

MEDICAL CONTESTED CASE HEARING 20021

DECISION

The health care provider, Dr. SC, appealed the Decision of the Independent Review Organization in Case Number _____.

The hearing for this appeal was held on December 8, 2020. For the reasons discussed below, the administrative law judge (ALJ) decides:

The claimant is entitled to psychotherapy 45 minutes x 6 sessions for the compensable injury of (Date of Injury).

Issue

At the hearing, Judy L. Ney, an ALJ, considered the following unresolved issue:

Is the claimant entitled to psychotherapy 45 minutes x 6 sessions for the compensable injury of (Date of Injury)?

Persons Present

The hearing was held by teleconference in accordance with Commissioner Cassie Brown's March 24, 2020, memo to system participants regarding worker's compensation operation in light of COVID-19.

The claimant appeared and was assisted by LM, ombudsman.

The insurance carrier appeared and was represented by MA, attorney.

Dr. SC, health care provider, attended as a witness.

VW attended as an observer.

Evidence Presented

The following witnesses testified:

For the claimant: None

For the health care provider: Dr. SC

For the insurance carrier: None

The following exhibits were admitted into evidence:

Administrative Law Judge Exhibits:	ALJ-1 and ALJ-2
Claimant Exhibits:	C-1 through C-6
Insurance Carrier Exhibits:	CR-A through CR-D

Discussion

The claimant sustained a compensable injury on (Date of Injury), while working as a park guard. He intervened in a confrontation between a man who was sexually assaulting a woman. The claimant was badly beaten with an iron pipe on the head, face, and left hand. He sustained multiple injuries to the head and neck requiring multiple facial and cranial corrective surgeries. The claimant was also diagnosed with chronic post-traumatic stress disorder (PTSD).

The claimant treated with Dr. SC, psychologist, and participated in over 130 individual psychotherapy sessions. Dr. C requested an additional six sessions. Preauthorization from the insurance carrier's utilization review agents, Dr. AB and Dr. JU, was requested and denied twice.

Dr. C then requested an Independent Review Organization (IRO) review of the denials. In the decision letter dated August 19, 2020, the IRO agreed with the insurance carrier's denials. Dr. C is now appealing the IRO decision.

To determine if treatment is medically necessary, Texas law requires Division of Workers' Compensation (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 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, the claimant and health care provider have the burden of showing by a preponderance of the medical evidence that the IRO decision is wrong. The claimant relied on the medical records in evidence, and the testimony from Dr. C to support his position of entitlement to the disputed treatment.

The insurance carrier relied upon the decisions from the utilization reviews and the IRO, to support its position that the claimant is not entitled to the requested treatment. The IRO explained that the claimant's cause of treatment exceeded the ODG guidelines and no individual psychotherapy notes were submitted for review showing documented significant and sustained improvement.

Dr. C testified that he is familiar with the medical review process. He stated that he had a peer to peer conversation with Dr. B and it was his understanding that the requested medical treatment was going to be approved. He also testified that he tried to send his records for review.

Appendix D of the ODG states that in cases where the medical care is an exception to ODG, the health care provider should document extenuating circumstances of the case that warrant performance of the treatment, patient co-morbidities, objective signs of functional improvement, and progress points expected from additional treatment.

Dr. C convincingly explained that he set measurable goals for the claimant, and the claimant has shown significant improvement over the course of his treatment by being able to: return to work, continue working, dealing with his long medical recovery from his serious injury, improve his diet, exercise, avoidance of drinking, impulsive overspending, and making plans to live independently. He also stated that with the help of extensive psychotherapy the claimant's current PTSD symptoms were not as severe.

Dr. C stressed that the claimant is an individual who has required more extensive amount of treatment than the average employee as referenced in the ODG. He explained that presently, the claimant has experienced considerable work-place anxiety; COVID-19 has exacerbated the PTSD symptoms (fear of job loss); and he has encountered problems to try to live independently. Dr. C stated that additional psychotherapy sessions would help the claimant maintain employment and improve his activities of daily life.

In summary, the evidence offered, including the opinion of Dr. C, provided a persuasive explanation of how the disputed treatment is necessary. Appendix D of the ODG along with the generally accepted standards of practice recognized in the medical community and the unique ramifications associated with COVID-19 all support the necessity of the disputed treatment.

Therefore, the preponderance of the evidence is contrary to the decision of the IRO that the claimant is entitled to psychotherapy 45 minutes x 6 sessions.

The ALJ considered all 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. 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), the claimant was the employee of (Employer).

- C. On (Date of Injury), the employer provided workers' compensation insurance as a self-insured.
 - D. On (Date of Injury), the claimant sustained a compensable injury.
 - E. The requested treatment is for the (Date of Injury), compensable injury that includes post-traumatic stress disorder.
 - F. The Independent Review Organization decision agreed with the insurance carrier's denials of psychotherapy 45 minutes x 6 sessions.
 - G. The Independent Review Organization decision was sent to the parties on August 19, 2020 and deemed received by the claimant on August 24, 2020.
 - H. On September 9, 2020, the claimant filed this appeal of the Independent Review Organization decision with the Division of Workers' Compensation.
- 2. The insurance carrier delivered to the claimant a document stating the insurance carrier's true corporate name and the registered agent's name. This document was admitted into evidence.
 - 3. The preponderance of the evidence-based medical evidence is contrary to the decision of the Independent Review Organization that the claimant is not entitled to psychotherapy 45 minutes x 6 sessions 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. The claimant is entitled to psychotherapy 45 minutes x 6 sessions for the compensable injury of (Date of Injury).

Order

The insurance carrier is liable for the benefits in dispute in this hearing. The claimant remains entitled to medical benefits for the compensable injury in accordance with Texas Labor Code §408.021.

The true corporate name of the self-insured is (Self-Insured). The name and address of its registered agent for service of process is:

(NAME)
(STREET ADDRESS)
(CITY, STATE, ZIPCODE)

Signed on December 16, 2020.

Judy L. Ney
Administrative Law Judge