

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. For the reasons discussed herein, the Hearing Officer determines that the preponderance of the evidence is not contrary to the decision of the IRO that continued physical therapy twice a week for four weeks to the left shoulder and left hip is not health care reasonably required for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On June 25, 2014, John Bell, 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 IRO that the Claimant is not entitled to continued physical therapy to the twice a week for four weeks to the left shoulder and left hip for the (Date of Injury) compensable injury?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by SB, an ombudsman. Respondent/Carrier appeared and was represented by RT, an attorney.

DISCUSSION

Claimant sustained a compensable injury to her left shoulder and left hip as a result of a slip and fall incident that occurred on (Date of Injury). Carrier accepted an (Date of Injury) compensable injury in the nature of left shoulder strain and left hip contusion. After the (Date of Injury) compensable injury, Claimant underwent conservative treatment, including eight physical therapy sessions. Pressler Physical Therapy requested pre-authorization for continued sessions of physical therapy to the left hip and left shoulder, for two times a week for four weeks. 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 (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 ODG provides the following guidelines concerning physical medicine in connection with a shoulder sprain/strain and a hip sprain/strain:

ODG Physical Medicine Guidelines –Shoulder

Sprained shoulder; rotator cuff (ICD9 840; 840.4):

Medical treatment: 10 visits over 8 weeks

Medical treatment, partial tear: 20 visits over 10 weeks

Post-surgical treatment (RC repair/acromioplasty): 24 visits over 14 weeks

ODG Physical Medicine Guidelines –Hip

Allow for fading of treatment frequency (from up to 3 visits per week to 1 or less).

Also see other general guidelines that apply to all conditions under Physical Therapy in the ODG Preface.

Sprains and strains of the hip and thigh (ICDC 843):

9 visits over 8 weeks.

The IRO doctor, an MD board certified in physical medicine and rehabilitation, and pain management, determined the requested treatment was not medically necessary, noting Claimant had undergone orthopedic evaluation as well as eight physical therapy treatment sessions, which was within the ODG treatment guidelines for sprain/strains of the hip and shoulder. He also indicated there was no contra indication to Claimant being on an active home exercise program to continue rehabilitation.

Claimant testified that she was still experiencing difficulties with her left hip and left shoulder and that the additional physical therapy that she has received helped and improved her conditions. Claimant testified that she had difficulty performing the home exercise programs, as she was not a physical therapist. However, neither Claimant nor the medical providers cited the ODG treatment guidelines or any other evidence based medical evidence to support their position.

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 with Utica Lloyd's of Texas, Carrier.
 - D. On (Date of Injury) Claimant sustained a compensable injury in the course and scope of her employment and Carrier has accepted a left shoulder strain and left hip contusion to be compensable.
 - E. Petitioner timely appealed the decision of the Independent Review Organization on November 7, 2013.
 - F. The Independent Review Organization determined Claimant should not have continued physical therapy two times a week for four weeks for the left shoulder and left hip.

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. Continued physical therapy twice a week for four weeks to the left shoulder and left hip 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 continued physical therapy twice a week for four weeks to the left shoulder and left hip is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to continued physical therapy twice a week for four weeks to the left shoulder and left hip 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 Section 408.021 of the Act.

The true corporate name of the insurance carrier is **UTTICA LLOYD'S OF TEXAS**, and the name and address of its registered agent for service of process is

DAVID CUNNINGHAM
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RICHARDSON, TEXAS 75080-2791

Signed this 15th day of December, 2014.

John Bell
Hearing Officer