

MEDICAL CONTESTED CASE HEARING NO 11149
M6-11-32372-01

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 June 15, 2011 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to a Posturepedic mattress for the cervical and shoulder components of her compensable injury of (Date of Injury)?

PARTIES PRESENT

Claimant appeared, and was represented by Attorney FC; Carrier appeared, and was represented by Attorney JT.

BACKGROUND INFORMATION

Although no testimony was presented at the Contested Case Hearing, the medical records in evidence describe Claimant's injury, symptoms, and treatment. These records indicate that despite having undergone physical therapy, cervical epidural steroid injections, and arthroscopic shoulder surgery, Claimant continues to experience significant cervical and shoulder pain. In an effort to address these continuing symptoms, Claimant's treating doctor recommended that Claimant be provided with a Posturepedic mattress, which Carrier declined to purchase for Claimant; the Independent Review Organization upheld Carrier's decision, based on the lack of clear guidelines on the subject, and the minimal support in the literature that such mattresses make a clinical difference.

DISCUSSION

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(22-a) 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(18-a) 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, and 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. 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."

With regard to mattress selection for a cervical or shoulder injury, the ODG is silent; however, the ODG does address mattress selection in the context of easing lumbar pain, and states simply that mattress selection is a matter of personal preference. Specifically, that portion of the ODG states as follows:

Not recommend[ed] to use firmness as sole criteria. In a recent RCT, a waterbed (Aqva) and a body-contour foam mattress (Tempur) generally influenced back symptoms, function, and sleep more positively than a hard mattress, but the differences were small. The dominant problem in this study was the large amount of dropouts. The predominant reason for dropping out before the trial involved the waterbed, and there was some prejudice towards this type of mattress. The hard mattress had the largest amount of test persons who stopped during the trial due to worsening LBP, as users were more likely to turn around in the bed during the night because of pressures on protruding body parts. (Bergholdt, 2008) Another clinical trial concluded that patients with medium-firm mattresses had better outcomes than patients with firm mattresses for pain in bed, pain on rising, and disability; a mattress of medium firmness improves pain and disability among patients with chronic non-specific low-back pain. (Kovacs, 2003) There are no high quality studies to support purchase of any type of specialized mattress or

bedding as a treatment for low back pain. Mattress selection is subjective and depends on personal preference and individual factors.

As noted above, the ODG does not address mattress selection for a cervical or shoulder injury. Therefore, the issue would be appropriately determined with reference to any evidence-based medical studies submitted into evidence; however, it has not been shown that any definitive study of this type exists, and none was offered by either party. For this reason, one must seek guidance from evidence of generally accepted standards of practice within the medical community, evidence which would be considered persuasive if it were included in the record of the Contested Case Hearing. However, the only evidence of the necessity of the recommended product is the opinion of Claimant's treating doctor, who expressed his opinion that the mattress would improve Claimant's quality of sleep, so as to enable her to recover from her injury. This opinion, while constituting medical evidence, does not constitute evidence of generally accepted standards of medical practice, and consequently can not assist Claimant in meeting her burden of proof to overcome the decision of the IRO. For this reason, a decision in favor of Carrier must be entered as to the sole issue presented for resolution herein.

Even though all the evidence presented may not have been discussed in detail, it was considered; the Findings of Fact and Conclusions of Law are based on all of the evidence presented.

FINDINGS OF FACT

1. On (Date of Injury), Claimant was employed by the (Self-Insured), Employer.
2. On (Date of Injury), Employer subscribed to a policy of workers' compensation insurance issued by the (Self-Insured), Carrier.
3. On (Date of Injury), Claimant's residence was located within seventy-five miles of the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
4. 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.
5. On (Date of Injury), Claimant sustained damage or harm to the physical structure of her body while she was within the course and scope of her employment with Employer.
6. The injury referenced in the previous Finding of Fact arose out of Claimant's employment with Employer.
7. The IRO determined that a Posturepedic mattress is not health care reasonably required for the cervical or shoulder components of Claimant's compensable injury of (Date of Injury).
8. Claimant failed to present evidence that the purchase of a Posturepedic mattress is considered reasonable and necessary for treatment of cervical spine or shoulder injuries according to generally accepted standards of practice within the medical community.

9. A Posturepedic mattress is not health care reasonably required for the cervical and shoulder components of Claimant's compensable injury of (Date of Injury).

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-based medical evidence is not contrary to the decision of the Independent Review Organization that a Posturepedic mattress is not health care reasonably required for the cervical or shoulder components of Claimant's compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to a Posturepedic mattress for the cervical or shoulder components of her compensable injury of (Date of Injury).

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 the **(SELF-INSURED)**, and the name of its registered agent for service of process is JB.

If service of process is made in person, Carrier's registered agent's address is:

(STREET ADDRESS)
(CITY), TEXAS (ZIP CODE)

If service of process is made by mail, Carrier's registered agent's address is:

(P.O. BOX)
(CITY), TEXAS (ZIP CODE)

Signed this 22nd day of June, 2011.

Ellen Vannah
Hearing Officer