

## MEDICAL CONTESTED CASE HEARING 20019

### **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 (DWC). 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 that Claimant is not entitled to purchase a transcutaneous electrical nerve stimulator unit with conductive garment.

### **STATEMENT OF THE CASE**

On November 19, 2020, Monica Zahn, a DWC administrative law judge, held a contested case hearing, with the record closing on December 4, 2020, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that Claimant is not entitled to purchase a transcutaneous electrical nerve stimulator (TENS) unit with conductive garment?

### **PERSONS PRESENT**

The contested case hearing was held by teleconference due to the COVID-19 pandemic. Petitioner (Claimant) in this case, did not appear. Respondent (Insurance Carrier) appeared and was represented by RG, attorney. EC assisted as the court reporter.

### **EVIDENCE PRESENTED**

No witnesses testified.

The following exhibits were admitted into evidence:

Administrative Law Judge Exhibits: ALJ-1 and ALJ-2.

Claimant Exhibits: None.

Insurance Carrier Exhibits: CR-A through CR-J.

### **DISCUSSION**

Although properly notified, Claimant failed to appear for the medical contested case hearing scheduled for November 19, 2020. A 10-day letter was sent to Claimant on November 23, 2020, advising her that the hearing had convened, that the record was opened and developed, and that

the record would be held open for 10 days after receipt of the letter to afford Claimant the opportunity to respond in writing, show good cause for her failure to appear at the November 19, 2020, medical contested case hearing, and request that the hearing be rescheduled to permit her to present evidence on the disputed issue. On November 30, 2020, Claimant responded and asked that a decision be rendered based on previously submitted exhibits in a separate proceeding, (DOCKET NO). Claimant did not request to reschedule the hearing, and no response was received by Insurance Carrier, so pursuant to 28 Texas Administrative Code §142.11(c), with the evidence presented at the hearing on November 19, 2020, the record closed on December 4, 2020.

Claimant sustained a compensable injury on (Date of Injury). Claimant received treatment from BR, D.O., who recommended the TENS unit with conductive garment, the disputed treatment in this case, as treatment for the compensable injury. Insurance Carrier's utilization review agent denied preauthorization on the ground that efficacy from prior TENS unit use was not substantiated. The medical records did not indicate subjective improvement or reduction in pain medication to warrant the need for the purchase of a TENS unit. An independent review organization (IRO) review of the denial was requested. In the decision letter dated May 4, 2020, the IRO upheld Insurance Carrier's denial. The IRO stated that the requested purchase of a TENS unit with conductive garment was not medically necessary because "the letter did not address the efficacy and/or functional improvements provided to the patient with the use of a TENS unit, such as return to work ability and/or an ability to decrease medications." (CR-I Pg8). Claimant appealed the IRO decision.

To determine if treatment is medically necessary, Texas law requires DWC to use treatment guidelines. These guidelines must be evidence-based, scientifically valid, and outcome-focused. Use of these guidelines ensures that an injured employee will receive reasonable and necessary health care. *See* Texas Labor Code §§413.011(e) and 413.017(1). DWC uses the current edition of the *Official Disability Guidelines* (ODG). If the ODG does not address the requested treatment, then other guidelines or generally accepted standards of practice recognized in the medical community are used.

In this dispute, Claimant has the burden of showing by a preponderance of the medical evidence that the IRO decision is wrong. Claimant did not appear to present evidence on her behalf. Insurance Carrier provided the reports from the utilization review agents and the IRO decision.

After careful review of all the evidence presented, it is determined that the ODG does not support the necessity of the disputed treatment. The IRO determined the disputed treatment was not medically necessary because efficacy and/or functional improvement from the continued use of the TENS unit could not be fully established. This determination by the IRO is based on the ODG requirement of objective documentation of functional improvement with use of the TENS unit.

The preponderance of the evidence is not contrary to the decision of the IRO that Claimant is not entitled to purchase a TENS unit with conductive garment.

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 the evidence, whether or not the evidence is specifically discussed in this Decision.

### **FINDINGS OF FACT**

1. Insurance Carrier 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, Insurance Carrier.
  - D. On (Date of Injury), Claimant sustained a compensable injury.
  - E. The Independent Review Organization (IRO) determined Claimant should not have the requested purchase of a TENS unit with conductive garment.
  - F. The petitioner timely appealed the decision of the IRO.
2. DWC sent to Claimant at her address of record with the 10-day letter, 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 CR-B.
3. Claimant did not appear for the November 19, 2020, medical contested case hearing.
4. Claimant did not have good cause for failing to appear at the November 19, 2020, medical contested case hearing.
5. Claimant did not establish the requirements of the ODG or provide evidence-based medical support for purchase of a TENS unit with conductive garment.
6. Purchase of a TENS unit with conductive garment 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 Independent Review Organization that Claimant is not entitled to purchase a TENS unit with conductive garment.

## **DECISION**

The preponderance of the evidence is not contrary to the decision of the Independent Review Organization that Claimant is not entitled to purchase a TENS unit with conductive garment.

## **ORDER**

Insurance Carrier is not liable for the benefits in dispute in this hearing. 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 **BANKERS STANDARD INSURANCE COMPANY**, and the name and address of its registered agent for service of process is:

**CT CORPORATION SYSTEM  
1999 BRYAN STREET, SUITE 900  
DALLAS, TEXAS 75201-3136**

Signed this 7th day of December, 2020.

Monica Zahn  
Administrative Law Judge