MEDICAL CONTESTED CASE HEARING NO. 11068
M6-10-28918-01

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 4, 2010, with the record closing on December 3, 2010, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is entitled to individual psychotherapy once per week for six weeks for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Carrier appeared and was represented by GT, attorney. Respondent did not appear. Claimant appeared and was assisted by JT, ombudsman.

BACKGROUND INFORMATION

Respondent Dr. M did not appear for the medical contested case hearing scheduled for November 4, 2010 at 9:00 am. A 10 day letter was sent to Respondent on November 4, 2010, offering her an opportunity to request that the hearing be reset to permit her to present evidence on the disputed issue. No response to that letter was received. The record was closed on December 3, 2010.

On _____ Claimant sustained a compensable injury, including injury to her thoracic and lumbar areas, left shoulder, and left knee, when she slipped and fell. A request was made for six sessions of individual psychotherapy (cognitive behavioral therapy, or CBT). The IRO doctor, an MD board certified in psychiatry, overturned the previous denials of the requested treatment.

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. 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 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 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 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."

There is no ODG provision for psychological treatment specific to thoracic, shoulder or knee injury.

The ODG provides concerning psychological treatment for low back injury:

> See Behavioral treatment.

The ODG provides concerning behavioral treatment for low back injury:

> Recommended as option for patients with chronic low back pain and delayed recovery. Also recommended as a component of a Chronic pain program (see the Pain Chapter). Behavioral treatment, specifically cognitive behavioral therapy (CBT), may be an effective treatment for patients with chronic low back pain, but it is still unknown what type of patients benefit most from what type of behavioral treatment. Some studies provide evidence that intensive multidisciplinary bio-psycho-social rehabilitation with a functional restoration approach improves pain and function. (Newton-John, 1995) (Hasenbring, 1999) (van Tulder-Cochrane, 2001) (Ostelo-Cochrane, 2005) (Airaksinen, 2006) (Linton, 2006) (Kaapa, 2006) (Jellema, 2006) Recent clinical trials concluded that patients with chronic low back pain who followed cognitive intervention and exercise programs improved significantly in muscle strength compared with patients who underwent lumbar fusion or placebo. (Keller, 2004) (Storheim, 2003) (Schonstein, 2003) Multidisciplinary biopsychosocial rehabilitation has been shown in controlled studies to improve pain and function in patients with chronic back pain. However, specialized back pain rehabilitation centers are rare and only a few patients can participate on this therapy. It is unclear how to select who will benefit, what combinations are effective in individual cases, and how long treatment is beneficial, and if used, treatment should not exceed 2 weeks without demonstrated efficacy (subjective and objective gains). (Lang, 2003) A recent RCT concluded that lumbar fusion failed to show any benefit over cognitive intervention and exercises, for patients with chronic low back pain

after previous surgery for disc herniation. (Brox, 2006) Another trial concluded that active physical treatment, cognitive-behavioral treatment, and the two combined each resulted in equally significant improvement, much better compared to no treatment. (The cognitive treatment focused on encouraging increased physical activity.) (Smeets, 2006) For chronic LBP, cognitive intervention may be equivalent to lumbar fusion without the potentially high surgical complication rates. (Ivar Brox-*Spine*, 2003) (Fairbank-*BMJ*, 2005) Cognitive behavioral therapy (CBT) significantly improves subacute and chronic low back pain both in the short term and during 1 year compared with advice alone and is highly cost-effective, a new RCT suggests. Disability scores as measured by the Roland Morris questionnaire improved by 2.4 points at the end of 12 months in the CBT group compared with 1.1 points among control patients. Patients were treated with up to 6 sessions of group CBT, whereas controls received no additional treatment other than a 15-minute session of active management advice. According to self-rated benefit from treatment, results showed that 59% of patients assigned to CBT reported recovery at 12 months compared with 31% of controls. Fear avoidance, pain self-efficacy, and the Short Form Health Survey physical scores also improved substantially in the CBT group but not in the control group. The CBT taught people how to challenge their fear of making things worse and to test out ways of improving their physical activity. (Lamb, 2010) See also Multi-disciplinary pain programs in the Pain Chapter. See also Psychosocial adjunctive methods in the Mental Illness & Stress Chapter.

ODG cognitive behavioral therapy (CBT) guidelines for low back problems:

Screen for patients with risk factors for delayed recovery, including fear avoidance beliefs. See Fear-avoidance beliefs questionnaire (FABQ).

Initial therapy for these "at risk" patients should be physical therapy exercise instruction, using a cognitive motivational approach to PT.

Consider separate psychotherapy CBT referral after 4 weeks if lack of progress from PT alone:

- Initial trial of 3-4 psychotherapy visits over 2 weeks
- With evidence of objective functional improvement, total of up to 6-10 visits over 5-6 weeks (individual sessions)

The IRO doctor concluded Claimant met the ODG criteria for CBT, noting she had low back pain, had received initial physical therapy without benefit, and had been screened and found to have fear avoidance factors likely to lead to a delayed recovery. The IRO doctor also observed that CBT is considered an appropriate modality for treatment of patients with chronic pain, and that Claimant's behavioral evaluation documented the presence of depression and anxiety as well as pain.

The evidence based medicine in this case was the ODG. The reviewing physicians and the IRO doctor based their opinions concerning the requested treatment on the ODG guidelines and their understandings of the material facts. The IRO doctor thought Claimant received initial physical therapy without benefit based on the report for the behavioral medicine consultation (a psychological evaluation) done on May 26, 2010 by AJ, a masters degree licensed professional counselor who works for the same employer as Dr. M. Claimant received six sessions of physical therapy, from April 14, 2010 through May 5, 2010, at (Medical Center). Ms. AJ's evaluation says Claimant reported to her that the (Medical Center) physical therapy sessions

were not beneficial. However, Claimant testified at the hearing that this therapy helped her. The (Medical Center) records demonstrated she improved and completed the therapy with all goals met and no functional deficits, although she still complained of pain.

The reviewers, psychologists Dr. D and Dr. F, concluded the ODG guidelines were not met in that Claimant was not shown to be an appropriately identified patient. Dr. D noted the ODG requirement of four weeks of physical therapy with lack of progress was not met.

The preponderance of the evidence based medical evidence was contrary to the IRO 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).

   C. On _____ Claimant sustained a compensable injury.

   D. The Independent Review Organization determined Claimant should have the requested treatment.

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 Division sent to Respondent at her address of record with the 10 day letter 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.

4. Respondent failed to appear for the November 4, 2010 medical contested case hearing and did not respond to the Division's 10 day letter offering her an opportunity to have the hearing rescheduled.

5. There was no showing of good cause for Respondent's failure to appear for the medical contested case hearing.

6. Individual psychotherapy once per week for six weeks 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 individual psychotherapy once per week for six weeks is health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to individual psychotherapy once per week for six weeks 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 of the Act.

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

CORPORATION SERVICE COMPANY
211 EAST 7th STREET, SUITE 620
AUSTIN, TEXAS 78701

Signed this 3rd day of December, 2010.

Thomas Hight
Hearing Officer