MEDICAL CONTESTED CASE HEARING NO. 09222
M6-09-17668-01

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 scheduled for May 20, 2009 but reset to and held on July 29, 2009 to decide the following disputed issue:

> Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to a lumbar epidural block at L5-S1 under fluoroscopy for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by AC, ombudsman.
Respondent/Carrier appeared and was represented by MM, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on _____. Claimant returned to work regular duty in 1995. On November 11, 2006, Claimant underwent an MRI of the lumbar spine which revealed mild spondylosis at L1-2, L3-4 and L5-S1 and L5-S1 left central subarticular disc herniation/protrusion with slight deformity of the left S1 nerve root sleeve. An EMG performed on October 17, 2006 revealed evidence of S1 radiculopathy. Claimant has undergone physical therapy and at least three epidural injections for treatment of his lumbar injury. In November 2008, Claimant presented to his treating doctor with complaints of sciatic-like symptoms. Claimant's treating doctor recommended an epidural block at L5-S1 under fluoroscopy which was denied by the Carrier and referred to an IRO who determined that the recommended treatment was not medically necessary.

The IRO reviewer, a board certified orthopedic surgeon, upheld the previous adverse determination stating that there is no objective evidence that the Claimant has radiculopathy on examinations, that there is no clear neurocompressive pathology on the 2006 MRI and that the treating physician documented that the Claimant's neurological status is intact. The IRO reviewer noted that the records did not contain electrodiagnostic studies to confirm radiculopathy; however, the Claimant did undergo an EMG in October 2006 with abnormal findings. The IRO reviewer concluded that the Claimant does not appear to meet the *ODG* (Official Disability Guidelines) criterion for an epidural steroid injection and medical necessity does not exist for a lumbar epidural block at L5-S1 under fluoroscopy.

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.

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 *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 *ODG*.

Pursuant to the *ODG* for epidural steroid injections:

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 Claimant testified that he received considerable relief of his low back pain and symptoms after the prior injections. Dr. V, a pain management physician, responded to the IRO's decision stating that the Claimant exhibited marked improvement of pain following the previous injection "on the order of 60-70% with increased activity which included gainful employment." Dr. V asserted through his testimony that epidural steroid injections have been endorsed by the North American Spine Society and the Agency for Healthcare Research and Quality of the Department of Health and Human Services as an integral part of non-surgical management of radicular pain from spine disorders. Dr. V failed to address the criteria recommended in the *ODG* or the other concerns raised by the IRO. Based on the evidence presented, the Claimant failed to present an evidence-based medical opinion to overcome the IRO's decision and the preponderance of the evidence is not contrary to the IRO decision that the Claimant is not entitled to a lumbar epidural block at L5-S1 under fluoroscopy for the compensable injury of _____.

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 the (Self-Insured), Employer.

   C. Claimant sustained a compensable injury on _____.

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. The requested procedure is not consistent with the recommendations in the *ODG* for an epidural block at L5-S1 under fluoroscopy.

4. The requested epidural block at L5-S1 under fluoroscopy is not health care reasonably required for the compensable injury of _____.

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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 epidural block at L5-S1 under fluoroscopy is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to an epidural block at L5-S1 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 §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

MAYOR OF (CITY)
(STREET ADDRESS, FLOOR)
(CITY), TX (ZIP CODE)

Signed this 30th day of July, 2009.

Carol A. Fougerat
Hearing Officer