MEDICAL CONTESTED CASE HEARING NO. 11065
M6-10-30027-01

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 November 29, 2010 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 transforaminal ESI at the L4-L5 level for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was represented by JL, attorney.
Respondent/Carrier appeared and was represented by CE, attorney.

BACKGROUND INFORMATION

The claimant sustained a compensable injury to the lumbar spine for which he underwent an epidural steroid injection (ESI) at the L4-L5 level on January 16, 2009 and another on October 14, 2009. Dr. P, a pain management doctor, requested another ESI at the L4-L5 level for the purpose of pain management. A Utilization Review Agent (URA) completed a review of the requested procedure on August 13, 2010 and denied the requested procedure. The URA concluded that there was insufficient clinical evidence submitted for review to be able to certify the request. In its decision, the URA noted that the request lacked a recent comprehensive physical exam submitted for review that had objective evidence of radiculopathy, and that the claimant was reported to have undergone a prior ESI and there was insufficient documentation submitted that demonstrated the claimant had an increase in functional response as well as decreased medication intake with the previous injection. Upon reconsideration in a report dated September 13, 2010, the URA denied the requested procedure citing the same reasoning as the first URA. On its reconsideration, the URA contacted Dr. P to provide him an opportunity to submit further documentation, which he provided via fax. The additional documentation was reviewed and did not contain information regarding the claimant's response to the injections. Upon review by the Independent Review Organization (IRO), the requested ESI was again not certified. The IRO noted that among other reasons, the request did not meet the criteria enumerated in the Official Disability Guidelines (ODG) in that it was not shown that the claimant had an adequate response to the first injection and insufficient documentation was submitted for review that demonstrated an increase in the claimant's functionality with his activities of daily living.

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 making decisions about the care of individual patients. The Commissioner of the Division of Workers' Compensation is required to adopt treatment guidelines that are evidence-based, scientifically valid, outcome-focused and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. Texas Labor Code Section 413.011(e). Medical services consistent with the medical policies and fee guidelines adopted by the commissioner are presumed reasonable in accordance with Texas Labor Code Section 413.017(1).

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. Also, in accordance with Division Rule 133.308 (t), "A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division are (sic) considered parties to an appeal. 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."

The ODG lists the criteria for the use of epidural steroid injections as follows:

> Note: The purpose of ESI is to reduce pain and inflammation, thereby facilitating progress in more active treatment programs, reduction of medication use 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) Radiculopathy must be 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) 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 supported. This is generally referred to as the "therapeutic phase." Indications for repeat blocks include acute exacerbation of pain, or new onset of radicular 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 objected that the claimant presented a statement from Dr. P and another from Dr. L, who had administered the last ESI, in order to address the improvement received from the last ESI that had been administered. These statements were created after the IRO's decision. The carrier relied upon appeal panel decision 100379-S to argue that evidence that was not presented and reviewed by the IRO at the time of its review should not be considered. In that case, a diagnostic test that had not been undertaken before the IRO's decision was performed thereafter and presented at the medical contested case hearing. The statements provided by the claimant in the case at hand were attempts from the providers to show how their documentation met the criteria listed in the ODG.

A review of Dr. P's statement appears to contradict the percentage of improvement alleged to have been achieved in Dr. L's statement. Dr. L's statement relied upon the claimant's own statements to a medical assistant that he had received a 60 to 70 percent improvement on a November 9, 2009 visit. The notes for this visit were not provided. Documentation as to the duration of the claimed improvement in functionality was not shown. Testimony was not presented from a medical provider. Radicular pain was noted in one entry but radiculopathy was not listed as a diagnosis nor was there shown to be pain in a dermatomal distribution with corroborative findings of radiculopathy. The medical reports presented listed the medicine that the claimant had been prescribed for pain but did not document how the intake of these medications were altered or affected due to pain relief after the administration of the last ESI. The claimant has failed to show how he has met the ODG's criteria for the requested procedure

and has failed to provide an evidence-based medical opinion from a competent source to overcome the IRO's decision.

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) and sustained a compensable injury.

   C. The IRO upheld the carrier's denial of the requested procedure.

2. Carrier delivered to Claimant and Provider 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 claimant did not provide evidence based medical evidence to overcome the determination of the IRO.

4. A transforaminal ESI at the L4-L5 level 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 transforaminal ESI at the L4-L5 level is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to a transforaminal ESI at the L4-L5 level 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 **SERVICE LLOYDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

JOSEPH KELLEY-GRAY, PRESIDENT
6907 CAPITOL OF TEXAS HIGHWAY NORTH
AUSTIN, TEXAS 78755

Signed this 30th day of November, 2010.

Virginia Rodríguez-Gómez
Hearing Officer