MEDICAL CONTESTED CASE HEARING NO. 11117
M6-11-31598-01

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 contested case hearing was held on March 21, 2011 to decide the following disputed issue:

> Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that Claimant is not entitled to outpatient post operative physical therapy to the right knee 3 times a week for 4 weeks to consist of aquatic therapy, neuromuscular reeducation, therapeutic exercises, therapeutic activities, manual therapy, electrical stimulation, group therapy and gait training, no more than 4 units per session for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by JT, ombudsman.
Respondent/Carrier was represented by JT (2), attorney.

BACKGROUND INFORMATION

Petitioner/Claimant injured her right knee during the course and scope of employment on _____. In July of 2010, she had arthroscopic surgery to excise tears of the medial meniscus and to perform debridement and chondroplasty of the patella and medial femoral condyle. Following the surgery, she had 24 sessions of physical therapy. Those sessions included aquatic therapy, neuromuscular reeducation, therapeutic exercises and activities, manual therapy, electrical stimulation, group therapy, gait training, cold packs, and ultrasound.

On December 23, 2010, an Independent Review Organization denied the request for Claimant to have additional physical therapy. The reviewer, who is a board certified orthopedic surgeon, referred to the *Official Disability Guidelines* (ODG) and the reviewer's own medical judgment, clinical experience and expertise in accordance with accepted medical standards in upholding previous adverse determinations by two other doctors regarding the sessions. The reviewer noted that Claimant's previous physical therapy sessions exceeded the number of sessions recommended by the ODG and commented that Claimant's arthritic pain would not be helped by additional sessions.

Claimant testified that the previous sessions, which she described as water-based therapy, improved her condition about 55%. She said that she believes she can improve even more with land-based therapy, explaining that previously she was unable to complete land-based therapy.

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 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."

The ODG provides the following for Physical Medicine Guidelines:

> Recommended. Positive limited evidence. As with any treatment, if there is no improvement after 2-3 weeks the protocol may be modified or re-evaluated. See also specific modalities. (Philadelphia, 2001) Acute muscle strains often benefit from daily treatment over a short period, whereas chronic injuries are usually addressed less frequently over an extended period. It is important for the physical therapy provider to document the patient's progress so that the physician can modify the care plan, if needed. The physical therapy prescription should include diagnosis; type, frequency, and duration of the prescribed therapy; preferred protocols or treatments; therapeutic goals; and safety precautions (eg, joint range-of-motion and weight-bearing limitations, and concurrent illnesses). **(**Rand, 2007**)** Controversy exists about the effectiveness of physical therapy after arthroscopic partial meniscectomy. (Goodwin, 2003) A randomised controlled trial of the effectiveness of water-based exercise concluded that group-based exercise in water over 1 year can produce significant reduction in pain and improvement in physical function in adults with lower limb arthritis, and may be a useful adjunct in the management of hip and/or knee arthritis. (Cochrane, 2005) Functional exercises after hospital discharge for total knee arthroplasty result in a small to moderate short-term, but not long-term, benefit. In the

short term physical therapy interventions with exercises based on functional activities may be more effective after total knee arthroplasty than traditional exercise programs, which concentrate on isometric muscle exercises and exercises to increase range of motion in the joint. (Lowe, 2007) Supervised therapeutic exercise improves outcomes in patients who have osteoarthritis or claudication of the knee. Compared with home exercise, supervised therapeutic exercise has been shown to improve walking speed and distance. **(**Rand, 2007**)** A physical therapy consultation focusing on appropriate exercises may benefit patients with OA, although this recommendation is largely based on expert opinion. The physical therapy visit may also include advice regarding assistive devices for ambulation. (Zhang, 2008) Accelerated perioperative care and rehabilitation intervention after hip and knee arthroplasty (including intense physical therapy and exercise) reduced mean hospital length of stay (LOS) from 8.8 days before implementation to 4.3 days after implementation. (Larsen, 2008) In patients with ACL injury willing to moderate activity level to avoid reinjury, initial treatment without ACL reconstruction should be considered. All ACL-injured patients need to begin knee-specialized physical therapy early (within a week) after the ACL injury to learn more about the injury, to lower the activity level while performing neuromuscular training to restore the functional stability, and as far as possible avoid further giving-way or re-injuries in the same or the other knee, irrespectively if ACL is reconstructed or not. (Neuman, 2008) Limited gains for most patients with knee OA. (Bennell, 2005) More likely benefit for combined manual physical therapy and supervised exercise for OA. (Deyle, 2000) Many patients do not require PT after partial meniscectomy. (Morrissey, 2006) There are short-term gains for PT after TKR. (Minns Lowe, 2007) Physical therapy and patient education may be underused as treatments for knee pain, compared to the routine prescription of palliative medication. (Mitchell, 2008) While foot orthoses are superior to flat inserts for patellofemoral pain, they are similar to physical therapy and do not improve outcomes when added to physical therapy in the short-term management of patellofemoral pain. (Collins, 2008) This study sought to clarify which type of postoperative rehabilitation program patients should undergo after ACL reconstruction surgery, comparing a neuromuscular exercise rehabilitation program with a more traditional strength-training regimen, and it showed comparable long-term primary and secondary outcomes between the 2 groups at 12 and 24 months. On the basis of the study, the authors recommend a combined approach of strength exercises with neuromuscular training in postoperative ACL rehabilitation programs. (Risberg, 2009) This RCT concluded that, after primary total knee arthroplasty, an outpatient physical therapy group achieved a greater range of knee motion than those without, but this was not statistically significant. (Mockford, 2008) See also specific physical therapy modalities by name, as well as Exercise.

