

MEDICAL CONTESTED CASE HEARING NO. 15005

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and the Rules of the Division of Workers' Compensation. For the reasons discussed herein, the Hearing Officer determines that Petitioner/Claimant is not entitled to a right transforaminal epidural steroid injection (ESI) at C5-C6 with IV sedation for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

A contested case hearing was held on October 1, 2014 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 right transforaminal epidural steroid injection (ESI) at C5-C6 with IV sedation for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant failed to appear for the contested case hearing and did not respond to the Division's 10-day letter. Respondent/Carrier appeared and was represented by SSC, attorney.

DISCUSSION

Although properly notified, Petitioner/Claimant failed to appear for the contested case hearing scheduled for 2:00 p.m. on October 1, 2014. A letter advising that the hearing had convened and that the record would be held open for ten days to afford Petitioner/Claimant the opportunity to respond and request that the hearing be rescheduled to permit her to present evidence on the disputed issue was mailed to Petitioner/Claimant on October 1, 2014. Petitioner/Claimant failed to respond to the Division's 10-day letter and on October 16, 2014, the record was closed.

Dr. RS's request for the proposed ESI at C5-C6 with IV sedation was denied by two Utilization Review Agents (URAs) – one on an initial review, the other following a request for reconsideration. After the adverse determination on reconsideration by the URA, Dr. S appealed to an Independent Review Organization (IRO). The IRO reviewer, a neurological surgeon, upheld the URA denial of the procedure. The IRO reviewer determined that the requested right transforaminal ESI at C5-C6 with IV sedation was not health care reasonably required for Petitioner/Claimant's compensable injury of (Date of Injury). As part of the IRO report, on January 30, 2014, the IRO reviewer noted that Dr. S's neurological examination of Petitioner/Claimant during January 2014 was normal and that Petitioner/Claimant's physical examination failed to establish the presence of radiculopathy with intact sensation, motor

strength and deep tendon reflexes. Petitioner/Claimant appealed the IRO decision and requested this MCCH to determine the medical necessity of the proposed right transforaminal ESI at C5-C6 with IV sedation.

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 is 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."

Petitioner/Claimant as the party challenging the IRO decision has the burden of proof to overcome that decision by the preponderance of evidence-based medical evidence. Evidence-based medical evidence entails the opinion of a qualified expert that has some basis in evidence-based medicine. Expert evidence is required in all medical necessity disputes and Petitioner/Claimant's lay testimony is not probative on questions requiring expert evidence, such as the inquiry into the medical necessity of the procedure at issue.

Having failed to appear and offer evidence in support of her claim and upon review of the documents in evidence, Petitioner/Claimant failed to show that she is entitled to the relief that she seeks. As the preponderance of the evidence is not contrary to the decision of the IRO that the requested proposed right transforaminal ESI at C5-C6 with IV sedation is not health care reasonably required for the compensable injury of (Date of Injury), Petitioner/Claimant is held not to be entitled to that procedure.

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 Carrier 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 and sustained a compensable injury.
 - C. On (Date of Injury), Employer provided workers' compensation insurance coverage with Travelers Indemnity Company, Carrier.
 - D. The Independent Review Organization (IRO) determined that the health care at issue is not reasonably required for the compensable injury of (Date of Injury).
2. The Division sent a single document stating the true corporate name of the Carrier and the name and street address of Carrier's registered agent for service with the 10-day letter to the Petitioner/Claimant at Petitioner/Claimant's address of record. That document was admitted into evidence as Hearing Officer Exhibit Number 2.
3. The requested proposed right transforaminal ESI at C5-C6 with IV sedation is not health care reasonably required for the compensable injury of (Date of Injury).
4. Petitioner/Claimant failed to appear for the October 1, 2014 contested case hearing and did not respond to the Division's letter offering them the opportunity to have the hearing rescheduled.
5. Petitioner/Claimant did not have good cause for their failure to appear at the contested case hearing on October 1, 2014.

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 Independent Review Organization (IRO) that a right transforaminal epidural steroid injection (ESI) at C5-C6 with IV sedation is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Petitioner/Claimant is not entitled to a right transforaminal epidural steroid injection (ESI) at C5-C6 with IV sedation for the compensable injury of (Date of Injury).

ORDER

Carrier is not liable for the benefits at issue in this hearing. Petitioner/Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY**, and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY D/B/A
CSC-LAWYERS INCORPORATING SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218**

Signed this 24th day of October, 2014.

Marilyn J. Allen
Hearing Officer