

MEDICAL CONTESTED CASE HEARING NO. 16058

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and the Rules of the Texas Department of Insurance, Division of Workers' Compensation. For the reasons discussed herein, the Hearing Officer determines that:

The preponderance of the evidence is contrary to the decision of the IRO that purchase of prosthetic leg equipment codes L5624, L5631, L5679, L5651, L5649, L5920, L5950, L5650, and L5999 is not health care reasonably required for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

Thomas Hight, a Division hearing officer, held a contested case hearing on February 8, 2017 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 purchase of prosthetic leg codes L5624, L5631, L5679, L5651, L5649, L5920, L5950, L5650, and L5999 for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner appeared pro se. Respondent/Self-Insured appeared and was represented by LW, attorney. Claimant appeared and was assisted by EG, ombudsman.

EVIDENCE PRESENTED

The following witnesses testified:

For Petitioner: Petitioner.

Claimant: None.

For Carrier: None.

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits: HO-1 through HO-3.

Petitioner's Exhibits: None.

Claimant's Exhibits: C-1 through C-6.

Carrier's Exhibits: CR-A through CR-F.

DISCUSSION

Claimant lost his left leg in (Year) and uses a prosthesis. He had a revision of the trans-femoral amputation on January 10, 2014.

Petitioner LG, prosthetist, requested replacement of the socket part of Claimant's prosthesis. The independent review organization (IRO) doctor, an MD board certified in physical medicine and rehabilitation, partially overturned the prior adverse determination, approving the medical necessity of a "leg knee socket" (L5701) but upholding the previous adverse determination concerning equipment codes L5624, L5631, L5679, L5651, L5649, L5920, L5950, L5650, and L5999. Petitioner appealed from the IRO decision and requested a medical contested case hearing.

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(s), "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 criteria for use of a lower limb prosthesis:

A lower limb prosthesis may be considered medically necessary when:

1. The patient will reach or maintain a defined functional state within a reasonable period of time;
2. The patient is motivated to ambulate; and
3. The prosthesis is furnished incident to a physician's services or on a physician's order.

The IRO doctor thought Petitioner was requesting the socket portion of the prosthesis (L5701) and not any of the other codes. The IRO doctor considered this to be consistent with “requirement number one of the ODG, (because) the approved socket should allow the injured workers’ leg to heal and continue with his mobility through better fit and function”, and approved equipment code L5701 but disapproved the other codes.

Petitioner is a certified prosthetist and assistant professor of prosthetics. She testified that she had replaced several sockets for Claimant’s prosthesis in the past. She explained that she fabricates the socket part of the prosthesis and custom fits it to the patient’s limb. She said all of the requested codes were necessary to the proper fabrication and fitting of the socket for Claimant. This testimony was not rebutted by anything.

Petitioner overcame the IRO decision by the preponderance of evidence based medical evidence.

The Hearing Officer considered all of the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all of the evidence whether or not the evidence is specifically discussed in this Decision and Order.

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 (Date of Injury) Claimant was the employee of (Employer), Employer.
 - C. On (Date of Injury) Employer provided workers’ compensation insurance as a Self-Insurer.
 - D. On (Date of Injury) Claimant sustained a compensable injury.

2. Self-Insured delivered to Petitioner and 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. The Independent Review Organization determined Claimant should have requested prosthetic leg equipment code L5701 but not have requested equipment codes L5624, L5631, L5679, L5651, L5649, L5920, L5950, L5650, or L5999.
4. Purchase of prosthetic leg equipment codes L5701, L5624, L5631, L5679, L5651, L5649, L5920, L5950, L5650, and L5999 is health care reasonably required for the 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 is contrary to the decision of the IRO that purchase of prosthetic leg equipment codes L5624, L5631, L5679, L5651, L5649, L5920, L5950, L5650, and L5999 is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is entitled to purchase of prosthetic leg equipment codes L5701, L5624, L5631, L5679, L5651, L5649, L5920, L5950, L5650, and L5999 for the compensable injury of (Date of Injury).

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 Section 408.021 of the Act.

The true corporate name of the insurance Self-Insured is **(CARRIER)**, and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIPCODE)

Signed this 8th day of February, 2017.

Thomas Hight
Hearing Officer