

**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 Claimant is not entitled to 12 sessions of additional physical therapy for the compensable injury of (Date of Injury)

**STATEMENT OF THE CASE**

A contested case hearing was held on January 28, 2015 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 12 sessions of additional physical therapy for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

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

**DISCUSSION**

Although properly notified, Petitioner and Claimant failed to appear for the contested case hearing scheduled for 10:30 a.m. on January 28, 2015. A letter advising that the hearing had convened and that the record would be held open for ten days to afford Petitioner or Claimant the opportunity to respond and request that the hearing be rescheduled to permit them to present evidence on the disputed issue was mailed to Petitioner and Claimant on January 28, 2015. Petitioner and Claimant failed to respond to the Division's 10-day letters and on February 12, 2015, the record was closed.

Dr. EH's request for the proposed 12 sessions of additional physical therapy 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. H appealed to an Independent Review Organization (IRO). The IRO reviewer, an orthopedic surgeon, upheld the URA denial of the additional treatment. The IRO reviewer determined that the requested 12 sessions of additional physical therapy was not health care reasonably required for Claimant's compensable injury of (Date of Injury) As part of the IRO report, on August 5, 2014, the IRO reviewer noted that Claimant has completed 27 postoperative physical therapy visits with little progress, following his most recent right knee arthroscopy with revision ACL graft reconstruction and partial medial and partial lateral meniscectomy performed on January 16, 2014. It was noted that the Official Disability Guidelines (ODG) permit up to 24 visits over 16

weeks in therapy, status post anterior cruciate ligament (ACL) repair. The IRO reviewer indicated that there was no clear rationale provided to support exceeding this recommendation. Petitioner appealed the IRO decision and requested this MCCH to determine the medical necessity of the 12 sessions of additional physical therapy.

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 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."

With regard to ACL injury rehabilitation, the relevant provisions of the ODG applicable to this case are as follows:

Recommended as indicated below. Studies that compare at-home rehab to supervised rehab for patients who have had an ACL injury are of low quality and show that more studies are necessary before a conclusion can be drawn as to the

most effective therapy. (Beard, 1998) (Thomson-Cochrane, 2002) One meta-analysis compared studies to examine the evidence for effectiveness of various physical therapist-led rehabilitation programs, and of various interventions used within these programs, for rehabilitation of acute or chronic ACL, MCL or meniscal injuries of the knee in adults. The reviewer concluded that the available evidence for physical therapist-led rehabilitation of ACL, MCL and meniscal injuries is wide ranging in terms of scope but insufficient to establish the relative effectiveness of the various approaches and methods in current use. (Thomson, 2002) A trial testing the efficacy of a 6-week rehabilitation program determined that six weeks rehabilitation is too short a time period from original injury to obtain normal mobility and restored knee function. (Zatterstrom, 1998) A 12-month follow-up of a controlled trial that tested supervised versus self-monitored training and rehabilitation for ACL repair determined that initial guidance is an important part of the rehabilitation process. (Zatterstrom, 2000) Knee bracing after ACL reconstruction appears to be largely useless, according to a systematic review. Range-of-motion, strengthening, and functional exercises remain the cornerstone of postoperative ACL rehabilitation. The most important rehab for ACL surgery patients is to start physical therapy early and rigorously. Postoperative bracing did not protect against reinjury, decrease pain, or improve stability. Accelerated rehabilitation (starting at 3 weeks postoperatively rather than the traditional 3 months and intended to reduce the usual 6-month time for return to activity) was considered to be safe according to this review. The authors conclude that immediate postoperative weight-bearing, range of knee motion from 0° to 90° of flexion, and strengthening with closed-chain exercises are likely to be safe. They also suggest that starting eccentric quadriceps strengthening and isokinetic hamstring strengthening at week 3 after surgery may accelerate recovery. The reviewers found promising data for home-based rehabilitation for the motivated patient, but found doubtful support for neuromuscular training such as proprioceptive and balance training, perturbation training, and vibratory stimulation. (Kruse, 2012) This systematic review on methods of rehabilitation after ACL reconstruction concluded that postoperative bracing had no benefit, accelerated strengthening improved outcomes, home-based rehabilitation was as successful over the long term, and there were some small short-term benefits to proprioceptive training. (Grant, 2013) See also Physical Therapy Guidelines.

**ODG Physical Medicine Guidelines:** Sprains and strains of knee and leg;

Cruciate ligament of knee (ACL tear) (ICD9 844; 844.2):

Post-surgical (ACL repair): 24 visits over 16 weeks

Petitioner and Claimant as the parties challenging the IRO decision have 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 or 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 his claim and upon review of the documents in evidence, Petitioner and Claimant failed to show that he is entitled to the relief that he seeks. As the preponderance of the evidence is not contrary to the decision of the IRO that the requested 12 sessions of additional physical therapy is not health care reasonably required for the compensable injury of (Date of Injury), Claimant is held not to be entitled to that treatment.

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.
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 letters to the Petitioner and Claimant at Petitioner and Claimant's address of record. Those documents were admitted into evidence as Hearing Officer Exhibits Number 2 and 4.
3. The Independent Review Organization (IRO) determined that the health care at issue is not reasonably required for the compensable injury of (Date of Injury)
4. Petitioner and Claimant failed to appear for the January 28, 2015 contested case hearing and did not respond to the Division's letters offering them the opportunity to have the hearing rescheduled.

5. Petitioner and Claimant did not have good cause for their failure to appear at the contested case hearing on January 28, 2015.

### **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 12 sessions of additional physical therapy is not health care reasonably required for the compensable injury of (Date of Injury)

### **DECISION**

Claimant is not entitled to 12 sessions of additional physical therapy 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 **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 18<sup>th</sup> day of February, 2015.

Marilyn J. Allen  
Hearing Officer