MEDICAL CONTESTED CASE HEARING NO. 09052
M6-08-12901-01

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 benefit contested case hearing was held on July 17, 2008, to decide the following disputed issue:

> Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IR0) that Claimant is not entitled to a bilateral transforaminal neuroplasty with epidurogram under fluoroscopy for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was assisted by JA, ombudsman. Carrier appeared and was represented by attorney, TW.

BACKGROUND INFORMATION

It is undisputed that Claimant sustained an injury during the course and scope of her employment on _____. The evidence shows that Claimant complained of lumbar pain radiating down the right lower extremity and has been treated with physical therapy, medication, and epidural steroid injections. Her treating doctor referred her to Dr. S, who diagnosed her with displacement of the lumbar intervertebral disc and lumbosacral radiculitis. It was Dr. S who recommended the epidural steroid injections and his records show that she reported 50% pain relief following right L5 transforaminal ESI with epidurogram.

In a March 4, 2008 report, Dr. S noted the improvement from the ESI, but stated that the pain relief was limited; that Claimant had bilateral leg pain and her slump tests were positive bilaterally; and, she had right L5 hypoesthesia. He noted bilateral neuroforaminal narrowing on MRI, and recommended bilateral L5 transforaminal neuroplasty.

In reviewing Dr. S's request for a bilateral transforaminal neuroplasty with epidurogram under fluoroscopy, the first utilization review doctor, noted that the requested service exceeded the *ODG* level of care and explained that the records reviewed only provided evidence of possible radiculopathy in a dermatomal distribution on the right. The doctor denied the requested procedure.

According to the records, the utilization review doctor who reviewed the request on reconsideration, also denied preauthorization for the requested service and noted the fact that the MRI revealed no evidence of HNP or nerve root compromise; and, the Claimant had no more than 25% pain decrease after the epidural steroid injection.

An IRO reviewer (a board certified pain management and rehabilitation doctor) reviewed the records

and upheld the adverse determinations of the utilization review doctors. The IRO denied bilateral transforaminal neuroplasty with epidurogram under fluoroscopy. The reviewer noted that Claimant's symptoms were in her low back and along the right lower extremity; therefore, there was no reason for a bilateral procedure. The reviewer cited the *ODG* and stated that the Guidelines described the procedure as "under study" and used for chronic back pain. The *ODG* further states that if the intent of the procedure is to interrupt scar tissue, its presence must be documented by gallium MRI or fluoroscopy during epidural steroid injections, which had not been done in Claimant's case.

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. **Section 401.011(22-a)** defines health care reasonably required 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: (A) evidence based medicine; or (B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community." "Evidence based medicine" is further defined, by **Section 401.011(18-a)** as 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 in making decisions about the care of individual patients.

The Division of Workers' Compensation has adopted treatment guidelines under Division **Rule 137.100**. That rule requires that health care providers provide treatment in accordance with the current edition of the *Official Disability Guidelines (ODG),* and treatment provided pursuant to those guidelines is presumed to be health care reasonably required as mandated by the above-referenced sections of the **Texas Labor Code**.

ODG

The initial inquiry in any dispute regarding medical necessity is whether the proposed care is consistent with the *ODG*. At the time the IRO reviewed this case, the procedure requested was "under study." It has since been categorized by the *ODG* as "not recommended" due to lack of sufficient evidence or conflicting evidence of efficacy. Regardless of the categorization, the requested procedure in the instant case is not consistent with the *ODG*.

When searching the *ODG* Treatment Guidelines for neuroplasty, one is referred to "adhesiolysis, percutaneous." That section of the Treatment Guidelines advises as follows:

Adhesiolysis, percutaneous: Not recommended due to the lack of sufficient literature evidence (risk vs. benefit, conflicting literarure). Also referred to as epidural neurolysis, epidural neuroplasty, or lysis of epidural adhesions, percutaneous adhesiolysis is a treatment for chronic back pain that involves disruption, reduction, and/or elimination of fibrous tissue from the epidural space. Lysis of adhesions is carried out by catheter manipulation and/or injection of saline (hypertonic saline may provide the best results). Epidural injection of local anesthetic and steroid is also performed. It has been suggested that the purpose of the intervention is to eliminate the effect of scar formation, allowing for direct application of drugs to the involved

nerves and tissue, but the exact mechanism of success has not been determined. There is a large amount of variability in the technique used, and the technical ability of the physician appears to play a large role in the success of the procedure. In addition, research into the identification of the patient who is best served by this intervention remains largely uninvestigated. Adverse reactions include dural puncture, spinal cord compression, catheter shearing, infection, excessive spinal cord compression, hematoma, bleeding, and dural puncture. Duration of pain relief appears to range from 3-4 months. Given the limited evidence available for percutaneous epidural adhesiolysis it is recommended that this procedure be regarded as investigational at this time. (Gerdesmeyer, 2003) (Heavner, 1999) (Belozer, 2004) (BlueCross BlueShield, 2004) (Belozer, 2004) (Boswell, 2005) (The Regence Group, 2005) (Chopra, 2005) (Manchikanti1, 2004) This recent RCT found that after 3 months, the visual analog scale (VAS) score for back and leg pain was significantly reduced in the epidural neuroplasty group, compared to to conservative treatment with physical therapy, and the VAS for back and leg pain as well as the Oswestry disability score were significantly reduced 12 months after the procedure in contrast to the group that received conservative treatment. (Veihelmann, 2006)

Preliminary suggested criteria for percutaneous adhesiolysis while under study:
- The 1-day protocol is preferred over the 3-day protocol.
- All conservative treatment modalities have failed, including epidural steroid injections.
- The physician intends to conduct the adhesiolysis in order to administer drugs closer to a nerve.
- The physician documents strong suspicion of adhesions blocking access to the nerve.
- Adhesions blocking access to the nerve have been identified by Gallium MRI or Fluoroscopy during epidural steroid injections.

