

MEDICAL CONTESTED CASE HEARING NO. 13106

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.

ISSUES

A contested case hearing was held on June 21, 2013 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to easily accessible shower and raised commode post right lower extremity for the compensable injury of (Date of Injury).

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by RB, ombudsman. Respondent/Carrier appeared and was represented by KP, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on (Date of Injury), when his right leg was pinned between two vehicles. His right femur, tibial plateau, and fibula were fractured. He had open reduction internal fixation surgery for the femur fracture. Claimant has limited range of motion in the right knee and edema in the right leg. His treating physician, Dr. H, requested preauthorization for an easily accessible shower and raised commode. The IRO doctor 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 IRO doctor, a board certified orthopedic surgeon, concluded that the requested bathroom equipment was not medically necessary, because the clinical evaluation provided for review did not reveal any evidence of significant functional limitations.

Claimant and his daughter, JS, testified. There were reports from designated doctor Dr. S (DWC-69 and report) and Dr. H and a photograph of the tub/shower in Claimant's home. Carrier offered the preauthorization and reconsideration reviews and a letter from JS to Dr. H.

Claimant failed to overcome the IRO decision by the preponderance of evidence based medical evidence.

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

Even though all the evidence presented was not discussed, it was considered. 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 was the employee of (Employer).

- C. On (Date of Injury) Employer provided workers' compensation insurance with New Hampshire Insurance Company, Carrier.
 - D. On (Date of Injury) Claimant sustained a compensable injury.
 - E. The Independent Review Organization determined Claimant should not have the requested treatment.
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. Easily accessible shower and raised commode post right lower extremity 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 easily accessible shower and raised commode post right lower extremity is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to easily accessible shower and raised commode post right lower extremity 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 **NEW HAMPSHIRE INSURANCE COMPANY**, and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPNY
211 EAST 7th STREET, SUITE 620
AUSTIN, TEXAS 78701**

Signed this 21st day of June, 2013.

Thomas Hight
Hearing Officer