

## MEDICAL CONTESTED CASE HEARING 20020

### DECISION

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 Claimant is not entitled to 10 additional visits/80 units of chronic pain management program for the lumbar and cervical spine for the compensable injury of (Date of Injury).

### ISSUE

Claimant appealed the decision of the Independent Review Organization in Case Number \_\_\_\_\_. At the hearing held on November 24, 2020, Rabiab Ngbwa, an administrative law judge, considered the following issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to 10 additional visits/80 units of chronic pain management program for the lumbar and cervical spine for the compensable injury of (Date of Injury)?

### PERSONS PRESENT

Claimant appeared and was assisted by VR, ombudsman. Insurance Carrier appeared and was represented by JF, attorney.

The hearing was held telephonically due to COVID-19.

### EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant.

For Insurance Carrier: None.

The following exhibits were admitted into evidence:

The administrative law judge did not offer exhibits.

Claimant's Exhibits: C-1 through C-4.

Insurance Carrier's Exhibits: CR-A through CR-H.

## **DISCUSSION**

The compensable injury of (Date of Injury), consists of a right foot sprain, lumbar sprain/strain, and a neck sprain/strain. On June 4, 2019, Claimant first sought treatment for the compensable injury. She was treated with pain medication, orthotics, physical therapy, and a chronic pain management program. According to Claimant, the chronic pain management program helped her to manage her back pain and mental stress associated with her compensable injury.

On December 20, 2019, following Claimant's first set of chronic pain management sessions, orthopedic surgeon, AT, M.D., recommended that Claimant participate in 10 additional sessions of chronic pain management. He explained that the additional sessions would increase Claimant's physical strength, range of motion (ROM), and cardiovascular fitness. Dr. T stated that Claimant reported a higher level of pain following her most recent chronic pain management program but noted that she had not taken her pain medication that day. He noted that Claimant's cervical and lumbar ROM had increased.

Preauthorization from Insurance Carrier's utilization review agent was requested and denied. On December 24, 2019, AM, M.D., issued a utilization review decision letter denying the requested 10 additional chronic pain program sessions. Dr. M stated that, following her first sessions, Claimant made minimal gains, her pain score had increased, and her global assessment of functioning was unchanged. He noted that Claimant's recent approval to undergo a cervical fusion established that the prior chronic pain program sessions did not result in a functional improvement. Thus, Dr. M denied the requested sessions.

On January 17, 2020, WB, M.D., affirmed Dr. M's decision. Dr. B explained that chronic pain management programs are not supported when surgical interventions are anticipated.

Claimant then requested an IRO review of the denials. The IRO reviewer was identified as a licensed physician in physical medicine and rehabilitation. In the decision dated February 16, 2020, the IRO reviewer upheld the insurance agents' denials. The IRO reviewer determined that the requested treatment was not medically necessary for treatment of Claimant's medical condition because, after 10 sessions over three weeks, there was a lack of significant demonstrated effectiveness by subjective or objective gains. The IRO reviewer noted that Claimant's clinical information demonstrated an increase in her level of pain, minimal changes in psychometric testing, and no change in functional assessment. The IRO reviewer noted that, following her previous chronic pain program session, Claimant was approved for cervical fusion surgery. In addition, the IRO reviewer noted the lack of documentation regarding Claimant's compliance with a home exercise program or practice with cognitive-behavior skills or regarding Claimant's functional goals. On March 4, 2020, 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 relied on her testimony, the medical records in evidence, and the opinion of Dr. T to support her position of entitlement to the disputed treatment. Claimant acknowledged that the requested treatment was inconsistent with ODG guidelines because she sought treatment of the compensable injury approximately six months after the date of injury. For the requested medical treatment, the ODG states that treatment is recommended three to six months post injury. In addition, the ODG states chronic pain management sessions should not be extended without evidence of compliance and significant demonstrated efficacy as documented by subjective and objective gains. In this case, following her previous sessions, Claimant's level of pain, psychometric testing, and functional assessment did not improve or had minimal changes. In addition, the sessions did not improve Claimant's cervical condition, which was referred for cervical fusion surgery.

Considering the reports of Dr. T, Dr. M, Dr. B, and the IRO reviewer, the ALJ finds that Claimant did not meet her burden of proof to overcome the IRO decision by a preponderance of the medical evidence. Claimant did not present persuasive medical evidence to establish that she met the ODG requirements for the requested 10 additional visits/80 units of chronic pain management program for the lumbar and cervical spine. Therefore, the preponderance of the evidence is not contrary to the decision of the IRO that Claimant is not entitled to additional visits/80 units of chronic pain management program for the lumbar and cervical spine.

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 Workers' Compensation Division of the Texas Department of Insurance.
  - B. On (Date of Injury), Claimant was the employee of (Employer).

- C. On (Date of Injury), Claimant sustained a compensable injury in the form of a right foot sprain, lumbar sprain/strain, and a neck sprain/strain.
- D. On (Date of Injury), Employer provided workers' compensation insurance through LM Insurance Corporation.
2. The IRO decision upheld Insurance Carrier's denials of 10 additional visits/80 units of chronic pain management program for the lumbar and cervical spine.
  3. The IRO decision was sent to the parties on February 16, 2020.
  4. On March 4, 2020, Claimant filed her appeal of the IRO decision with the Division of Workers' Compensation. The appeal was filed within twenty days from the date the IRO decision was sent to the parties.
  5. Insurance Carrier delivered to Claimant a document stating Insurance Carrier's true corporate name and the name and street address of Insurance Carrier's registered agent. The document was admitted into evidence.
  6. Claimant does not meet the requirements of the ODG for 10 additional visits/80 units of chronic pain management program for the lumbar and cervical spine.
  7. The preponderance of the evidence is not contrary to the decision of the IRO that the Claimant is not entitled to 10 additional visits/80 units of chronic pain management program for the lumbar and cervical spine 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. The preponderance of the evidence is not contrary to the decision of the IRO that the Claimant is not entitled to 10 additional visits/80 units of chronic pain management program for the lumbar and cervical spine for the compensable injury of (Date of Injury).

### **DECISION**

Claimant is not entitled to 10 additional visits/80 units of chronic pain management program for the lumbar and cervical spine for the compensable injury of (Date of Injury).

## **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 **LM INSURANCE CORPORATION**, and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY  
211 EAST 7th STREET, STE. 620  
AUSTIN, TEXAS 78701-3218**

Signed this 2nd day of December, 2020.

Rabiat Ngbwa  
Administrative Law Judge