MEDICAL CONTESTED CASE HEARING NO. 18025

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 the preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to a laminotomy with decompression bilaterally at L4-L5 and laminectomy and foraminotomy bilaterally at L4-L5 for the compensable injury of (Date of Injury).

ISSUE

A contested case hearing was held on September 13, 2018, 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 a laminotomy with decompression bilaterally at L4-L5 and laminectomy and foraminotomy bilaterally at L4-L5 for the compensable injury of (Date of Injury)?

PARTIES PRESENT

The Petitioner/Claimant appeared and was assisted by LI, ombudsman. The Respondent/Carrier appeared and was represented by CE, attorney.

EVIDENCE PRESENTED

Witnesses for Claimant/Petitioner: Claimant
Witnesses for Carrier/Respondent: PG, M.D.

The following exhibits were admitted into evidence:

Administrative Law Judge's Exhibits: ALJ-1 and ALJ-2
Evidence for Claimant/Petitioner: Exhibits CL-1 through CL-11
Evidence for Carrier/Respondent: Exhibits CR-A through CR-I

BACKGROUND INFORMATION

Claimant sustained a compensable injury on (Date of Injury), when she was involved in a motor vehicle accident while driving a school bus. She received conservative treatment, including medication, physical therapy, and pain management with lumbar injections. Claimant underwent an interbody fusion at C4-C5 and C5-C6. Claimant had low back pain which radiated down to her feet. A MRI done showed severe stenosis at L4-L5, but no instability. The assessment made by Claimant's doctor, JB, M.D., was that of lumbar spinal stenosis. Dr. B recommended bilateral laminectomies and foraminotomies. The procedures were denied by the Carrier.

An Independent Review Organization (IRO) assessment was requested. Professional Associates, LLC was appointed to act as IRO by the Texas Department of Insurance. A board certified orthopedic surgeon was the reviewer through Professional Associates, LLC. The reviewer upheld the Carrier's denial of the requested surgery noting that there was an absence of documentation of any neurological compression required to support the requested surgery. The MRI scan obtained on December 11, 2017 showed degenerative changes consistent with the Claimant's age. The degenerative changes showed canal stenosis and bilateral foraminal stenosis. Pursuant to the IRO determination, the Official Disability Guidelines (ODG) require a clinical correlation from the history, symptoms, radiological findings, and the planned surgical intervention. The determination outlined that there was mismatch between the imaging findings and the clinical findings, and surgery would be neither reasonable nor necessary.

DISCUSSION

Texas Labor Code § 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 § 401.011 (22-a) 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 § 401.011 (18-a) 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 in accordance with Texas Labor Code §

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 § 413.017(1).

In accordance with the above statutory guidance, the Division of Workers' Compensation has adopted treatment guidelines by 28 Texas Administrative Code § 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 28 TAC § 133.308(s), "A decision issued by an IRO is not considered an agency decision and neither the department nor the division is considered parties to an appeal. In a division 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 guidance with regard to the requested procedures:

> Laminectomy/laminotomy-Recommended for lumbar spinal stenosis. For patients with lumbar spinal stenosis, surgery (standard posterior decompressive laminectomy alone, without discectomy) offered a significant advantage over nonsurgical treatment in terms of pain relief and functional improvement that was maintained at 2 years of follow-up, according to a new SPORT study. Discectomy should be reserved for those conditions of disc herniation causing radiculopahy. Laminectomy may be used for spinal stenosis secondary to degenerative processes exhibiting ligamental hypertrophy, facet hypertrophy, and disc protrusion, in addition to anatomical derangements of the spinal column such as tumor, trauma, etc. (Weinstein, 2008) (Katz, 2008) This study showed that surgery for spinal stenosis and for disc herniation were not as successful as total hip replacement but were comparable to total knee replacement in their success. Pain was reduced to within 60% of normal levels, function improved to 65% normal, and quality of life was improved by about 50%. The study compared the gains in quality of life achieved by total hip replacement, total knee replacement, surgery for spinal stenosis, disc excision for lumbar disc herniation, and arthrodesis for chronic low back pain. (Hansson, 2008) A comparison of surgical and nonoperative outcomes between degenerative spondylolisthesis and spinal stenosis patients from the SPORT trial found that fusion was most appropriate for spondylolisthesis, with or without listhesis, and decompressive laminectomy alone most appropriate for spinal stenosis. (Pearson, 2010) In patients with spinal stenosis, those treated surgically with standard posterior decompressive laminectomy showed significantly greater improvement in pain, function,

satisfaction, and self-rated progress over 4 years compared to patients treated nonoperatively, and the results in both groups were stable between 2 and 4 years. (Weinstein, 2010) Comparative effectiveness evidence from SPORT shows good value for standard posterior laminectomy after an imaging-confirmed diagnosis of spinal stenosis [as recommended in ODG], compared with nonoperative care over 4 years. (Tosteson, 2011) Decompressive surgery (laminectomy) is more effective for lumbar spinal stenosis than land based exercise, but given the risks of surgery, a self-management program with exercise prior to consideration of surgery is also supported. (Jarrett, 2012) This study indicates that in patients with a primary diagnosis of lumbar spinal stenosis (LSS), the rate of fusions and the use of implants has increased, and the decompression rate has decreased. Trends in the surgical management of stenosis have become increasingly important to study because more invasive procedures, including the addition of fusion and the use of implants, have been associated with greater use of resources and increased complications. (Bae, 2013) Over time, surgery (laminectomy for spinal stenosis) results in better outcomes out to at least 5 years, but the benefits of surgery likely erode beyond that time as patients age. (Lurie, 2015) Laminectomy is a surgical procedure for treating spinal stenosis by relieving pressure on the spinal cord. The lamina of the vertebra is removed or trimmed to widen the spinal canal and create more space for the spinal nerves. See also Discectomy/laminectomy for surgical indications, with the exception of confirming the presence of radiculopathy. For average hospital LOS after criteria are met, see Hospital length of stay (LOS). [HERE]

