

MEDICAL CONTESTED CASE HEARING NO. 14029

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 November 5, 2013, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to twelve PT/aqua therapy sessions for the compensable injury of (Date of Injury)?

PARTIES PRESENT

The petitioner/claimant appeared as was assisted by SP, ombudsman.
The respondent/carrier appeared and was represented by GS, attorney.

EVIDENCE PRESENTED

Witnesses for Claimant/Petitioner: Claimant.

Witnesses for Carrier/Respondent: None.

Hearing Officer's Exhibits: HO-1 and HO-2.

Evidence for Claimant/Petitioner: Exhibits CL-1 through CL-6.

Evidence for Carrier/Respondent: Exhibits CR-A through CR-D.

BACKGROUND INFORMATION

Claimant sustained a compensable injury to her cervical spine on (Date of Injury). She received surgery and injections. Upon insertion of a neuro-stimulator in her spine, Claimant had complications resulting in left hemiplegia. Claimant has since recovered most function and reports she is able to drive a car and engage in most activities of daily living. She continues to have some pain and numbness. Claimant is treated by CB, D.C. Dr. B requested twelve sessions of PT/aqua therapy for the compensable injury of (Date of Injury). Carrier denied the request.

I-Resolutions, Inc. was appointed to act as Independent Review Organization by the Texas Department of Insurance. The IRO reviewer found that the previous adverse determination

should be upheld. In explaining the denial, the reviewer noted that there was insufficient documentation of Claimant's injury and assessment of her treatment and condition. There were at least 64 prior sessions of physical therapy; however, no treatment records were provided. There was also no documentation of Claimant's compliance with a home exercise program. There was, overall, insufficient documentation to support the need for the requested aqua therapy.

DISCUSSION

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. In this case, the ODG does not specifically address aqua therapy as treatment for a cervical injury.

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."

At the Contested Case Hearing, Claimant testified that she previously had twelve aqua therapy sessions and they were beneficial. Claimant's physicians submitted letters; however, they did not specifically address the IRO reviewer's concerns. No evidence-based medicine in support of the aqua therapy was presented. Based on the evidence presented, the Claimant did not meet her burden of overcoming the decision of the IRO by a preponderance of the evidence-based medical evidence and, therefore, the claimant is not entitled to PT/aqua therapy for the compensable injury of (Date of Injury).

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 Workers' Compensation Division of the Texas Department of Insurance.
 - B. On (Date of Injury), Claimant was the employee of (Employer).
 - C. On (Date of Injury), Claimant sustained a compensable injury.
 - D. On (Date of Injury), Employer provided workers' compensation insurance to its employees through Zurich American Insurance Company, Carrier.
2. The Carrier delivered to the Claimant a single document stating the true corporate name of the Carrier, and the name and street address of the Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. I-Resolutions, Inc. was appointed to act as Independent Review Organization by the Texas Department of Insurance.
4. The IRO determined that the claimant was not entitled to twelve sessions of PT/aqua therapy for the compensable injury of (Date of Injury).
5. Claimant did not provide evidence-based medical evidence in support of her requested treatment.
6. Twelve sessions of aqua therapy is not health care reasonably required for the compensable injury of (Date of Injury).

CONCLUSIONS OF LAW

1. The Workers' Compensation Division of the Texas Department of Insurance 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 the claimant is not entitled to twelve sessions of aqua therapy for the compensable injury of (Date of Injury).

DECISION

The preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to twelve sessions of aqua therapy for the compensable injury of (Date of Injury).

ORDER

Carrier is not liable for the benefits at issue in this hearing, and it is so ordered. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICER COMPANY
211 EAST 7TH STREET, SUITE 620
(CITY), TEXAS 78701-3232**

Signed this 12th day of November, 2013.

Carolyn Cheu Mobley
Hearing Officer