MEDICAL CONTESTED CASE HEARING NO. 16051

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and the Rules of the Texas Department of Insurance, Division of Workers' Compensation. For the reasons discussed herein, the Hearing Officer determined that Claimant/Petitioner is not entitled to the additional brain injury rehabilitation program x 12 visits for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On January 17, 2017, Gerri Thomas, a Division hearing officer, held a contested case hearing to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to the additional brain injury rehabilitation program x 12 visits?

PARTIES PRESENT

Claimant/Petitioner appeared and was assisted by MV, ombudsman. Petitioner, (Healthcare Provider), appeared telephonically and was assisted by SE, lay representative. Carrier/Respondent appeared and was represented by WS, attorney.

DISCUSSION

Medical Necessity

Evidence Based Medicine (EBM)

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."

On the date of this medical contested case hearing, the Official Disability Guidelines provides the following with regard to interdisciplinary rehabilitation programs (TBI):

> Criteria for Interdisciplinary brain injury rehabilitation programs (postacute care):
>
> *Admission (applies to moderate and severe TBI):*
>
> - GCS level from 3 to 12 in the initial 24 hrs, severe at 3-7 GCS and moderate at 8-12 GCS, with moderate TBI generally including loss of consciousness > 30 min, loss of memory > 1 day, altered MS > 1 day, and/or structural changes on CT or MRI (while the initial GCS score is usually used to determine severity, there are a minority of patients whose GCS scores will deteriorate within the first 24 to 48 hours, and some injuries can progress over a few weeks, as in the case of a slow, subdural bleed);
> - Mobility and functional activity limitations, including vestibular (balance and coordination) problems;
> - Able to tolerate comprehensive rehab program 3-4 hours/day, 5 days/week;
> - Has potential to follow visual or verbal commands and agree to actively participate;
> - Purposeful response or voluntary movement to external stimuli;
> - Able to sit supported 1 hour/day;

- Preadmission assessment documented by licensed clinician including a proposed treatment plan indicating
    - Diagnoses;
    - Short/long-term goals (specific, quantified, objective) and estimated time to achieve goals;
    - Specific projected treatments, duration, intensity;
    - Careful attention to transition of care (exchange of info, review of meds and procedures and early discharge planning) from hospital to residential transitional rehabilitation facilities to prevent repeat hospitalizations.

Residential Transitional Rehabilitation (i.e., inpatient):

- Treatment is provided under medical prescription by a physiatrist, neurologist or other physician with brain injury experience;
- Provide services that are within the scope of services provided under a Commission on Accreditation of Rehabilitation Facilities (CARF) accredited rehabilitation program for brain injury or another nationally recognized accredited rehabilitation program for brain injury;
- Patient able to benefit from intensive therapy (equal to or greater than 4 hours per day, 5 to 7 days per week), and at least one of the following:
    - Patient requires neurobehavioral treatment for moderate to severe deficits, or
    - Patient demonstrates moderate to severe cognitive dysfunction, or
    - Patient requires treatment from multiple rehabilitation disciplines, or
    - Patient is medically complex, requiring physician or nursing interventions and up to 24 hours of nursing, or
    - Patient will benefit from combination therapies, or
    - Patient is unsafe, or
    - Patient diagnosed with severe postconcussion syndrome, or
    - Patient is unable to feed orally, or
    - Family is unable to provide for the patient's level of care while participating in rehabilitation,
- Care provided is NOT custodial care, but is focused on recovery and progress is demonstrated.

Day Treatment (i.e., outpatient):

- Treatment is provided under medical prescription by a Physiatrist, Neurologist or other physician with brain injury experience,
- Provide services that are within the scope of services provided under CARF as a brain injury rehabilitation program,

- Patient able to benefit from intensive therapy (equal to or greater than 4 hours per day, 5 days per week), and at least one of the following:
    - Patient requires neurobehavioral treatment for mild behavioral deficits, or
    - Patient demonstrates moderate to severe cognitive dysfunction, or
    - Patient requires treatment from multiple rehabilitation disciplines, or
    - Patient diagnosed with mild to moderate postconcussion syndrome, or
    - Patient is unable to feed orally,
- Care provided is NOT custodial care, but is focused on recovery and progress is demonstrated.
- Patient ambulates 50 feet with supervision.