As noted previously herein, "health care reasonably required" means 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 that evidence is not available, generally accepted standards of medical practice recognized in the medical community. Treatment provided pursuant to the *ODG* is presumed to be health care reasonably required.

Both of the utilization review doctors and the IRO doctor denied the requested bilateral transforaminal neuroplasty with epidurogram under fluoroscopy. The IRO cited the relevant provisions of the *ODG*, specifically the fact that there was no showing of left-sided involvement and, therefore, no need for a bilateral procedure; and, the fact that there was no evidence that there was any adhesion blocking access to the nerve that had been verified by gallium MRI or fluoroscopy during epidural steroid injection as required by the *ODG*. It is incumbent on the Claimant, therefore, to provide evidence-based medicine sufficient to overcome the presumption afforded the *ODG* and the opinions of the doctors correctly applying the *ODG*.

Other Evidence Based Medicine

When weighing medical evidence, the hearing officer must first determine whether the doctor giving the expert opinion is qualified to offer it, but also, the hearing officer must determine whether the opinion is relevant to the issues in the case and whether the opinion is based upon a reliable foundation. An expert's bald assurance of validity is not enough. *See* ***Black v. Food Lion, Inc.***, 171 F.3rd 308 (5th Cir. 1999); ***E.I. Du Pont De Nemours and Company, Inc. v. Robinson***, 923 S.W.2d 549 (Tex. 1995). When determining reliability, the hearing officer must consider the evidence in

terms of (1) general acceptance of the theory and technique by the relevant scientific community; (2) the expert's qualifications; (3) the existence of literature supporting or rejecting the theory; (4) the technique's potential rate of error; (5) the availability of other experts to test and evaluate the technique; (6) the clarity with which the theory or technique can be explained to the trial court; and (7) the experience and skill of the person who applied the technique on the occasion in question. ***Kelly v. State***, 792 S.W.2d 579 (Tex. App.-Fort Worth 1990).

Claimant failed to present an evidence-based medical opinion from a competent source to overcome the IRO's decision. The treatment proposed by Dr. S is a departure from the *ODG* in that it is not recommended and there is no evidence justifying the need for a bilateral procedure, nor is there any evidence of an adhesion blocking access to the nerve root. Dr. S did not provide any justification for the requested procedure and his desire to depart from the ODG standard of care other than a note in his March 4, 2008 treatment record in which he opined that the addition of Wydase and hypertonic saline can make an ESI much more efficacious. His conclusory statements, without sufficient reference to the *ODG* or other evidence-based medicine justifying departure from the *ODG*, do not meet the requisite evidentiary standard required to overcome the presumption afforded the IRO. The preponderance of the evidence is not contrary to the IRO decision and the requested bilateral transforaminal neuroplasty with epidurogram under fluoroscopy does not meet the criteria set out in the *ODG*.

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 _____, Claimant was the employee of (Employer), when she sustained a compensable injury.

   C. The IRO determined that the requested services were not reasonable and necessary health care services for the compensable injury of _____.

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

3. Claimant's treating doctor recommended bilateral transforaminal neuroplasty with epiduragram under flouroscopy.

4. The proposed treatment is not recommended by the *ODG* due to a lack of sufficient evidence-based medicine regarding the benefits of the procedure outweighing the risks.

5. The IRO decision upheld the Carrier's denial of the requested bilateral transforaminal

neuroplasty with epidurogram under fluoroscopy because the ODG does not recommend it; because Claimant's symptoms are not bilateral; and, because there is no evidence of any adhesion blocking access to the nerve root, verified by gallium MRI or fluoroscopy during epidural steroid injection

6. The requested service is not consistent with the *ODG* criteria for a bilateral transforaminal neuroplasty with epidurogram under fluoroscopy.

7. The bilateral transforaminal neuroplasty with epidurogram under fluoroscopy is not health care reasonably required for the compensable injury of _____.

CONCLUSIONS OF LAW

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

2. Venue was proper in the (City) Field Office.

3. The preponderance of the evidence is not contrary to the decision of IR0 that a bilateral transforaminal neuroplasty with epidurogram under fluoroscopy is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to a bilateral transforaminal neuroplasty with epidurogram under fluoroscopy for the compensable injury of _____.

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.

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

(SELF INSURED)
(ADDRESS)
(CITY), TEXAS (ZIP CODE)

Signed this 12th day of November, 2008.

Erika Copeland
Hearing Officer