

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.

ISSUE

A contested case hearing was held on April 13, 2015 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that Claimant is not entitled to Synvisc injections to the right knee in series of 3 for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by CN, ombudsman.
Respondent/Carrier appeared and was represented by MLB, attorney.
LC appeared on behalf of Employer.

BACKGROUND INFORMATION

Claimant relied on his testimony and the writings of GS, M.D., and NSB, M.D., in an attempt to prove that the Independent Review Organization was incorrect in determining that Claimant is not entitled to Synvisc injections to the right knee. Carrier was correct in maintaining that Claimant had not provided sufficient evidence-based medical evidence to prove entitlement to the injections.

Claimant testified that he received medical treatment, including physical therapy and cortisone shots, from doctors after he injured his right knee during the course and scope of employment on (Date of Injury). He said that Dr. S proposed Synvisc injections to help delay surgery for a total knee replacement and commented that the tear from the compensable injury was not bad.

AJB, M.D., and AD, M.D., two utilization reviewers, denied the request for Synvisc injections. They wrote that the testing did not show that Claimant had osteoarthritis of the knee. On December 29, 2014, the reviewer for the Independent Review Organization referred to the Official Disability Guidelines (ODG) and agreed with the two utilization reviewers, commenting that documents did not show that Claimant had osteoarthritis of the knee.

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 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 says that Synvisc is a brand of hylan and directs the reader to its section on Hyaluronic Acid Injections if a series of three injections is recommended as an option for osteoarthritis. The ODG provides the following for Hyaluronic Acid Injections:

Recommended as a possible option for severe osteoarthritis for patients who have not responded adequately to recommended conservative treatments (exercise, NSAIDS or acetaminophen), to potentially delay total knee replacement, but in recent quality studies the magnitude of improvement appears modest at best.

Criteria for Hyaluronic Acid Injections:

- Patients experience significantly symptomatic osteoarthritis but have not responded adequately to recommended conservative nonpharmacologic (e.g., exercise) and pharmacologic treatments or are intolerant of these therapies

- (e.g., gastrointestinal problems related to anti-inflammatory medications), after at least 3 months;
- Documented symptomatic severe osteoarthritis of the knee, which may include the following: bony enlargement; bony tenderness; crepitus (noisy, grating sound) on active motion; less than 30 minutes of morning stiffness; no palpable warmth of synovium; over 50 years of age;
 - Pain interferes with functional activities (e.g., ambulation, prolonged standing) and not attributed to other forms of joint disease;
 - Failure to adequately respond to aspiration and injection of intra-articular steroids;
 - Generally performed without fluoroscopic or ultrasound guidance;
 - Are not currently candidates for total knee replacement or who have failed previous knee surgery for their arthritis, unless younger patients wanting to delay total knee replacement.
 - Repeat series of injections: If documented significant improvement in symptoms for 6 months or more, and symptoms recur, may be reasonable to do another series. No maximum established by high quality scientific evidence; see repeat series of injections above.
 - Hyaluronic acid injections are not recommended for any other indications such as chondromalacia patellae, facet joint arthropathy, osteochondritis dissecans, or patellofemoral arthritis, patellofemoral arthritis, patellofemoral syndrome (patellar knee pain), plantar nerve entrapment syndrome, or for use in joints other than the knee (e.g., ankle, carpo-metacarpal joint, elbow, hip metatarsophalangeal joint, shoulder, and temporomandibular joint) because the effectiveness of hyaluronic acid injections for these indications has not been established.

Claimant's evidence did not include information showing that testing confirmed that he had osteoarthritis of the knee. While Dr. B's encounter note of February 19, 2015 mentions osteoarthritis of the knee, he does not refer to specific imaging or other testing that documented osteoarthritis of the knee.

The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

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, who was the employee of the City of (City), sustained a compensable injury.
 - C. On (Date of Injury), Employer provided workers' compensation insurance as a self-insured.

- 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) The requested treatment, Synvisc injections to the right knee in series of 3, 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 Synvisc injections to the right knee in series of 3 is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to Synvisc injections to the right knee in series of 3 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 **CITY OF (CITY), SELF-INSURED** and the name and address of its registered agent for service of process is

**RG
ADDRESS
(CITY), TEXAS ZIP**

Signed this 15th day of April, 2015.

CAROLYN F. MOORE
Hearing Officer