

MEDICAL CONTESTED CASE HEARING NO. 19002

DECISION AND ORDER

This case is decided pursuant to 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 a lumbar transforaminal epidural steroid injection (ESI) bilaterally at L5 with fluoroscopy.

STATEMENT OF THE CASE

A contested case hearing was held on April 18, 2018, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that a lumbar transforaminal epidural steroid injection (ESI) bilaterally at L5 with fluoroscopy is not health care reasonably required for the compensable injury of (Date of Injury)?

PARTIES PRESENT

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

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

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: SH

For Carrier: None

The following exhibits were admitted into evidence:

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

Claimant's Exhibits C-1 through C-5.

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

DISCUSSION

Claimant, nurse assistant, sustained a compensable injury on (Date of Injury) when she was assisting patients. The compensable injury of (Date of Injury) extends to and includes a lumbar

strain and the conditions of the cervical spine that resulted in a cervical fusion. Claimant received physical therapy, medications, and chiropractic care for her lumbar strain. Claimant testified that the pain has persisted. On November 29, 2018, RS, MD reviewed a June 12, 2018 lumbar MRI and recommended the lumbar transforaminal epidural steroid injection (ESI) bilaterally at L5 with fluoroscopy. Dr. S opined that Claimant's diagnoses include lumbar and thoracic radiculopathy. Dr. S referred Claimant to MM, MD. On August 6, 2018, VT, FNC-C, in Dr. M's office, diagnosed lumbar disc displacement with radiculopathy and recommended the lumbar transforaminal epidural steroid injection (ESI) bilaterally at L5 with fluoroscopy.

On August 28, 2018, Dr. M requested the lumbar transforaminal epidural steroid injection (ESI) bilaterally at L5 with fluoroscopy. A Utilization Review was conducted by physician reviewer, BB, MD. Dr. B reviewed the necessity of the lumbar transforaminal epidural steroid injection (ESI) bilaterally at L5 with fluoroscopy considering the Official Disability Guidelines (ODG) and he denied authorization. Dr. B noted that the ODG states that radiculopathy due to herniated nucleus pulposus (HNP) must be present with objective physical exam findings corroborated by imaging studies to support the requested procedure. Claimant requested reconsideration and on September 27, 2018, NM MD, physician reviewer, upheld Dr. B's decision.

Claimant appealed the denial and an Independent Review Organization (IRO) was appointed by the Texas Department of Insurance in accordance with Rule 133.308. After consideration of the information provided, in IRO Case # 231325, the IRO upheld Carrier's denial of the lumbar transforaminal epidural steroid injection (ESI) bilaterally at L5 with fluoroscopy. Claimant thereafter filed a request for a contested case hearing as provided for by Rule 133.308(s). The contested case hearing was held on January 22, 2019.

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 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 in making decisions about the care of individual patients. 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 adopted treatment guidelines by Division Rule 137.100. The 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. A decision issued by an IRO is not considered an agency decision and the Department and the Division are not considered parties to an appeal. In a contested case hearing, the party appealing the IRO decision has the burden of overcoming the decision issued by the IRO by a preponderance of the evidence-based medical evidence. (Rule 133.308 (s).)

For the lumbar transforaminal epidural steroid injection (ESI) bilaterally at L5 with fluoroscopy, the ODG lists the following criteria:

Criteria for the use of Epidural steroid injections:

Note: The purpose of ESI is to reduce pain and inflammation, thereby facilitating progress in more active treatment programs, the reduction of medication use and the avoidance of surgery, but this treatment alone offers no significant long-term functional benefit.

- (1) Radiculopathy (due to herniated nucleus pulposus, but not spinal stenosis) must be documented. Objective findings on examination need to be present. Radiculopathy must be corroborated by imaging studies and/or electrodiagnostic testing.
- (2) Initially unresponsive to conservative treatment (exercises, physical methods, NSAIDs, muscle relaxants, and neuropathic drugs).
- (3) Injections should be performed using fluoroscopy (live x-ray) and injection of contrast for guidance.
- (4) *Diagnostic Phase:* At the time of initial use of an ESI (formally referred to as the “diagnostic phase” as initial injections indicate whether success will be obtained with this treatment intervention), a maximum of one to two injections should be performed. A repeat block is not recommended if there is inadequate response to the first block (< 30% is a standard placebo response). A second block is also not indicated if the first block is accurately placed unless:
 - (a) there is a question of the pain generator;
 - (b) there was possibility of inaccurate placement; or
 - (c) there is evidence of multilevel pathology.

In these cases, a different level or approach might be proposed. There should be an interval of at least one to two weeks between injections.

