MEDICAL CONTESTED CASE HEARING NO. 11126
M6-11-32386-01

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 April 8, 2011 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to repeat contrast X-ray lumbar spine, myelogram, needle localization, repeat CT lumbar spine with contrast for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by LS, ombudsman. Respondent/Self-Insured appeared and was represented by KP, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury including injury to the low back on _____. He had back pain and pain into his legs, worse on the right. Dr. O performed a right side microdiscectomy at L4-5 on July 26, 2010. This helped, however as time passed pain into the left leg increased, and Claimant developed atrophy in the left leg and a diminished left side patellar reflex. A lumbar MRI done on September 21, 2010 did not show the source of Claimant's left sided radiculopathy. Approval was requested for contrast X-ray lumbar spine, myelogram, needle localization, CT lumbar spine with contrast. The IRO doctor, board certified in physical medicine and rehabilitation and in pain management, upheld the previous denials of the request.

The use of "repeat" in the IRO decision and in the issue may be misleading. Claimant had lumbar X-rays and a lumbar CT scan before approval was requested for the procedure in dispute, so that part of the procedure would be a repeat, however he has never had a myelogram, lumbar contrast X-rays, or CT scan with contrast. Whether some or all of the requested procedure was a repeat was not a factor mentioned in the IRO decision or in the other evidence as material to approval or denial of the procedure.

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."

The ODG provides the following concerning CT and CT myelography for low back injury:

> Not recommended except for indications below for CT. CT Myelography OK if MRI unavailable, contraindicated (e.g. metallic foreign body), or inconclusive. (Slebus, 1988) (Bigos, 1999) (ACR, 2000) (Airaksinen, 2006) (Chou, 2007) Magnetic resonance imaging has largely replaced computed tomography scanning in the noninvasive evaluation of patients with painful myelopathy because of superior soft tissue resolution and multiplanar capability. Invasive evaluation by means of myelography and computed tomography myelography may be supplemental when visualization of neural structures is required for surgical planning or other specific problem solving. (Seidenwurm, 2000) The new ACP/APS guideline as compared to the old AHCPR guideline is more forceful about the need to avoid specialized diagnostic imaging such as computed tomography (CT) without a clear rationale for doing so. (Shekelle, 2008) A new meta-analysis of randomized trials finds no benefit to routine lumbar imaging (radiography, MRI, or CT) for low back pain without indications of serious underlying conditions, and recommends that clinicians should refrain from routine, immediate lumbar imaging in these patients. (Chou-*Lancet*, 2009) Primary care physicians are making a significant amount of inappropriate referrals for CT and MRI, according to new research published in the *Journal of the American College of Radiology*. There were high rates of inappropriate examinations for spinal CTs (53%), and for spinal MRIs (35%), including lumbar spine MRI for acute back pain without conservative therapy. (Lehnert, 2010)

Indications for imaging—Computed tomography:

- Thoracic spine trauma: equivocal or positive plain films, no neurological deficit
- Thoracic spine trauma: with neurological deficit
- Lumbar spine trauma: trauma, neurological deficit
- Lumbar spine trauma: seat belt (chance) fracture
- Myelopathy (neurological deficit related to the spinal cord), traumatic
- Myelopathy, infectious disease patient
- Evaluate pars defect not identified on plain x-rays
- Evaluate successful fusion if plain x-rays do not confirm fusion (Laasonen, 1989)

The IRO doctor opined globally that the ODG criteria were not met but did not discuss any of the criteria specifically. The IRO doctor noted that Claimant had a recent lumbar MRI which showed "no recurrent pathology", that Claimant's physical examinations were stable and did not reveal any significant changes, and that there was no indication Claimant had been recommended for additional surgery. The comment concerning surgery was accurate and probably referred to part of the ODG criteria for CT myelography. However, it was not evident that an MRI showing new or recurrent pathology is required by any ODG criterion in connection with the requested procedure. Claimant's physical examinations were not stable and did reveal significant changes.

Dr. O testified at the hearing. He said he was familiar with the ODG, and the ODG criteria were met. He pointed out that the post-surgical MRI did not show anything that would explain Claimant's worsening left sided radiculopathy. He noted the ODG criteria for CT myelography includes the provision that invasive evaluation by means of myelography and computed tomography myelography may be supplemental when visualization of neural structures is required for surgical planning or other specific problem solving. He recommended the requested procedure as a way to identify the problem and decide if surgery were needed. He noted the X-rays with contrast could be done with weight bearing and in flexion/extension, unlike an MRI, and the CT scan with contrast would better visualize bony and neural structures. Dr. A, Claimant's treating doctor, also testified he was familiar with the ODG, and the requested procedure met the ODG criteria.

Self-Insured did not call any witnesses, relying on the IRO decision and a peer review from Dr. M. Dr. M thought the ODG criteria were not met because the post-surgical MRI was not inconclusive, and there was no progression of neurological deficit. The MRI did not identify the source of Claimant's progressive left sided radiculopathy. There was a worsening neurological deficit.

There was no objection to the testimony, reports, or qualifications of any doctor.

The evidence based medicine in this case is the ODG. Dr. O provided credible expert testimony showing the criteria were met, discussing them in the context of this case. The preponderance of the evidence based medical evidence is contrary to the decision of the IRO.

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 not have the requested treatment.

2. Self-Insured delivered to Claimant a single document stating the true corporate name of Self-Insured, and the name and street address of Self-Insured's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.

3. Repeat contrast X-ray lumbar spine, myelogram, needle localization, repeat CT lumbar spine with contrast is 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 repeat contrast X-ray lumbar spine, myelogram, needle localization, repeat CT lumbar spine with contrast is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is entitled to repeat contrast X-ray lumbar spine, myelogram, needle localization, repeat CT lumbar spine with contrast for the compensable injury of _____.

ORDER

Self-Insured is 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 Self-Insured is (SELF-INSURED), and the name and address of its registered agent for service of process is

(SELF-INSURED)
(STREET ADDRESS)
(CITY), TEXAS (ZIP CODE)

Signed this 8th day of April, 2011.

Thomas Hight
Hearing Officer