MEDICAL CONTESTED CASE HEARING NO. 09210
M6-09-19530-01

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 June 23, 2009, 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 12 sessions of physical therapy for the cervical spine for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was represented by CS, attorney. Carrier appeared and was represented by attorney, SL.

BACKGROUND INFORMATION

It is undisputed that Claimant sustained a compensable injury to her neck and right upper extremity while attempting to stop a box from falling from a top rack. As a result of her injury, she underwent cervical laminectomy and resection of an ependymoma from C2-C7 on April 7, 2007. She developed a post-surgical staph infection and underwent irrigation and debridement on June 7, 2007. Claimant underwent post-surgical physical therapy sessions and 180 hours of chronic pain management, which she completed in August of 2008. Claimant testified that her symptoms have worsened since completion of her therapy and chronic pain management. She has been diagnosed with a partial thickness tear of the supraspinatous tendon (MRI 12-19-08). Claimant testified that her doctor ordered the physical therapy to stabilize her neck symptoms prior to shoulder surgery.

The carrier's first utilization review doctor, a board certified occupational medicine doctor, denied the requested physical therapy citing the *ODG* and opined that Claimant had undergone home health treatment and post-operative inpatient rehabilitation as well as many sessions of physical therapy in the years since her injury. He noted at least 35 post operative physical therapy sessions, followed by intermittent physical therapy and physical rehabilitation as part of the chronic pain management program. He noted that Claimant had not shown progress with physical therapy and chronic pain management and continued to have back and neck pain with radicular symptoms. He noted that her complaints were unchanged after these measures and questioned why Claimant could not perform a well designed and focused home exercise program. He stated that the requested treatment exceeds the *ODG* for physical therapy under the low back and neck treatment guidelines, and recent documentation from the requesting doctor did not support additional physical therapy.

The second utilization reviewer, a board certified physical medicine and rehabilitation doctor, also cited the *ODG* in recommending denial of the requested physical therapy. That reviewer referenced

a January 27, 2009, letter from the treating doctor wherein that doctor opined that Claimant had continued neck pain and radiation into the upper extremities caused, at least in part, by a residual tumor and syrinx. The reviewer noted the treating doctor's examination findings of reverse lordosis of the cervical spine and a disc herniation on MRI, which is most likely aggravating and causing some of the constant neck pain. The reviewer cited the Neck and Upper Back treatment guidelines from the *ODG* and opined that the medical records failed to document a current physical examination and significant objective functional deficits on examination. The reviewer noted an absence of reference to any exacerbation or flare-up of the Claimant's condition, which would warrant further formal treatment. This reviewer also noted the extensive amount of physical therapy Claimant had already undergone including at least 21 sessions post-operatively followed by 3 sessions in 2008 and 20 sessions of a chronic pain management program. The reviewer concluded that after the amount of therapy already completed, Claimant should be well-versed in an independent home exercise program.

An IRO reviewer and physical medicine and rehabilitation doctor reviewed the records and upheld the adverse determinations of the utilization review doctors. The IRO reviewer denied the requested 12 sessions of physical therapy for the cervical spine citing the *ODG* provisions regarding physical therapy following cervical laminectomy and chronic pain management. The reviewer noted Dr. S' opinion that a herniated disc was causing some of the pain, but noted the only MRI available for review was performed six months post surgery in 2007. The reviewer noted that the *ODG* does allow for some post cervical laminectomy physical therapy, but Claimant has completed more than twice the number of sessions allowed by the *ODG*. The reviewer also noted Claimant's participation in a chronic pain management program and the *ODG* recommendation that no further outpatient medical rehabilitation would be recommended following a chronic pain management program. The reviewer concluded that in the absence of any new neurological problem, there was no justification for additional therapies and the request did not meet the *ODG*.

Claimant offered a February 12, 2009 MRI of the cervical spine, which revealed a spinal cord lesion at C4 which might represent post-operative changes or a residual tumor as well as multilevel degenerative disc disease causing reversal of the cervical lordosis. She also offered the records of Drs. S and V, pain management doctors to whom she had been referred by her treating doctor. Those doctors recommended continued physical therapy and chronic pain management.

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 twelve sessions citing the relevant provisions of the *ODG*, specifically the fact Claimant had already undergone more than the recommended amount of 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. Drs. S and V, Claimant's pain management doctors, may well be qualified to render an opinion regarding conservative neck treatment. The treatment proposed by the pain

management doctors, however, is a departure from the *ODG*. The Claimant did not present evidence-based medicine to overcome the IRO. The preponderance of the evidence is not contrary to the IRO decision and the requested 12 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 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 pain management doctors recommended 12 sessions of physical therapy to the cervical spine for treatment of the compensable injury.

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

5. Claimant has undergone in excess of 20 sessions of physical therapy, as well as chronic pain management, for treatment of her cervical spine.

6. The IRO decision upheld the Carrier's denial of the requested 12 sessions of physical therapy to the cervical spine because the Claimant had already undergone more than the number of sessions of physical therapy recommended by the *ODG* and the medical evidence did not justify additional physical therapy.

7. The requested service is not consistent with the *ODG* criteria for physical therapy to the cervical spine.

8. The requested physical therapy for the cervical spine 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 12 sessions of physical therapy for the cervical spine is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to 12 sessions of physical therapy for the cervical spine 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 **NEW HAMPSHIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701

Signed this 6th day of August, 2009.

Erika Copeland
Hearing Officer