MEDICAL CONTESTED CASE HEARING NO. 09078
M6-08-15046-01

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 November 18, 2008, to decide the following disputed issue:

> Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to eight sessions of physical therapy to the cervical spine to include CPT codes 97110, 97140 and G0283 for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was represented by DR, attorney. Carrier appeared and was represented by adjuster, HW.

BACKGROUND INFORMATION

It is undisputed that Claimant sustained a compensable injury to multiple parts of his body while working as a bus mechanic for a local school district. Claimant has had complaints of pain in his left hand, left shoulder, neck, low back and right lower extremity. Claimant received conservative treatment with Dr. C. He saw a designated doctor in May of 2008, who diagnosed cervicalgia, left rotator cuff impingement, a contusion to the third finger on the left hand and right lower extremity radicular type pain. The designated doctor opined that Claimant had not reached MMI at that time as he had just begun active physical therapy. She noted that Claimant had been referred for pain management and might undergo spinal injections. The designated doctor opined that Claimant had sustained trauma to his cervical spine and possible injury to his left rotator cuff as the result of his compensable injury. She also linked the left third finger contusion and right lower extremity pain to the compensable injury.

Dr. C referred Claimant to an orthopedic surgeon, a pain management doctor and physical therapy. Claimant underwent some physical therapy, which he testified improved his functional ability. Following the designated doctor's evaluation, Dr. C ordered more cervical physical therapy, which was denied.

The carrier's first utilization review doctor denied the requested physical therapy citing the *ODG* and opined that Claimant had completed the *ODG* recommended physical therapy for the diagnosis submitted. The reviewer stated that the clinical notes submitted did not include any recent evaluation from Dr. C that would indicate improvement warranting additional physical therapy.

The utilization review doctor who reviewed the request on reconsideration also denied the requested

treatment. He also cited the *ODG* and stated that while there was some improvement with physical therapy, there was no recent documentation from Dr. C to support additional physical therapy.

An IRO reviewer and board certified family practice/occupational medicine doctor reviewed the records and upheld the adverse determinations of the utilization review doctors. The IRO reviewer denied the requested eight sessions of physical therapy citing the *ODG* provisions for treatment of the neck. The reviewer noted that Claimant completed ten sessions of physical therapy between May 15, 2008 and June 11, 2008, and the physical therapist recommended additional sessions on June 12, 2008. The reviewer cited the treatment guidelines recommendation for approximately ten visits over an eight week period for cervicalgia, neck pain, cervical spondylosis, sprains and strains of the neck. The reviewer concluded that Claimant appeared to have sustained an exacerbation of multilevel degenerative changes in his cervical and lumbar spine and, without additional corroboration of specific anatomic derangement, the additional eight sessions of physical therapy were neither reasonable, necessary or consistent with the *ODG* recommendations.

Dr. C, in a lengthy narrative, took issue with the *ODG* as too restrictive and argued that they would not apply in Claimant's case.

Dr. B, a board certified pain management and rehabilitation doctor, reviewed the records and Dr. C' response to the IRO decision and opined that nothing in Dr. C's response justified overturning the denials of the utilization review doctors or the IRO or departure from the *ODG*.

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, therefore, in any dispute regarding medical necessity, is whether the proposed care is consistent with the *ODG*. As the utilization review and IRO doctors in the instant case have stated, the *ODG* allows for physical therapy for treatment of neck injuries and sets out the

recommended number of physical therapy sessions that are reasonable and necessary.

The *ODG* Treatment Guidelines for the neck discuss physical therapy as follows:

> Recommended. Low stress aerobic activities and stretching exercises can be initiated at home and supported by a physical therapy provider, to avoid debilitation and further restriction of motion. (Rosenfeld, 2000) (Bigos, 1999) For mechanical disorders for the neck, therapeutic exercises have demonstrated clinically significant benefits in terms of pain, functional restoration, and patient global assessment scales. (Philadelphia, 2001) (Colorado, 2001) (Kjellman, 1999) (Seferiadis, 2004) Physical therapy seems to be more effective than general practitioner care on cervical range of motion at short-term follow-up. (Scholten-Peeters, 2006) In a recent high quality study, mobilization appears to be one of the most effective non-invasive interventions for the treatment of both pain and cervical range of motion in the acutely injured WAD patient. (ConlinI, 2005) A recent high quality study found little difference among conservative whiplash therapies, with some advantage to an active mobilization program with physical therapy twice weekly for 3 weeks. (Kongsted, 2007) See also specific physical therapy modalities, as well as Exercise.

