

MEDICAL CONTESTED CASE HEARING NO. 19015

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 a purchase of binaural Phonak Audeo Marvel 90 rechargeable with TV connector, drying capsules, power pack, dry briks, dry and store, wax guards, and domes is health care reasonably required for the compensable injury of (Date of Injury).

ISSUES

On October 15, 2019, Judy Ney, a Division administrative law judge, held a contested case hearing to decide the following disputed issues:

Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to a purchase of binaural Phonak Audeo Marvel 90 rechargeable with TV connector, drying capsules, power pack, dry briks, dry and store, wax guards, and domes for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Claimant appeared and was assisted by JM, ombudsman. Petitioner appeared telephonically for part of the CCH and represented himself. Carrier/Respondent appeared and was represented by JM, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable hearing loss, due to working in a noisy, high decibel environment over time, with a date of injury of (Date of Injury). He has been using hearing aids. His present hearing aids are over four years old and currently the request is for them to be replaced with new hearing aids with Bluetooth connectivity, noise reduction components and programmability. Claimant has treated with Dr. GB, otolaryngologist and JE, audiologist, since January 2015. He has been diagnosed with bilateral sensorineural hearing loss. Each year an audiogram was performed. Claimant testified that his hearing aids do not properly function, and he now lip-reads to understand conversations.

Petitioner's request for new hearing aids was denied by the Carrier due to lack of documentation of Claimant's hearing tests and the lack of evidence-based medicine to support the requested equipment. The reconsideration request was also denied due to lack of documentation from the

requesting physician as to why the specific model was requested. Petitioner requested review by an independent review organization (IRO). The IRO issued a decision on May 28, 2019, upholding the Carrier's denial. The IRO Reviewer, a board-certified doctor in otolaryngology, explained that: "From the provided records, the current hearing aids are four years old. The average life of hearing aids ranges from five years to eight years with good maintenance. New hearing aids can be provided for a change in hearing that would dictate further amplification. Hearing aids are not required for any change in technology of the hearing aids with the rapidly changing industry. From the provided information, there is no documented change in the patient's hearing to justify authorization of new hearing aids. The only audiogram is his current audiogram from March of this year." Dr. B appealed the decision to this medical contested case hearing.

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 (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 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 and 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. 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 (t), "[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 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."

Regarding hearing aids, the ODG, 24th online edition 2019 (updated September 3, 2019), in the Head Chapter, states as follows:

“Hearing Aids [are] recommended as indicated below. Hearing aids are recommended for any of the following: (1) Conductive hearing loss unresponsive to medical or surgical interventions. (Conductive hearing loss involves the outer and middle ear and is due to mechanical or physical blockage of sound. Usually, conductive hearing loss can be corrected medically or surgically.) (2) Sensorineural hearing loss. (Sensorineural or "nerve" hearing loss involves damage to the inner ear or the 8th cranial nerve. It can be caused by aging, prenatal or birth-related problems, viral or bacterial infections, heredity, trauma, exposure to loud noises, the use of certain drugs, fluid buildup in the middle ear, or a benign tumor in the inner ear.) or (3) Mixed hearing loss (conductive hearing loss coupled with sensorineural hearing loss). (*Cigna, 2006*) (*Chisolm, 2007*)

Hearing aids should be recommended by an otolaryngologist or a qualified audiologist, and prior authorization should be required for hearing aids costing more than \$1,500 per ear, including hearing aid evaluation, fitting and purchase of hearing aids, once every four years. (*CMS, 2014*)”

The ODG recommends hearing aids for nerve damage hearing loss and Claimant's hearing loss is of this type. Claimant falls into the ODG time category of every four years to obtain new hearing aids. Specifically, what is in question is the type of hearing aids required. For the Petitioner to prevail, he must either provide evidence-based medicine supporting the new type of hearing aids or “if that evidence is not available, generally accepted standards of medical practice recognized in the medical community.” (Texas Labor Code Section 401.011 (22-a)) Dr. B credibly testified as a licensed medical specialist, that he has recommended the new hearing aids with the newest technology since he considers each case individually, and the requested hearing aids are the “best for him (Claimant) to function in his environment.” Dr. B explained the medical advances in hearing aid technology, stating that the requested digital hearing aids are now the current standard of care. Dr. B also convincingly stated that he has not read any studies about new hearing aid technology but has read studies stating the benefits of hearing aids. Once again, the decision of the IRO did not dispute Claimant’s need for hearing aids, just the specific type requested. Dr. B has overcome the presumption for the need of evidence based-studies for a specific type of hearing aid, with his convincing, credible testimony as an expert in the field of otolaryngology. Petitioner has provided evidence of generally accepted standards of medical practice recognized in the medical community to overcome the decision of the IRO.

The preponderance of the evidence is contrary to the decision of the IRO, and therefore Claimant is entitled to a purchase of binaural Phonak Audeo Marvel 90 rechargeable with TV connector, drying capsules, power pack, dry briks, dry and store, wax guards, and domes for the compensable injury of (Date of 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 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), Employer.
 - C. On (Date of Injury), Employer provided workers' compensation insurance with Bankers Standard Insurance Company, Carrier.
 - D. On (Date of Injury), Claimant sustained a compensable injury.
 - E. The IRO decision found that Claimant was not entitled to a purchase of binaural Phonak Audeo Marvel 90 rechargeable with TV connector, drying capsules, power pack, dry briks, dry and store, wax guards, and domes 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. Claimant met the requirements for the need of hearing aids per the ODG.
4. The ODG is silent as to the specific type of hearing aids.
5. Dr. GB provided the necessary explanation as to Claimant's need for the specific hearing aids request in accordance with generally accepted standards of medical practice recognized in the medical community.
6. The preponderance of the evidence is contrary to the decision of the IRO and therefore, the Claimant is entitled to a purchase of binaural Phonak Audeo Marvel 90 rechargeable with TV connector, drying capsules, power pack, dry briks, dry and store, wax guards, and domes for the compensable injury of (Date of Injury).
7. A purchase of binaural Phonak Audeo Marvel 90 rechargeable with TV connector, drying capsules, power pack, dry briks, dry and store, wax guards, and domes 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. A purchase of binaural Phonak Audeo Marvel 90 rechargeable with TV connector, drying capsules, power pack, dry briks, dry and store, wax guards, and domes is health care reasonably required for the compensable injury of (Date of Injury).

DECISION

A purchase of binaural Phonak Audeo Marvel 90 rechargeable with TV connector, drying capsules, power pack, dry briks, dry and store, wax guards, and domes is health care reasonably required for the compensable injury of (Date of Injury).

ORDER

Carrier is ordered to pay benefits in accordance with this decision, the Texas Workers' Compensation Act, and the Commissioner's Rules. Accrued but unpaid income benefits, if any, shall be paid in a lump sum together with interest as provided by law.

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

**C T CORPORATION SYSTEM
19999 BRYAN STREET, SUITE 900
DALLAS, TX 75201-3136**

Signed this 17th day of October, 2019.

Judy L. Ney
Administrative Law Judge