

MEDICAL CONTESTED CASE HEARING NO. 18028

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 12 aquatic therapy visits, 2 times a week for 6 weeks for the lumbar, for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On November 7, 2018, Christopher M. Maisel, a Division administrative law judge, held a contested case hearing to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to 12 aquatic therapy visits 2 times a week for 6 weeks for the lumbar, for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by DV, ombudsman.

Respondent/Carrier appeared and was represented by RJ, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: (Claimant)

For Carrier: None

The following exhibits were admitted into evidence:

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

Claimant's Exhibits C-1 through C-12.

Carrier's Exhibits CR-A through CR-K.

DISCUSSION

Medical Necessity

Evidence Based Medicine (EBM)

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 (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. 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."

On the date of this medical contested case hearing, the ODG provides the following with regard to aquatic therapy.

Aquatic Therapy-Recommended as an optional form of exercise therapy, where available, as an alternative to land-based physical therapy.

For recommendations on the number of supervised visits see Physical Therapy.

Physical therapy (PT) ODG Physical Therapy Guidelines

Intervertebral disc disorders without myelopathy:

Medical treatment: 10: visits over 8 weeks

Post-surgical treatment (discectomy/laminectomy): 16 visits over 8 weeks

Post-surgical treatment (arthroplasty): 26 visits over 16 weeks

Post-surgical treatment (fusion, after graft maturity): 34 visits over 16 weeks

Intervertebral disc disorder with myelopathy

Post -surgical treatment: 48 visits over 18 weeks

The parties could not stipulate or otherwise describe the Claimant's compensable injury other than a low back injury that was sustained in (Year). On February 4, 2016 Claimant underwent surgery for removal of symptomatic internal fixation L5-S1, redo of central decompression L3-L4 with bilateral foraminotomies L3-L4 and L4-L5 and excision of herniated lumbar disc L3-L4 and posterior lateral fusion L3-L4. Claimant received physical therapy and aquatic therapy post operation, in 2016 and 2017. On May 31, 2018 additional aquatic therapy visits were requested. Claimant's request was adjusted from 18 to 12 aquatic therapy visits, 2 per week over 6 weeks. Carrier denied the request. The request underwent peer review and reconsideration. On June 21, 2018 a "Recommended Adverse Determination" was made based on the opinion of a Board Certified Orthopedic Surgeon. On June 26, 2018 the Texas Department of Insurance assigned P-IRO, Inc as the Independent Review Organization (IRO) in this case. On July 16, 2018 P-IRO Inc issued its "Notice of Independent Review Decision." The IRO found that the previous adverse determination should be upheld.

The IRO was performed by orthopedic surgery, whose physicians thought the requested treatment was not medically necessary, noting that Claimant received 33 sessions of physical and aquatic therapy over the past year had been completed with minimal improvement and that there was no clear indication to support the need for aquatic therapy or how aquatic therapy would benefit the patient (number) years post injury.

The IRO agreed with the prior adverse determination and found that the request for 12 aquatic therapy visits, 2 times a week for 6 weeks for the lumbar spine is not medically necessary. The IRO stated that the basis of its decision included ODG-Official Disability Guidelines & Treatment Guidelines, and noted "ODG treatment index, 126th Edition (web), 2018, Low Back, Aquatic therapy."

Claimant testified there was a need for the therapy and he thought it would help him. Claimant submitted a letter from Dr. DE, claimant's treating doctor, which stated that Claimant needed the therapy to improve his gait and help improve his posture. However, neither Claimant nor Dr. E cited the ODG treatment guidelines or any other evidence-based medical evidence to support their position. Claimant did not provide any other evidence based medical evidence to overcome the decision of the IRO.

Claimant did not meet his burden of proof to overcome the decision issued by an IRO by a preponderance of evidence-based medical evidence.

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) 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 with Liberty Mutual Fire Insurance Company, Carrier.
2. Carrier delivered to Petitioner/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. The Texas Department of Insurance assigned P-IRO, Inc as the IRO in this matter.
4. The IRO found that the previous adverse determination should be upheld.
5. The IRO determined that 12 aquatic therapy visits, 2 times a week for 6 weeks for the lumbar spine is not medically necessary.
6. 12 aquatic therapy visits 2 times a week for 6 weeks for the lumbar 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 the Claimant is not entitled to 12 aquatic therapy visits 2 times a week for 6 weeks for the lumbar, for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to 12 aquatic therapy visits, 2 times a week for 6 weeks for the lumbar, 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 **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY
211 E. 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701**

Signed this 9th day of November, 2018.

Christopher M. Maisel
Administrative Law Judge