\MEDICAL CONTESTED CASE HEARING NO 11171
M6-11-34219-01

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 July 7, 2011, to decide the following disputed issue:

> Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to outpatient physical therapy for eight sessions to the left knee area consisting of (1-4 units) therapeutic exercises, (1-4 units) neuromuscular re-education, (1-4 units) manual therapy, (1-4 units) therapeutic activities, (1-4 units) electrical stimulation, (1-4 units) ultrasound, and iontophoresis not to exceed four (4) units per session?

PARTIES PRESENT

The petitioner/claimant appeared and was assisted by JM, ombudsman. The respondent/carrier appeared and was represented by BK, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on (date of injury), when she was walking through a muddy area and fell, twisting her knee. She was seen at (Healthcare Provider) where she was diagnosed with and ACL sprain and knee pain. Claimant was referred to the physical therapists at (Healthcare Provider). After nine sessions of physical therapy, with increasing knee pain and no progress, claimant requested a referral to an orthopaedic surgeon. She was seen by GW, M.D. An MRI was negative. Dr. W diagnosed left patellofemoral pain and gave claimant a cortisone injection. He recommended extensive physical therapy at a new facility with a therapist specializing in knee pain. Eight additional sessions of physical therapy were requested and denied by the carrier. Utilization Review upheld the denial and the claimant requested a review by an Independent Review Organization.

The Independent Review Organization (IRO), (Independent Review Organization), upheld the carrier's denial of the physical therapy. According to the IRO report, the IRO reviewer was a board certified orthopaedic surgeon. The reviewer indicated that claimant's physician had not provided sufficient reasons why the claimant could not be provided a self-administered therapy

program. During the time the request was being processed, claimant elected to participate in physical therapy with the specified therapist. She received her remaining three preauthorized sessions, then claimant elected to continue as a self-pay patient. Her treatment primarily consisted of a self-administered program.

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 (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 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 133.208 (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."

On the date of this medical contested case hearing, the ODG provides the following with regard to Occupational Disorders of the Knee – Physical Therapy:

> 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).Medical treatment: 9 visits over 8 weeks.

At the CCH, claimant provided no evidence-based medicine in support of her claim. Based on the evidence presented, the claimant failed to meet her burden of overcoming the decision of the IRO by a preponderance of the evidence-based medical evidence and, therefore, the claimant is not entitled to outpatient physical therapy for eight sessions to the left knee area consisting of therapeutic exercises, neuromuscular re-education, manual therapy, therapeutic activities, electrical stimulation, ultrasound, and iontophoresis.

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 Workers' Compensation Division of the Texas Department of Insurance.
   B. On (Date of Injury), claimant was the employee of (Employer).
   C. On (Date of Injury), claimant sustained a compensable injury.
   D. On (Date of Injury), employer was a self-insured governmental entity for the purpose of workers' compensation.

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

3. (Independent Review Organization) was appointed to act as Independent Review Organization by the Texas Department of Insurance.

4. The IRO determined that the claimant was not entitled to outpatient physical therapy for eight sessions to the left knee area consisting of (1-4 units) therapeutic exercises, (1-4 units) neuromuscular re-education, (1-4 units) manual therapy, (1-4 units) therapeutic activities, (1-4 units) electrical stimulation, (1-4 units) ultrasound, and iontophoresis not to exceed four (4) units per session.

5. Outpatient physical therapy for eight sessions to the left knee area consisting of (1-4 units) therapeutic exercises, (1-4 units) neuromuscular re-education, (1-4 units) manual therapy, (1-4 units) therapeutic activities, (1-4 units) electrical stimulation, (1-4 units) ultrasound, and iontophoresis not to exceed four (4) units per session is not health care reasonably required for the compensable injury of (Date of Injury).

CONCLUSIONS OF LAW

1. The Workers' Compensation Division of the Texas Department of Insurance has jurisdiction to hear this case.

2. Venue is proper in the (City) Field Office.

3. Claimant is not entitled to outpatient physical therapy for eight sessions to the left knee area consisting of (1-4 units) therapeutic exercises, (1-4 units) neuromuscular re-education, (1-4 units) manual therapy, (1-4 units) therapeutic activities, (1-4 units) electrical stimulation, (1-4 units) ultrasound, and iontophoresis not to exceed four (4) units per session.

DECISION

Claimant is not entitled to outpatient physical therapy for eight sessions to the left knee area consisting of (1-4 units) therapeutic exercises, (1-4 units) neuromuscular re-education, (1-4 units) manual therapy, (1-4 units) therapeutic activities, (1-4 units) electrical stimulation, (1-4 units) ultrasound, and iontophoresis not to exceed four (4) units per session.

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 **(a self-insured governmental entity)** 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)
CITY, STATE, ZIP CODE

For service by mail, the address is:

EXECUTIVE DIRECTOR
SELF-INSURED
(STREET ADDRESS)
CITY, STATE, ZIP CODE

Signed this 27th day of July, 2011.

Carolyn Cheu Mobley
Hearing Officer