

MEDICAL CONTESTED CASE HEARING NO. 18006

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. For the reasons discussed herein, the Administrative Law Judge determines that in Docket Number (Docket No. 1), IRO Case No. (IRO Case No. 1): the preponderance of the evidence is contrary to the decision of the IRO that Claimant is not entitled to 12 sessions of Medical Group Psychotherapy (once weekly for 90 days) for the compensable injury of (Date of Injury); and in Docket Number (Docket No. 2), IRO Case No. (IRO Case No. 2): the preponderance of the evidence is contrary to the decision of the IRO that Claimant is not entitled to 24 sessions of cognitive behavioral therapy (twice weekly for 90 days) between August 29, 2017 and November 29, 2017 for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

A contested case hearing was held on February 22, 2018 to decide the following disputed issue in Docket Number (Docket No. 1), IRO Case No. (IRO Case No. 1):

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to 12 sessions of Medical Group Psychotherapy (once weekly for 90 days) for the compensable injury of (Date of Injury)?

and the following disputed issue in Docket Number (Docket No. 2), IRO Case No. (IRO Case No. 2):

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to 24 sessions of cognitive behavioral therapy (twice weekly for 90 days) between August 29, 2017 and November 29, 2017 for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was represented by MS, attorney.

Respondent/Carrier was represented by CC, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: EA and Dr. CC.

For Carrier: Dr. AB.

The following exhibits were admitted into evidence:

Administrative Law Judge's Exhibits: ALJ-1 and ALJ-2.

Claimant's Exhibits: C-1 through C-4.

Carrier's Exhibits in Docket Number (Docket No. 1), IRO Case No. (IRO Case No. 1): CR-A through CR-D.

Carrier's Exhibits in Docket Number (Docket No. 2), IRO Case No. (IRO Case No. 2): CR-A through CR-E

DISCUSSION

The records showed that Claimant was involved in a work-related explosion on (Date of Injury). Claimant suffers from anxiety, posttraumatic stress disorder (PTSD), depression, panic attacks, and migraines. His medical treatment has included medications, neurological/psychiatric care for many years.

Dr. CC, Claimant's treating doctor, who is board certified in psychiatry, requested the claimed treatment. After Carrier denied the request multiple times, on October 26, 2017 and October 30, 2017, the Independent Review Organizations (IROs) upheld the denials stating that the requests did not meet the *Official Disability Guidelines* (ODG). The reviewers for the IROs wrote that there was a lack of documentation to support how many visits Claimant has participated in. Also the reviewers wrote that there was a lack of recent psychiatric progress notes that showed progress with an extenuating circumstance, allowing the patient to exceed the recommend 50 visits.

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 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 IRO reviewers relied on the following ODG provision for psychotherapy treatment for PTSD:

ODG Psychotherapy Guidelines:

- Up to 13-20 visits over 7-20 weeks (individual sessions), if progress is being made.
(The provider should evaluate symptom improvement during the process, so treatment failures can be identified early and alternative treatment strategies can be pursued if appropriate.)
- In cases of severe Major Depression or PTSD, up to 50 sessions if progress is being made.

Dr. AB, peer reviewer, and required medical examination doctor, testified that he agreed with the decisions of the IROs that Claimant has had no objective functional improvement from the extensive psychotherapy he has received over the past years. Dr. B went on to state that the requests were excessive.

Claimant presented the testimony of Dr. C and himself in support of his position.

Unlike the IRO reviewers, Dr. C persuasively relied upon Appendix D of the ODG.

Appendix D of the ODG states:

In cases where the medical care is an exception to ODG, the health care provider should document: (1) extenuating circumstances of the case that warrant performance of the treatment including the rationale for procedures not addressed in ODG; (2) patient co-morbidities, (3) objective signs of functional improvement for treatment conducted thus far; (4) measurable goals and progress points expected from additional treatment; and (5) additional evidence that supports the health care provider's case.

Dr. C explained that Claimant has multiple co-morbidities such as severe PTSD, disabling migraines (treatment provided by Dr. KE, neurologist), and the necessity of constant adjustment of medications. Also, Dr. C pointed out that there has been documentation of functional improvement in that every 90 days Million III testing was done (at the doctor's own expense) that showed Claimant's progress, with a positive response to the psychotherapy modalities. Claimant testified that he is now able to attend church and has begun to socialize with friends. Following the guidelines in Appendix D of the ODG, Dr. C stated that the exact treatment (number of sessions) is not what is important, but rather Claimant's documented functional improvement. Lastly, Dr. C stressed how dangerous it would be to stop Claimant's treatment, as suggested by Dr. B.

Claimant presented a preponderance of evidence based medicine through the evidence and testimony of Dr. C to overcome 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 (Date of Injury), Claimant, was the employee of (Employer), who sustained a compensable injury.
 - C. Claimant sustained a compensable injury on (Date of Injury).
 - D. In Docket Number (Docket No. 1), IRO Case No. (IRO Case No. 1) the IRO determined that the requested services of 12 sessions of Medical Group Psychotherapy (once weekly

for 90 days) were not reasonable and necessary health care services for the compensable injury of (Date of Injury).

- E. In Docket Number (Docket No. 2), IRO Case No. (IRO Case No. 2) the IRO determined that the requested services of 24 sessions of cognitive behavioral therapy (twice weekly for 90 days) between August 29, 2017 and November 29, 2017 were not reasonable and necessary health care services for the compensable injury of (Date of Injury).
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 Administrative Law Judge's Exhibit Number 2.
 3. In Docket Number (Docket No. 1), IRO Case No. (IRO Case No. 1), 12 sessions of Medical Group Psychotherapy (once weekly for 90 days) is health care reasonably required for the compensable injury of (Date of Injury).
 4. In Docket Number (Docket No. 2), IRO Case No. (IRO Case No. 2): 24 sessions of cognitive behavioral therapy (twice weekly for 90 days) between August 29, 2017 and November 29, 2017 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. In Docket Number (Docket No. 1), IRO Case No. (IRO Case No. 1): the preponderance of the evidence is contrary to the decision of the IRO that Claimant is not entitled to 12 sessions of Medical Group Psychotherapy (once weekly for 90 days) for the compensable injury of (Date of Injury).
4. In Docket Number (Docket No. 2), IRO Case No. (IRO Case No. 2): the preponderance of the evidence is contrary to the decision of the IRO that Claimant is not entitled to 24 sessions of cognitive behavioral therapy (twice weekly for 90 days) between August 29, 2017 and November 29, 2017 for the compensable injury of (Date of Injury).

DECISION

In Docket Number (Docket No. 1), IRO Case No. (IRO Case No. 1):

The preponderance of the evidence is contrary to the decision of the IRO that Claimant is not entitled to 12 sessions of Medical Group Psychotherapy (once weekly for 90 days) for the compensable injury of (Date of Injury).

In Docket Number (Docket No. 2), IRO Case No. (IRO Case No. 2):

The preponderance of the evidence is contrary to the decision of the IRO that Claimant is not entitled to 24 sessions of cognitive behavioral therapy (twice weekly for 90 days) between August 29, 2017 and November 29, 2017 for the compensable injury of (Date of Injury).

ORDER

In Docket Number (Docket No. 1), IRO Case No. (IRO Case No. 1):

Carrier is liable for the benefits at issue in this hearing.

In Docket Number (Docket No. 2), IRO Case No. (IRO Case No. 2):

Carrier is liable for the benefits at issue in this hearing.

The true corporate name of the insurance carrier is **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136**

Signed this 22nd day of February, 2018.

Judy L. Ney
Administrative Law Judge