MEDICAL CONTESTED CASE HEARING NO. 09197
M6-09-18296-01

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.

ISSUES

A contested case hearing was held on July 7, 2009 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 a lumbar epidural steroid injection at L5-S1 to include CPT codes 77003 and 62311 for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was represented by TJ, attorney. Respondent/Carrier appeared and was represented by RM, adjuster. Petitioner/Provider, Dr. B, appeared as a witness in this matter.

BACKGROUND INFORMATION

Claimant was injured on _____, when a forklift hit her and ran over her right foot causing her to fall and injure her lower back, left hip, and right foot. Claimant has undergone conservative treatment for her injuries. Claimant is currently on medication and has received physical therapy for her injuries. Her therapy records indicate that she is making slow and steady progress toward improvement. An MRI was performed on November 6, 2008 which revealed herniated discs at L4-L5 and L5-S1. On December 12, 2008, Dr. B requested an epidural steroid injection to relieve the claimant's right sided radiculopathy. Dr. B's request was denied twice by the carrier's utilization review agents and their denial was upheld by the Independent Review Organization (IRO).

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 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. The initial inquiry, therefore, in any dispute regarding medical necessity, is whether the proposed care is consistent with the ODG.

With regard to epidural steroid injections, the ODG provides as follows:

> Recommended as an option for treatment of radicular pain (defined as pain in dermatomal distribution with corroborative findings of radiculopathy). See specific criteria for use below. In a recent Cochrane review, there was one study that reported improvement in pain and function at four weeks and also one year in individuals with chronic neck pain with radiation. (Peloso-*Cochrane*, 2006) (Peloso, 2005) Other reviews have reported moderate short-term and long-term evidence of success in managing cervical radiculopathy with interlaminar ESIs. (Stav, 1993) (Castagnera, 1994) Some have also reported moderate evidence of management of cervical nerve root pain using a transforaminal approach. (Bush, 1996) (Cyteval, 2004) A recent retrospective review of interlaminar cervical ESIs found that approximately two-thirds of patients with symptomatic cervical radiculopathy from disc herniation were able to avoid surgery for up to 1 year with treatment. Success rate was improved with earlier injection (< 100 days from diagnosis). (Lin, 2006) There have been recent case reports of cerebellar infarct and brainstem herniation as well as spinal cord infarction after cervical transforaminal injection. (Beckman, 2006) (Ludwig, 2005) Quadriparesis with a cervical ESI at C6-7 has also been noted (Bose, 2005) and the American Society of Anesthesiologists Closed Claims Project database revealed 9 deaths or cases of brain injury after cervical ESI (1970-1999). (Fitzgibbon, 2004) These reports were in contrast to a retrospective review of 1,036 injections that showed that there were no catastrophic complications with the procedure. (Ma, 2005) The American Academy of Neurology recently concluded that epidural steroid injections may lead to an improvement in radicular lumbosacral pain between 2 and 6 weeks following the injection, but they do not affect impairment of function or the need for surgery and do not provide long-term pain relief beyond 3 months, and there is insufficient evidence to make any recommendation for the use of epidural steroid injections to treat radicular cervical pain. (Armon, 2007) There is evidence for short-term symptomatic improvement of radicular symptoms with epidural or selective root injections with corticosteroids, but these treatments did not appear to decrease the rate of open surgery. (Haldeman, 2008) See the Low Back Chapter for more information and references.
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> **Criteria for the use of Epidural steroid injections, therapeutic:**
> *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 by physical examination and corroborated by imaging studies and/or electrodiagnostic testing.
(2) Initially unresponsive to conservative treatment (exercises, physical methods, NSAIDs and muscle relaxants).
(3) Injections should be performed using fluoroscopy (live x-ray) for guidance
(4) If used for diagnostic purposes, a maximum of two injections should be performed. A second block is not recommended if there is inadequate response to the first block. Diagnostic blocks should be at 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) In the therapeutic phase, repeat blocks should only be offered if there is at least 50% pain relief for six to eight weeks, with a general recommendation of no more than 4 blocks per region per year.
(8) Repeat injections should be based on continued objective documented pain and function response.
(9) Current research does not support a "series-of-three" injections in either the diagnostic or therapeutic phase. We recommend no more than 2 ESI injections.
(10) It is currently not recommended to perform epidural blocks on the same day of treatment as facet blocks or stellate ganglion blocks or 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.

Dr. B testified that the claimant met all of the criteria found in the ODG to establish the medical necessity of the lumbar epidural steroid injection. Dr. B acknowledged that the claimant's EMG was negative for radiculopathy, but he stated that an EMG does not always show radiculopathy. Dr. B testified that his physical examination correlated with the findings on the MRI dated November 6, 2008. Dr. B stated that the claimant's examination revealed a positive straight leg raise and a dermatomal distribution of numbness and pain from the herniated discs.

While Dr. B's examinations showed evidence of radiculopathy, examinations by other physicians did not show clinical evidence of radiculopathy. Dr. B first documented evidence of radiculopathy when he examined the claimant on December 12, 2008. However, on December 17, 2008 the claimant was examined by her treating doctor, Dr. M. Dr. M's December 17, 2008 examination did not reveal any evidence of radiculopathy nor did he diagnose her with that condition. Subsequent examinations by Dr. M did not indicate that the claimant had any evidence of radiculopathy. An examination by the designated doctor, Dr. K, also did not reveal any evidence of radiculopathy. The claimant and petitioner failed to establish that the claimant met the ODG criteria for the use of epidural steroid injections. The preponderance of the evidence-based medical evidence is not contrary to the IRO's determination.

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).

   C. Claimant sustained a compensable injury on _____.

   D. The Independent Review Organizations (IRO) determined that the claimant should not have a lumbar epidural steroid injection.

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. A lumbar epidural steroid injection 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 not contrary to the decision of the IRO that a lumbar epidural steroid injection is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to a lumbar epidural steroid injection at L5-S1 to include CPT codes 77003 and 62311 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 **HARTFORD UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TX 78701

Signed this 13th day of July, 2009.

Jacquelyn Coleman
Hearing Officer