

MEDICAL CONTESTED CASE HEARING NO. 18004

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 Administrative Law Judge determines that Claimant is not entitled to right L2-3, L3-4 lumbar facet injections with fluoroscopy and monitored anesthesia by an on-call CRNA as an outpatient for the compensable injury of (Date of Injury).

ISSUES

A contested case hearing was held on February 13, 2018, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to right L2-3, L3-4 lumbar facet injections with fluoroscopy and monitored anesthesia by an on-call CRNA as an outpatient for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by RH, ombudsman. Respondent/Carrier appeared and was represented by PB, attorney.

DISCUSSION

Claimant sustained a compensable injury on (Date of Injury). A request for preauthorization of right L2-L3, L3-L4 lumbar facet injections with fluoroscopy and monitored anesthesia by an on-call CRNA as an outpatient was submitted to Carrier. On September 26, 2017, the request was denied. Claimant appealed the denial. The subsequent utilization review agent again recommended that the requested facet injections be denied. Claimant appealed Carrier's denial through the Division's IRO process. Independent Reviewers of Texas, the IRO, upheld Carrier's denial. Claimant appealed the IRO decision to a contested case hearing in accordance with Rule 133.308.

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 defined by Texas Labor Code Section 401.011 (18a) as 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 making decisions for the treatment of a particular patient. 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. In a contested case hearing, 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. (Division Rule 133.308 (s).)

Claimant testified that he had previously undergone facet injections on two earlier occasions and approval for another facet injection was requested by his pain management doctor, MM, M.D., after Claimant experienced relief from the second facet injection that lasted for several months. He testified that Dr. M told him that he could expect longer relief from each successive facet joint injection and that he recommended the requested facet joint injections over medial branch blocks. With regard to multiple series of facet injections, the ODG provides as follows:

Facet joint injections, multiple series

Not recommended.

Diagnostic blocks: One set of medial branch blocks is recommended prior to a neurotomy. Intra-articular blocks are not recommended as the diagnostic procedure. Confirmatory blocks, while recommended for research studies, do not appear to be cost effective or to prevent the incidence of a false positive response to the neurotomy procedure itself. See Facet joint diagnostic blocks (injections).

Therapeutic injections: With respect to facet joint intra-articular therapeutic injections, no more than one therapeutic intra-articular block is suggested. If successful (pain relief of at least 50% for a duration of at least 6 weeks), the recommendation is to proceed to a medial branch diagnostic block and subsequent neurotomy (if the medial branch block is positive). See Facet joint intra-articular

injections (therapeutic blocks). There is no peer-reviewed literature to support a “series” of therapeutic facet blocks.

Claimant argues that Dr. M recommended right and left facet injections and that another IRO’s determination that the denial of left facet injections should be overturned is inconsistent with the IRO physician reviewer’s determination upholding Carrier’s denial of the right facet injections.

Although a physician reviewer for US Decisions Inc. (the IRO appointed to review the denial of the left facet injections) recommended that the Carrier’s denial be overturned. The US Decisions Inc. physician reviewer cited the ODG entry for a facet joint inter-articular injection, but did not mention or reference the ODG entry on multiple series of facet injections and did not explain how his or her recommendation would be consistent with the ODG treatment recommendations or why Claimant’s situation would warrant a deviation from those recommendations. The physician reviewer wrote that “[s]ince the two prior reviews were somewhat specious, [he or she was] overturning the original denials.”

Claimant did not offer expert medical evidence, based upon evidence-based medicine, that would tend to show that the IRO determination upholding Carrier’s denial of the right L2-3, L3-4 lumbar facet injections with fluoroscopy and monitored anesthesia by an on-call CRNA as an outpatient is contrary to the ODG recommendations or that Claimant’s situation calls for a deviation from the ODG recommendations.

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 (Date of Injury), Claimant was the employee of (Employer), Employer.
 - C. The compensable injury of (Date of Injury), extends to and includes a herniated disc at L3-L4 and retrolisthesis of L3-L4.
 - D. The Texas Department of Insurance appointed Independent Reviewers of Texas, Inc., as the Independent Review Organization (IRO) to review Carrier’s denial of the requested right L2-3, L3-4 lumbar facet injections with fluoroscopy and monitored anesthesia by an on-call CRNA as an outpatient.

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. The ODG does not recommend more than one therapeutic intra-articular block.
4. Claimant received a therapeutic intra-articular facet joint injection prior to the request for preauthorization of the right L2-3, L3-4 lumbar facet injections that are the subject of this contested case hearing.
5. The preponderance of the evidence-based medical evidence is not contrary to the IRO decision that Carrier's denial of the requested right L2-3, L3-4 lumbar facet injections with fluoroscopy and monitored anesthesia by an on-call CRNA as an outpatient should be upheld.

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 IRO that right L2-3, L3-4 lumbar facet injections with fluoroscopy and monitored anesthesia by an on-call CRNA as an outpatient is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to right L2-3, L3-4 lumbar facet injections with fluoroscopy and monitored anesthesia by an on-call CRNA as an outpatient for the 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 **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TX 78701-3218**

Signed this 14th day of February, 2018.

KENNETH A. HUCHTON
Administrative Law Judge