ODG Indications for Surgery-Discectomy/laminectomy

Required symptoms/findings; imaging studies; and conservative treatments:

Required symptoms/findings; imaging studies; and conservative treatments below:

I. *Symptoms/Findings* which confirm presence of radiculopathy. Objective findings on examination need to be present. Straight leg raising test, crossed straight leg raising and reflex exams should correlate with symptoms and imaging.

Findings require ONE of the following:

A. L3 nerve root compression, requiring ONE of the following:
1. Severe unilateral quadriceps weakness/mild atrophy
2. Mild-to-moderate unilateral quadriceps weakness
3. Unilateral hip/thigh/knee pain

B. L4 nerve root compression, requiring ONE of the following:
1. Severe unilateral quadriceps/anterior tibialis weakness/mild atrophy

2. Mild-to-moderate unilateral quadriceps/anterior tibialis weakness
3. Unilateral hip/thigh/knee/medial pain

C. L5 nerve root compression, requiring ONE of the following:

1. Severe unilateral foot/toe/dorsiflexor weakness/mild atrophy
2. Mild-to-moderate foot/toe/dorsiflexor weakness
3. Unilateral hip/lateral thigh/knee pain

D. S1 nerve root compression, requiring ONE of the following:

1. Severe unilateral foot/toe/plantar flexor/hamstring weakness/atrophy
2. Moderate unilateral foot/toe/plantar flexor/hamstring weakness
3. Unilateral buttock/posterior thigh/calf pain

(EMGs are optional to obtain unequivocal evidence of radiculopathy but not necessary if radiculopathy is already clinically obvious.)

II. *Imaging Studies*, requiring ONE of the following, for concordance between radicular findings on radiologic evaluation and physical exam findings:

A. Nerve root compression (L3, L4, L5, or S1)
B. Lateral disc rupture
C. Lateral recess stenosis

Diagnostic imaging modalities, requiring ONE of the following:

1. MR imaging
2. CT scanning
3. Myelography
4. CT myelography and X-Ray

III. *Conservative Treatments*, requiring ALL of the following:

A. Activity modification (not bed rest) after patient education (>= 2 months)
B. Drug therapy, requiring at least ONE of the following:

1. NSAID drug therapy
2. Other analgesic therapy
3. Muscle relaxants
4. Epidural Steroid Injection (ESI)

C. Support provider referral, requiring at least ONE of the following (in order of priority):

1. Physical therapy (teach home exercise/stretching)
2. Manual therapy (chiropractor or massage therapist)
3. Psychological screening that could affect surgical outcome
4. Back school (Fisher, 2004)

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

At the Contested Case Hearing, Claimant did not provide evidence-based medicine in support of her requested bilateral laminectomies and foraminotomies. Based on the evidence presented and considered, Claimant failed to prove that she met the requirements in the ODG for the requested

procedures, and she failed to provide an evidence-based medical opinion sufficient to contradict the determination of the IRO. The preponderance of the evidence is not contrary to the IRO decision that Claimant is not entitled to a laminotomy with decompression bilaterally at L4-L5 and laminectomy and foraminotomy bilaterally at L4-L5 for the compensable injury of (Date of Injury).

The Administrative Law Judge 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 employed by (Employer).

   C. On (Date of Injury), Employer provided workers' compensation coverage as a self-insurer.

   D. On (Date of Injury), Claimant sustained a compensable 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. Professional Associates, LLC 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 a laminotomy with decompression bilaterally at L4-L5 and laminectomy and foraminotomy bilaterally at L4-L5 for the compensable injury of (Date of Injury).

5. Claimant does not meet the requirements of the ODG for her requested procedure and failed to provide sufficient evidence-based medical evidence in support of the necessity for the procedure.

6. A laminotomy with decompression bilaterally at L4-L5 and laminectomy and foraminotomy bilaterally at L4-L5 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. The preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to a laminotomy with decompression bilaterally at L4-L5 and laminectomy and foraminotomy bilaterally at L4-L5 for the compensable injury of (Date of Injury).

DECISION

The preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that the Claimant is not entitled to a laminotomy with decompression bilaterally at L4-L5 and laminectomy and foraminotomy bilaterally at L4-L5 for the compensable injury of (Date of Injury).

ORDER

Carrier is not liable for the benefits at issue in this hearing, and it is so ordered. Claimant remains entitled to medical benefits for the compensable injury in accordance with Texas Labor Code § 408.021.

The true corporate name of the insurance carrier is **(EMPLOYER), SELF-INSURED** and the name and address of its registered agent for service of process is:

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

Signed this 18th day of September, 2018

Alice Orta
Administrative Law Judge