

MEDICAL CONTESTED CASE HEARING 20016

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 (ALJ) determines that Claimant is not entitled to L3-L4 lumbar laminectomy, 23 hours observation.

STATEMENT OF THE CASE

On October 22, 2020, Britt Clark, a Division ALJ, held a contested case hearing to decide the following disputed issue:

Is the preponderance of the evidence contrary to the IRO's determination that Claimant is not entitled to L3-L4 lumbar laminectomy, 23 hours observation?

PARTIES PRESENT

Claimant appeared and was represented by RB, attorney. Insurance Carrier appeared and was represented by BJ, attorney. The hearing took place by videoconference due to the COVID-19 pandemic.

EVIDENCE PRESENTED

The following witnesses testified;

For Claimant: Claimant.

For Insurance Carrier: Dr. BS.

The following exhibits were admitted into evidence:

ALJ Exhibit ALJ-1.

Claimant's Exhibits C-1 through C-10.

Insurance Carrier's Exhibits CR-A through CR-I.

DISCUSSION

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."

The relevant portions of the ODG indicate the following for a laminectomy:

ODG Indications for Surgery™ -- Discectomy/laminectomy --

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 (\geq 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)

The proposed treatment was denied at the initial utilization review level and the reconsideration level, and the IRO reviewer agreed with the denial. An initial utilization review doctor, Dr. DG, opined that Claimant's physical examination findings failed to establish the presence of active radiculopathy and further opined that the description of the radicular pain with a specific dermatome was not documented. Dr. PG, utilization review doctor, indicated that there was no

evidence of true, active clinical radiculopathy, noting there was normal strength and sensation of the lower extremities. Insurance Carrier provided the testimony of Dr. BS, peer reviewer, who testified that Claimant did not meet the ODG criteria for a laminectomy. Dr. S testified that Claimant's symptoms are bilateral and not unilateral, that Claimant does not have quadriceps weakness, or other findings required by the ODG. Dr. S testified that Claimant's reflexes are normal in the medical records and the physical exam findings do not correlate with neural impingement.

The IRO reviewer found that the request for L3-L4 lumbar laminectomy with 23 hours observation did not meet ODG criteria. He stated:

Per ODG references, the requested "L3-L4 Lumbar Laminectomy 23 hours observation" for the patient is not medically necessary. While the patient meets criteria for lumbar laminectomy by imaging, he does not meet the physical exam criteria and it is not clear whether he has fulfilled the non-surgical treatment criteria. He has bilateral leg pain and numbness, not unilateral, and he does not have weakness or atrophy in whether leg per the notes which does not meet the physical exam criteria for a laminectomy. The duration and results of his PT treatment is not documented, and the nature of his medication treatments is not documented to know if these meet the non-surgical treatment criteria. Also, there is not good documentation of the results of his ESI treatments to support the necessity of surgery. For these reasons, I concur with the prior decisions related to this case that the L3-4 laminectomy is not certified. (CR-E).

Claimant disputed this opinion from the IRO doctor with the opinion of Dr. PM, his treating doctor. He provided a letter supporting the necessity of the treatment at issue. He stated, in part, the following:

[Claimant] has had MRI of his lumbar spine performed, which shows evidence of L3-4 stenosis and L3 exiting nerve root compression, which fulfills the criteria for concordance between radicular findings on his radiologic evaluation and physical exam findings of nerve root compression at the cord level. He has symptoms and findings, which confirms the presence of radiculopathy. He has not had an EMG, as an EMG is not a conclusive diagnostic study and has a high rate of false negatives and it is not felt to be necessary in his evaluation, as he has findings on his MRI that are concordant with his symptoms of radiculopathy. He has unilateral hip, thigh, and knee pain, which fulfills the ODG requirements.

He has been treated with injection at the L3-4 level. The short-term improvement he received from this injection, confirms that this is the level of neurogenic impingement that causes his symptoms. The other levels are well preserved without significant neurogenic impingement. It has now been about 20 months

since the injury. His symptoms are persistent and they have now been present for over a year, despite conservative treatment including physical therapy, injections, and multiple oral medications, which fulfill the ODG requirements. He has had a (sic) MRI, which shows stenosis with compression of the L3 nerve root. He would be indicated for an L3-4 laminectomy and decompression. Additional conservative treatment, now that he is approaching two years from his injury, would be highly unlikely to provide additional benefit.

After review of the conflicting evidence, it is determined that Claimant failed to meet his burden of proof. Dr. M did explain why Claimant would meet the ODG criteria for the laminectomy at issue and persuasively explained that Claimant met the non-surgical treatment criteria discussed by the ODG. However, he does not provide a persuasive refutation to the IRO's discussion as to the lack of clinical findings required by the ODG. There is not a dispute that the MRI of the lumbar spine showed L3-4 spinal stenosis with L3 nerve-root compression; however, Dr. M's assertion that Claimant has unilateral hip, thigh, and knee pain is inconsistent with his own records indicating that Claimant has bilateral lower extremity symptoms. Dr. M did not explain, nor do his records document, unilateral weakness/atrophy in the lower extremities. Dr. M's opinion was not persuasive when reviewing the totality of the medical evidence. It is determined that the preponderance of the medical evidence is not contrary to the opinion of the IRO reviewer. Consequently, Claimant is not entitled to L3-L4 lumbar laminectomy, 23 hours observation.

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 the employee of (Employer), Employer.
 - C. On (Date of Injury), Employer provided workers' compensation insurance through Texas Mutual Insurance Company, Insurance Carrier.
 - D. On (Date of Injury), Claimant sustained a compensable injury.
2. Insurance Carrier delivered to Claimant a single document stating the true corporate name of Insurance Carrier, and the name and street address of Insurance Carrier's registered agent, which document was admitted into evidence as Insurance Carrier's Exhibit B.

3. L3-L4 lumbar laminectomy, 23 hours observation 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 IRO's determination that Claimant is not entitled to L3-L4 lumbar laminectomy, 23 hours observation.

DECISION

Claimant is not entitled to L3-L4 lumbar laminectomy, 23 hours observation.

ORDER

Insurance 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 §408.021.

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

RICHARD J. GERGASKO
2200 ALDRICH ST.
AUSTIN, TX 78723

Signed this 30th day of October, 2020.

BRITT CLARK
Administrative Law Judge