year-old injury without prior treatment history and that there is no recent radiographic evidence to support a diagnosis of facet joint pain. Claimant testified that Dr. D requested a repeat MRI of the cervical spine; however, that request was denied and she has not undergone an MRI of the cervical spine since 2008. It appears that there were minimal medical records submitted to the IRO for review, either by the treating doctor or the Carrier.

Based on the evidence presented at this hearing, Claimant does not meet the criteria set out in the ODG for a left C4-7 medial branch block and the Claimant failed to provide an evidence-based medical opinion contrary to the determination of the IRO. The preponderance of the evidence is not contrary to the IRO decision that Claimant is not entitled to a left C4-7 medial branch block for treatment of the compensable injury of (Date of Injury).

The Hearing Officer considered all of the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all of the evidence whether or not the evidence is specifically discussed in this Decision and Order.

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. Claimant sustained a compensable injury on (Date of Injury).
 - D. The IRO determined that the proposed left C4-7 medial branch block is not medically necessary for the compensable injury of (Date of 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. Claimant does not meet the requirements of the ODG for a left C4-7 medial branch block and she failed to present other evidence-based medicine supporting the necessity for this procedure.
4. A left C4-7 medial branch block 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 a left C4-7 medial branch block is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to a left C4-7 medial branch block 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 **HARTFORD UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TX 75201**

Signed this 21st day of August, 2014.

Carol A. Fougerat
Hearing Officer