Continued Stay:

- Ongoing comprehensive rehab program with at least 3 disciplines and 4 hours/day, 5 days/week
- Measurable progress documented toward pre-established goals with gains sustained
- Mental status change and neurological assessment ongoing
- Neurologic change and neurological assessment ongoing
- Pain management addressed
- No longer than 2-4 weeks without evidence of significant demonstrated efficacy as documented by subjective and objective gains;
    - However, it is also not suggested that a continuous course of treatment be interrupted solely to document these gains, if there are preliminary indications that they are being made on a concurrent basis;
    - Interdisciplinary summary reports that include treatment goals and progress assessment with objective measures, must be made available upon request at least on a bi-weekly basis during the course of the treatment program.
- Residential Transitional Rehabilitation:
    - Target LOS up to 60 - 120 days for patients with moderate to severe injuries;
    - Longer end of range depending on acute LOS (with contracted IRF LOS now below 14 days, and trending toward 10, greater levels of disability are presented at admission to residential transitional rehabilitation, requiring longer transitional rehabilitation LOS);
    - Progress review every 2 to 4 weeks;
    - Program continuation dependent upon demonstrated progress;

- Residential transitional rehabilitation LOS that extends to vocational return may be longer;
- LOS for patients admitted to residential transitional rehabilitation for late rehabilitation may be longer, ranging between 180 to 240 days.
- Discharge:
  - Home environment safe and accessible;
  - Patient or caregiver demonstrate ability to manage transfers or functional mobility (e.g., ambulation, wheelchair), ADLs;
  - Comprehensive written discharge and teaching instructions reviewed.

- Day Treatment:
  - Total treatment duration should generally range up to 4 to 6 months;
  - If treatment duration in excess of 6 months is required, a clear rationale for the specified extension and reasonable goals to be achieved should be provided;
  - Longer durations require individualized care plans explaining why improvements cannot be achieved without an extension as well as evidence of documented improved outcomes from the facility;
  - At the conclusion and subsequently, re-enrollment in repetition of the same or similar rehabilitation program only if medically warranted for the same condition or injury or exacerbation of injury;
  - Suggestions for treatment post-program should be well documented and provided to the referral physician; the patient may require time-limited, less intensive post-treatment with the program itself;
  - Defined goals for these interventions and planned duration should be specified.
  - For individual outpatient therapies, see specific entries in ODG.

The parties stipulated that Claimant's compensable injury of (Date of Injury), extends to include a closed head trauma, dizziness, chest contusion, left sided face contusion, low back strain, neck sprain/strain, bilateral knee contusions, and post injury headache. Ultimately, an IRO was requested for an additional brain injury rehabilitation program x 12 visits.

In an IRO dated October 5, 2016, the IRO Reviewer upheld previous denials of the requested additional brain injury rehabilitation program x 12 visits.

Claimant/Petitioner relied on his testimony, the medical records offered, and a January 9, 2017, opinion from one of his treating doctors, MS, M.D., to support his position regarding the issue in dispute.

The evidence offered, including the opinion of Dr. S, did not provide a persuasive explanation through the use of evidence-based medical evidence as to how Claimant/Petitioner met the requirements of ODG for the requested additional brain injury rehabilitation program x 12 visits. Claimant/Petitioner also did not establish the necessity of the requested additional brain injury

rehabilitation program x 12 visits at issue through other evidence-based medical evidence. As such, insufficient evidence-based medical evidence existed to explain that the requested additional brain injury rehabilitation program x 12 visits was medically reasonable and necessary. Therefore, the preponderance of the evidence is not contrary to the decision of the IRO that Claimant/Petitioner is not entitled to the additional brain injury rehabilitation program x 12 visits.

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. The Texas Department of Insurance, Division of Workers' Compensation has jurisdiction to hear this matter.

   B. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.

   C. On (Date of Injury), Claimant/Petitioner was the employee of (Employer), Employer.

   D. On (Date of Injury), Employer provided workers' compensation insurance as a Self-Insured.

   E. On (Date of Injury), Claimant/Petitioner sustained a compensable injury.

   F. The compensable injury of (Date of Injury), extends to include a closed head trauma, dizziness, chest contusion, left sided face contusion, low back strain, neck sprain/strain, bilateral knee contusions, and post injury headache.

   G. The Independent Review Organization determined that Claimant/Petitioner should not have the requested treatment of the additional brain injury rehabilitation program x 12 visits.

   H. Claimant/Petitioner filed his appeal of the decision of the IRO on October 13, 2016, which was timely.

2. Carrier/Respondent delivered to Claimant/Petitioner a single document stating the true corporate name of Carrier/Respondent, and the name and street address of Carrier/Respondent's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.

3. Based on the evidence offered, the additional brain injury rehabilitation program x 12 visits 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 Claimant is not entitled to the additional brain injury rehabilitation program x 12 visits for the compensable injury of (Date of Injury).

DECISION

Claimant/Petitioner is not entitled to the additional brain injury rehabilitation program x 12 visits for the compensable injury of (Date of Injury).

ORDER

Carrier/Respondent is not liable for the benefits at issue in this hearing. Claimant/Petitioner remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **(SELF-INSURED)**, and the name and address of its registered agent for service of process is:

(NAME)
(ADDRESS).
(CITY), TX (ZIPCODE)

Signed this 17th day of January, 2017.

Gerri Thomas
Hearing Officer