ODG Physical Therapy Guidelines –

Allow for fading of treatment frequency (from up to 3 visits per week to 1 or less), plus active self-directed home PT. Also see other general guidelines that apply to all conditions under Physical Therapy in the ODG Preface, including assessment after a "six-visit clinical trial".

Cervicalgia (neck pain); Cervical spondylosis (ICD9 723.1; 721.0):
9 visits over 8 weeks

Sprains and strains of neck (ICD9 847.0):
10 visits over 8 weeks

Displacement of cervical intervertebral disc (ICD9 722.0):
Medical treatment: 10 visits over 8 weeks
Post-injection treatment: 1-2 visits over 1 week
Post-surgical treatment (discetomy/laminectomy): 16 visits over 8 weeks
Post-surgical treatment (fusion, after graft maturity): 24 visits over 16 weeks

Degeneration of cervical intervertebral disc (ICD9 722.4):
10-12 visits over 8 weeks
See 722.0 for post-surgical visits

Brachia neuritis or radiculitis NOS (ICD9 723.4):
12 visits over 10 weeks
See 722.0 for post-surgical visits

Post Laminectomy Syndrome (ICD9 722.8):
10 visits over 6 weeks

Fracture of vertebral column without spinal cord injury (ICD9 805):
Medical treatment: 8 visits over 10 weeks
Post-surgical treatment: 34 visits over 16 weeks

Fracture of vertebral column with spinal cord injury (ICD9 806):
Medical treatment: 8 visits over 10 weeks

Post-surgical treatment: 48 visits over 18 weeks
Work conditioning (See also Procedure Summary entry):
10 visits over 8 weeks

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.

All of the doctors who reviewed the requested physical therapy and the IRO doctor denied the requested additional eight sessions citing the relevant provisions of the *ODG*, specifically the fact Claimant had already undergone the recommended physical therapy and there was no medical documentation that warranted a departure from the *ODG* standard of care. It is incumbent on the Claimant, therefore, to provide evidence-based medicine sufficient to overcome 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. Dr. C is a family practitioner and may well be qualified to render an opinion regarding conservative neck treatment. The treatment proposed by Dr. C, however, is a departure from the *ODG*. Dr. C, in his lengthy response to the IRO, argued that the *ODG* is too restrictive and not applicable in the instant case. However, his records and conclusory statements, without evidence-based medicine justifying departure from the *ODG*, do not meet the requisite evidentiary standard required to overcome the IRO. The preponderance of the evidence is not contrary to the IRO decision and the requested eight sessions of physical therapy to the cervical spine 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 he 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 eight sessions of physical therapy to the cervical spine to include CPT codes 97110, 97140 and G0283.

4. For treatment of the neck, the *ODG* sets out a recommended number of physical therapy sessions.

5. Claimant has undergone ten sessions of physical therapy for his cervical spine.

6. The IRO decision upheld the Carrier's denial of the requested eight sessions of physical therapy to the cervical spine to include CPT codes 97110, 97140 and G0283 because the Claimant had already undergone ten sessions of physical therapy and the medical evidence did not justify additional physical therapy.

7. The requested service is not consistent with the *ODG* criteria for eight sessions of physical therapy to the cervical spine to include CPT codes 97110, 97140 and G0283.

8. The requested eight sessions of physical therapy to the cervical spine to include CPT codes 97110, 97140 and G0283 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 IRO that eight sessions of physical therapy to the cervical spine to include CPT codes 97110, 97140 and G0283 is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to eight sessions of physical therapy to the cervical spine to include CPT codes 97110, 97140 and G0283 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 **TEXAS ASSOCIATION OF SCHOOL BOARDS RISK MANAGEMENT FUND** and the name and address of its registered agent for service of process is

JAMES B. CROW, SECRETARY
TASB RISK MANAGEMENT FUND
12007 RESEARCH BOULEVARD
AUSTIN, TEXAS 78759

Signed this 15th day of January, 2009.

Erika Copeland
Hearing Officer