- (5) No more than two nerve root levels should be injected using transforaminal blocks.
- (6) No more than one interlaminar level should be injected at one session.
- (7) *Therapeutic phase:* If after the initial block/blocks are given (see “Diagnostic Phase” above) and found to produce pain relief of at least 50-70% pain relief for at least 6-8 weeks, additional blocks may be supported. This is generally referred to as the “therapeutic phase.” Indications for repeat blocks include acute exacerbation of pain, or new onset of radicular symptoms. The general consensus recommendation is for no more than 4 blocks per region per year. (CMS, 2004) (Boswell, 2007)
- (8) Repeat injections should be based on continued objective documented pain relief, decreased need for pain medications, and functional response.
- (9) Current research does not support a routine use of a “series-of-three” injections in either the diagnostic or therapeutic phase. We recommend no more than 2 ESI injections for the initial phase and rarely more than 2 for therapeutic treatment.
- (10) It is currently not recommended to perform epidural blocks on the same day of treatment as facet blocks or sacroiliac blocks or lumbar sympathetic blocks or trigger point injections as this may lead to improper diagnosis or unnecessary treatment.
- (11) Cervical and lumbar epidural steroid injection should not be performed on the same day. (Doing both injections on the same day could result in an excessive dose of steroids, which can be dangerous, and not worth the risk for a treatment that has no long-term benefit.)
- (12) Excessive sedation should be avoided.

Claimant appealed the denial of the lumbar transforaminal epidural steroid injection (ESI) bilaterally at L5 with fluoroscopy. Dr. B and Dr. M with Utilization Review Agent (URA) opined that Claimant did not meet the ODG criteria for the lumbar transforaminal epidural steroid injection (ESI) bilaterally at L5 with fluoroscopy. The clinical rationale was that there is no documentation of radiculopathy via herniated nucleus pulposus causing a nerve root impingement. Dr. M stated that the MRI is essentially normal, and the request is not medically necessary.

Claimant requested that an IRO be appointed to review the URA denial. The Division appointed Professional Associates (PA) as the IRO. PA submitted the review of the request to a Board Certified orthopedic. In IRO Case No. 231325, the physician reviewer upheld the denial of the request for the lumbar transforaminal epidural steroid injection (ESI) bilaterally at L5 with fluoroscopy. According to the physician reviewer, the ODG discusses verifiable radiculopathy, in conjunction with a herniated disc. The ODG does not support the use of ESIs for conditions such as those documented in Claimant’s case. The MRI documented multilevel degenerative

changes, but no herniated disc. Additionally there is a lack of objective physical findings and Claimant's pain description is not radicular in nature.

Claimant argued that the recommendations of the ODG regarding the lumbar transforaminal epidural steroid injection (ESI) bilaterally at L5 with fluoroscopy should not be allowed. According to Claimant, she has ongoing pain and is tired of taking medications. There is, however, no persuasive expert medical evidence that would tend to show that the recommendations contained in the ODG do not apply to Claimant or that the treatment requested by Dr. M is reasonably required for the compensable injury of (Date of Injury).

Based on a careful review of the evidence presented in the hearing, Claimant failed to meet her burden of overcoming the IRO decision. The IRO decision in this case is based on the ODG and the evidence revealed that Claimant failed to meet all the necessary criteria for lumbar transforaminal epidural steroid injection (ESI) bilaterally at L5 with fluoroscopy. The preponderance of the evidence-based medicine is not contrary to the decision of the IRO and, consequently, Claimant is not entitled to the lumbar transforaminal epidural steroid injection (ESI) bilaterally at L5 with fluoroscopy.

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:
2. The Texas Department of Insurance, Division of Workers Compensation has jurisdiction over this matter.
3. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
4. The compensable injury of (Date of Injury) extends to and includes a lumbar strain and the conditions of the cervical spine that resulted in a cervical fusion.
5. On (Date of Injury), Claimant was the employee of (Employer), Employer
6. On (Date of Injury), Employer provided workers compensation insurance coverage through self-insurance.
7. The IRO determined that the lumbar transforaminal epidural steroid injection (ESI) bilaterally at L5 with fluoroscopy for the compensable injury of (Date of Injury) is not medically necessary.

8. 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.
9. The preponderance of the evidence is not contrary to the decision of the IRO that lumbar transforaminal epidural steroid injection (ESI) bilaterally at L5 with fluoroscopy 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. Claimant is not entitled to a lumbar transforaminal epidural steroid injection (ESI) bilaterally at L5 with fluoroscopy for the compensable injury on (Date of Injury).

DECISION

Claimant is not entitled to a lumbar transforaminal epidural steroid injection (ESI) bilaterally at L5 with fluoroscopy for the compensable injury on (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 **(EMPLOYER), SELF-INSURED**, and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 E 7th STREET, SUITE 620
AUSTIN, TEXAS 78701**

Signed this 22nd day of January, 2018

Early Moye
Administrative Law Judge