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 May 13, 2009, to decide the following disputed issue:

> Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is entitled to a caudal epidural steroid injection with hypertonic saline for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was assisted by AT, Ombudsman.
Carrier appeared and was represented by DP, Attorney.

BACKGROUND INFORMATION

Claimant works as a restaurant equipment repairman. He was carrying a piece of equipment when he stumbled and almost fell to the floor. He felt immediate pain in his lower back. His date of injury is dated as _____.

Claimant ultimately had fusion surgery with instrumentation performed by a neurosurgeon on July 31, 2006. The surgery was not successful in controlling Claimant's pain level and Claimant's first documented caudal ESI was on December 15, 2006. The medical records indicate Claimant's ESI lasted only one to two weeks and then he had recurrent pain.

On April 10, 2007, Claimant had a second caudal ESI. The treating doctor's notes state that Claimant had a favorable response to the latest ESI, but noted that pain had returned by May 10, 2007.

The third documented caudal ESI was on June 12, 2007. The medical records indicate that the caudal ESI helped for about three weeks and then the pain returned. The amount and type of pain relief was not further defined.

On August 13, 2008, Claimant had a second surgery to remove the instrumentation from L4 to the sacrum. Claimant recovered from the surgery, but continued with lower back pain.

On January 2, 2009, Claimant had a fourth caudal ESI at the L5-S1 level of the lumbar spine. On January 26, 2009, the neurosurgeon noted that Claimant had a good response to the latest caudal ESI. Based on Claimant's response to the January 2, 2009 ESI, the neurosurgeon had requested pre-certification for the medical procedure that is the subject of this hearing.

In March 2009, as part of the Carrier review process, a utilization review doctor requested more specific information as the Claimant's percentage of pain control after the injection. That information was not in the medical records and the neurosurgeon's office called the Claimant and asked him to quantify the pain relief. Claimant responded that the pain relief was 40% for two or three weeks.

The neurosurgeon's request for repeat caudal ESI's was denied by the Carrier because Claimant did not meet the criteria set out in the Official Disability Guidelines (ODG). A reconsideration request was also denied and the neurosurgeon requested review by an Independent Review Organization (IRO).

The IRO decision dated March 30, 2009 overturned the Carrier's denial of the requested medical procedure. The IRO decision found a caudal ESI with hypertonic saline to be medically necessary to treat Claimant's condition. More specifically, the IRO decision found office notes of March 10, 2009 to document a 40% improvement following the first ESI on January 2, 2009. The IRO decision concluded that a second ESI is indicated under these circumstances. The IRO decision further states that the basis for this decision was medical judgment, clinical experience and expertise in accordance with accepted medical standards. The IRO doctor listed the ODG for the low back as information provided to him for review.

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.

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 Official Disability Guidelines (ODG).

Division Rule 133.308(t) requires that 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. Thus, the Carrier/Petitioner has the burden to overturn the IRO decision.

The ODG criteria for the use of Epidural steroid injections:

> *Note: The purpose of ESI is to reduce pain and inflammation, thereby facilitating progress in more active treatment programs, and avoiding surgery, but this treatment alone offers no significant long-term functional benefit.*

(1) Radiculopathy must be documented. Objective findings on examination need to be present. For unequivocal evidence of radiculopathy, see AMA Guides, 5th Edition, page 382-383. (Andersson, 2000)

(2) Initially unresponsive to conservative treatment (exercises, physical methods, NSAIDs and muscle relaxants).

(3) Injections should be performed using fluoroscopy (live x-ray) and injection of contrast for guidance.

(4) *Diagnostic Phase:* At the time of initial use of an ESI (formally referred to as the "diagnostic phase" as initial injections indicate whether success will be obtained with this treatment intervention), a maximum of one to two injections should be performed. A repeat block is not recommended if there is inadequate response to the first block (< 30% is a standard placebo response). A second block is also not indicated if the first block is accurately placed unless: (a) there is a question of the pain generator; (b) there was possibility of inaccurate placement; or (c) there is evidence of multilevel pathology. In these cases a different level or approach might be proposed. There should be an interval of at least one to two weeks between injections.

(5) No more than two nerve root levels should be injected using transforaminal blocks.

(6) No more than one interlaminar level should be injected at one session.

(7) *Therapeutic phase:* If after the initial block/blocks are given (see "Diagnostic Phase" above) and found to produce pain relief of at least 50-70% pain relief for at least 6-8 weeks, additional blocks may be required. This is generally referred to as the "therapeutic phase." Indications for repeat blocks include acute exacerbation of pain, or new onset of symptoms. The general consensus recommendation is for no more than 4 blocks per region per year. (CMS, 2004) (Boswell, 2007)

(8) Repeat injections should be based on continued objective documented pain relief, decreased need for pain medications, and functional response.

(9) Current research does not support a routine use of a "series-of-three" injections in either the diagnostic or therapeutic phase. We recommend no more than 2 ESI injections for the initial phase and rarely more than 2 for therapeutic treatment.

(10) It is currently not recommended to perform epidural blocks on the same day of treatment as facet blocks or sacroiliac blocks or lumbar sympathetic blocks or trigger point injections as this may lead to improper diagnosis or unnecessary treatment.

(11) Cervical and lumbar epidural steroid injection should not be performed on the same day. (Doing both injections on the same day could result in an excessive dose of steroids, which can be dangerous, and not worth the risk for a treatment that has no long-term benefit.)

The Carrier presented two utilization review opinions that both concluded that a repeat caudal ESI was not authorized unless the prior caudal ESI's were considered successful. Both utilization review opinions relied on the ODG criteria that if after the initial blocks are given and found to produce pain relief of at least 50-70% pain relief for at least six to eight weeks, then that is considered to be a successful prior ESI procedure and additional injection may be required.

The Carrier had an orthopedic surgeon testify at the Medical Contested Case Hearing (MCCH). He confirmed that the utilization review opinions did use the correct ODG criteria as set out above.

On the other hand, the IRO doctor did not choose to address the ODG criteria or any other evidence-based medicine guideline. He apparently was fully aware of the Carrier's utilization review opinions as they are listed as information provided for his review. Instead, the IRO reviewer relies on his medical judgment, his clinical experience, and his expertise in accordance with accepted medical standards. One doctor's opinion, no matter how good it may be, is exactly what the medical review process is seeking to change by requiring evidence-based medical evidence to justify medical treatment under the Texas Workers' Compensation Act. To be health care reasonably required, it must meet the statutory standard.

I find that the preponderance of the evidence-based medical evidence is contrary to the decision of the IRO and that Claimant is not entitled to a repeat caudal ESI with hypertonic saline as requested by his treating neurosurgeon.

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).

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. Claimant's medical records do not document that the January 2, 2009 epidural steroid injection produced pain relief of at least 50% pain relief for at least six weeks.

4. Claimant's prior epidural steroid injection was not considered to be successful under the ODG criteria and a repeat ESI injection is not authorized.

5. Caudal epidural steroid injection with hypertonic saline 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 is proper in the (City) Field Office.

3. The preponderance of the evidence is contrary to the decision of the IRO that caudal epidural steroid injection with hypertonic saline is health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to caudal epidural steroid injection with hypertonic saline 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 §408.021.

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

RUSSELL OLIVER, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723

Signed this 19th day of May, 2009.

Donald E. Woods
Hearing Officer