

MEDICAL CONTESTED CASE HEARING NO. 18024

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 a spinal cord stimulator implantation (permanent) is not health care reasonably required for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

A contested case hearing was held on September 5, 2018 by a Division administrative law judge, Francisca N. Okonkwo, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to a spinal cord stimulator implantation (permanent) for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Claimant appeared and was assisted by RE, ombudsman. Carrier appeared and was represented by SC, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For the Claimant: LR.

For Carrier: None.

The following exhibits were admitted into evidence:

Administrative Law Judge's Exhibits ALJ-1 through ALJ-3.

Claimant's Exhibits C-1 and C-2.

Carrier's Exhibits CR-A and CR-G.

DISCUSSION

On (Date of Injury), Claimant, a field service assistant for (Employer), fell down a flight of stairs and sustained injuries to her bilateral ankles and mid-calf. She was later diagnosed with complex regional pain syndrome (CRPS). Claimant testified that she has undergone multiple surgeries followed by all types of treatment, including lots of physical therapy, massage therapy, functional restoration and chronic pain management programs, and spinal nerve blocks. Claimant testified that she lives with pain every day and her current medications have “terrible” side effects such as blurred vision, dizziness and incontinence.

On February 7, 2018, Claimant underwent a spinal cord stimulator (SCS) trial, which was noted to be 75% effective in reducing her pain, joint swelling and cramps. Claimant’s treating doctor, Dr. MK, recommended that Claimant would benefit from a SCS. Claimant testified that two other doctors who have treated her, Dr. S and Dr. T, informed her that the SCS is her last treatment resort. Carrier has denied a permanent SCS implantation and utilization reviewers, Dr. H and Dr. W have agreed that medical necessity for this treatment has not been established. Claimant disagrees with the Independent Review Organization (IRO) decision which upheld Carrier's denial of a spinal cord stimulator implantation (permanent) for her compensable injury.

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."

With regard to a spinal cord stimulator implantation (permanent), the ODG lists the following criteria:

Recommended only for selected patients for specific conditions and in cases when less invasive procedures have failed or are contraindicated (see blue criteria to be met when considering use of a spinal cord stimulator). Spinal cord stimulators (SCS) are indicated for selected patients with Complex Regional Pain Syndrome (CRPS) Type I. For use in failed back surgery syndrome (FBSS), see the Low Back Chapter. See also Psychological evaluations (SCS) in the Mental Illness & Stress Chapter.

Indications for stimulator implantation:

Complex Regional Pain Syndrome (CRPS) when all of the following are present:

- (1) There has been limited response to non-interventional care;
- (2) Psychological clearance indicates realistic expectations and clearance for the procedure;
- (3) There is no current evidence of substance abuse issues;
- (4) There are no contraindications to a trial;
- (5) Permanent placement requires evidence of 50% pain relief and medication reduction or functional improvement after temporary trial.

For use in failed back surgery syndrome (FBSS), see the Low Back Chapter.

For average hospital LOS if criteria are met, see Hospital length of stay (LOS).

More trials are needed to confirm whether SCS is an effective treatment for certain types of chronic pain. (Mailis-Gagnon-Cochrane, 2004) (BlueCross BlueShield, 2004). This supporting evidence is significantly supplemented and enhanced when combined with the individually based observational evidence gained through an individual trial prior to implant. This individually based observational evidence should be used to demonstrate effectiveness and to

determine appropriate subsequent treatment. (Sundaraj, 2005) Further, the introduction of the percutaneous electrode implantation has enabled trial stimulation, which is now commonly recognized as an indispensable step in assessing whether the treatment is appropriate for individual patients. (Furlan-Cochrane, 2004) CRPS patients implanted with SCS reported pain relief of at least 50% over a median follow-up period of 33 months. (Taylor, 2006) SCS appears to be an effective therapy in the management of patients with CRPS. (Kemler, 2004) (Kemler, 2000) Recently published 5-year data from this study showed that change in pain intensity was not significantly different between the SCS plus PT group and the PT alone group, but in the subgroup analysis of implanted SCS patients, the change in pain intensity between the two groups approached statistical significance in favor of SCS, and 95% of patients with an implant would repeat the treatment for the same result. A thorough understanding of these results including the merits of intention-to-treat and as-treated forms of analysis as they relate to this therapy (where trial stimulation may result in a large drop-out rate) should be undertaken prior to definitive conclusions being made. (Kemler, 2008) Permanent pain relief in CRPS-I can be attained under long-term SCS therapy combined with physical therapy. (Harke, 2005) As batteries for both rechargeable and nonrechargeable systems are nearing end of life, there are both early replacement indicators and end of service notifications. Typical life may be 8-9 years for rechargeable batteries, but this depends on the unit. In addition, the physician programmer can be used to interrogate the implanted device and determine the estimated remaining battery life. (Restore, 2011)

The Utilization Review doctors found that there was a lack of documentation regarding medication reduction and functional improvement with the trial. Furthermore, there was a lack of examination findings of CRPS in the clinical notes of February 13, 2018. Based on the outlined criteria, the IRO found that while the case discussion notes that Claimant does have a clear diagnosis of CRPS and had a positive response to the spinal cord stimulator trial, the medical necessity of implantation are not met as all criteria per the ODG is not supported by clinical documentation.

The lay testimony of Claimant was considered. The medical records in evidence were also considered. However, the medical evidence presented was not sufficient to meet her burden of proof. Claimant has not shown by a preponderance of evidence-based medical evidence that the requested spinal cord stimulator permanent implantation is health care reasonably required for the compensable injury.

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. The Texas Department of Insurance, Division of Workers' Compensation has jurisdiction in this matter.
 - B. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - C. On (Date of Injury), Claimant was the employee of (Employer), Employer.
 - D. On (Date of Injury), Employer provided worker's compensation insurance through Travelers Indemnity Company, Carrier.
 - E. Claimant sustained a compensable injury on (Date of Injury).
 - F. The Independent Review Organization determined that claimant should not have a spinal cord stimulator implantation (permanent).
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. A spinal cord stimulator implantation (permanent) is not 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 not contrary to the decision of the IRO that a spinal cord stimulator implantation (permanent) is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

A spinal cord stimulator implantation (permanent) is not health care reasonably required 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 **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY D/B/A
CSC-LAWYERS INCORPORATING SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218**

Signed this 7th day of September, 2018.

FRANCISCA N. OKONKWO
Administrative Law Judge