

MEDICAL CONTESTED CASE HEARING NO. 14083

**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 laminotomy with decompression, nerve root and lumbar additional vertebral space and lumbar laminectomy additional segment for the compensable injury of (Date of Injury).

**STATEMENT OF THE CASE**

Thomas Hight, a Division hearing officer, held a contested case hearing on August 21, 2014 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to laminotomy with decompression, nerve root and lumbar additional vertebral space and lumbar laminectomy additional segment for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by JBT, ombudsman. Respondent/Self-Insured appeared and was represented by RR, attorney.

**DISCUSSION**

Claimant sustained a compensable injury on (Date of Injury), when she fell from a chair. She had a microdiscectomy at the L4-5 level on August 28, 2009. Dr. BG requested approval of laminotomy with decompression, nerve root and lumbar additional vertebral space and lumbar laminectomy additional segment. The IRO decision upheld the previous denials, and Claimant appealed.

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."

The ODG provides the following concerning lumbar discectomy/ laminectomy:

ODG Indications for Surgery™ -- Discectomy/laminectomy --

Required symptoms/findings; imaging studies; & conservative treatments below:

- I. Symptoms/Findings which confirm presence of radiculopathy. Objective findings on examination need to be present. Straight leg raising test, crossed straight leg raising and reflex exams should correlate with symptoms and imaging.

Findings require ONE of the following:

- A. L3 nerve root compression, requiring ONE of the following:
  1. Severe unilateral quadriceps weakness/mild atrophy
  2. Mild-to-moderate unilateral quadriceps weakness
  3. Unilateral hip/thigh/knee pain
- B. L4 nerve root compression, requiring ONE of the following:
  1. Severe unilateral quadriceps/anterior tibialis weakness/mild atrophy
  2. Mild-to-moderate unilateral quadriceps/anterior tibialis weakness
  3. Unilateral hip/thigh/knee/medial pain
- C. L5 nerve root compression, requiring ONE of the following:
  1. Severe unilateral foot/toe/dorsiflexor weakness/mild atrophy

- 2. Mild-to-moderate foot/toe/dorsiflexor weakness
- 3. Unilateral hip/lateral thigh/knee pain
- D. S1 nerve root compression, requiring ONE of the following:
  - 1. Severe unilateral foot/toe/plantar flexor/hamstring weakness/atrophy
  - 2. Moderate unilateral foot/toe/plantar flexor/hamstring weakness
  - 3. Unilateral buttock/posterior thigh/calf pain
 (EMGs are optional to obtain unequivocal evidence of radiculopathy but not necessary if radiculopathy is already clinically obvious.)
- II. Imaging Studies, requiring ONE of the following, for concordance between radicular findings on radiologic evaluation and physical exam findings:
  - A. Nerve root compression (L3, L4, L5, or S1)
  - B. Lateral disc rupture
  - C. Lateral recess stenosis
 Diagnostic imaging modalities, requiring ONE of the following:
  - 1. MR imaging
  - 2. CT scanning
  - 3. Myelography
  - 4. CT myelography & X-Ray
- III. Conservative Treatments, requiring ALL of the following:
  - A. Activity modification (not bed rest) after patient education ( $\geq$  2 months)
  - B. Drug therapy, requiring at least ONE of the following:
    - 1. NSAID drug therapy
    - 2. Other analgesic therapy
    - 3. Muscle relaxants
    - 4. Epidural Steroid Injection (ESI)
  - C. Support provider referral, requiring at least ONE of the following (in order of priority):
    - 1. Physical therapy (teach home exercise/stretching)
    - 2. Manual therapy (chiropractor or massage therapist)
    - 3. Psychological screening that could affect surgical outcome
    - 4. Back school (Fisher, 2004)

For average hospital LOS after criteria are met, see Hospital length of stay (LOS).

The IRO doctor, an orthopedic physician, thought the requested procedure would not be considered medically necessary and appropriate based on review of the records and the ODG treatment guidelines, noting the MRI report failed to demonstrate any significant neurocompressive lesion.

The record consisted of the IRO decision and Claimant's appeal, the two IMO adverse determination letters, a PLN-11 disputing Claimant's entitlement to medical benefits, and a peer review from Dr. DM supporting Self-Insured's position.

Claimant testified but offered no exhibits, and there was no medical witness. There was no offer of evidence based medical evidence to overcome the IRO decision.

There was no objection to the testimony, reports, or qualifications of any doctor.

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. 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 determined Claimant should not have the requested treatment.
2. Self-Insured delivered to Claimant a single document stating the true corporate name of Self-Insured and the name and street address of Self-Insured's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. Laminotomy with decompression, nerve root and lumbar additional vertebral space and lumbar laminectomy additional segment 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 laminotomy with decompression, nerve root and lumbar additional vertebral space and

lumbar laminectomy additional segment is not health care reasonably required for the compensable injury of (Date of Injury).

**DECISION**

Claimant is not entitled to laminotomy with decompression, nerve root and lumbar additional vertebral space and lumbar laminectomy additional segment for the compensable injury of (Date of Injury).

**ORDER**

Self-Insured is not liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with Section 408.021 of the Act.

The true corporate name of the Self-Insured is (**SELF-INSURED**) and the name and address of its registered agent for service of process is

**JAVIER GARZA, WCI MANAGER  
201 WEST 7th STREET  
ASH 414  
AUSTIN, TEXAS 78701**

Signed this 21st day of August, 2014.

Thomas Hight  
Hearing Officer