Active Treatment versus Passive Modalities: See the Low Back Chapter for more information. The use of active treatment modalities instead of passive treatments is associated with substantially better clinical outcomes. The most commonly used active treatment modality is Therapeutic exercises (97110), but other active therapies may be recommended as well, including Neuromuscular reeducation (97112), Manual therapy (97140), and Therapeutic activities/exercises (97530).

ODG Physical Medicine 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.

Dislocation of knee; Tear of medial/lateral cartilage/meniscus of knee; Dislocation of patella (ICD9 836; 836.0; 836.1; 836.2; 836.3; 836.5):
Medical treatment: 9 visits over 8 weeks
Post-surgical (Meniscectomy): 12 visits over 12 weeks

Sprains and strains of knee and leg; Cruciate ligament of knee (ACL tear) (ICD9 844; 844.2):
Medical treatment: 12 visits over 8 weeks
Post-surgical (ACL repair): 24 visits over 16 weeks
Old bucket handle tear; Derangement of meniscus; Loose body in knee; Chondromalacia of patella; Tibialis tendonitis (ICD9 717.0; 717.5; 717.6; 717.7; 726.72):
9 visits over 8 weeks
Post-surgical: 12 visits over 12 weeks
Pain in joint; Effusion of joint (ICD9 719.0; 719.4):
9 visits over 8 weeks
Arthritis (Arthropathy, unspecified) **(ICD9 716.9):**

Medical treatment: 9 visits over 8 weeks
Post-injection treatment: 1-2 visits over 1 week

Post-surgical treatment, arthroplasty, knee: 24 visits over 10 weeks
Abnormality of gait (ICD9 781.2):
16-52 visits over 8-16 weeks (Depends on source of problem)
Fracture of neck of femur (ICD9 820):
Post-surgical: 18 visits over 8 weeks
Fracture of other and unspecified parts of femur (ICD9 821):
Post-surgical: 30 visits over 12 weeks
Fracture of patella (ICD9 822):
Post-surgical: 10 visits over 8 weeks
Fracture of tibia and fibula (ICD9 823)
Medical treatment: 30 visits over 12 weeks
Post-surgical treatment (ORIF): 30 visits over 12 weeks
Amputation of leg (ICD9 897):
Post-replantation surgery: 48 visits over 26 weeks
Work conditioning
See Work conditioning, work hardening

Claimant failed to present evidence-based medical evidence contrary to the decision of the IRO to show that the requested therapy is a reasonable and necessary health care service 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, who was the employee of the (Self-Insured), sustained a compensable injury.

C. The Independent Review Organization 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 the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.

3. Outpatient post operative physical therapy to the right knee 3 times a week for 4 weeks to consist of aquatic therapy, neuromuscular reeducation, therapeutic exercises, therapeutic activities, manual therapy, electrical stimulation, group therapy and gait training, no more than 4 units per session 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 Independent Review Organization that Claimant is not entitled to outpatient post operative physical therapy to the right knee 3 times a week for 4 weeks to consist of aquatic therapy, neuromuscular reeducation, therapeutic exercises, therapeutic activities, manual therapy, electrical stimulation, group therapy and gait training, no more than 4 units per session is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to outpatient post operative physical therapy to the right knee 3 times a week for 4 weeks to consist of aquatic therapy, neuromuscular reeducation, therapeutic exercises, therapeutic activities, manual therapy, electrical stimulation, group therapy and gait training, no more than 4 units per session 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

For service in person, the address is:

EXECUTIVE DIRECTOR
(SELF-INSURED)
(STREET ADDRESS)
(OFFICE BUILDING, FLOOR)
(CITY), TEXAS (ZIP CODE)

For service by mail, the address is:

EXECUTIVE DIRECTOR
(SELF-INSURED)
(P.O. BOX)
(CITY), TEXAS (ZIP CODE)

Signed this 24th day of March, 2011.

CAROLYN F. MOORE
Hearing Officer