

MEDICAL CONTESTED CASE HEARING 20022

DECISION

The parties attended a medical contested case hearing on December 8, 2020. For the reasons discussed below, the administrative law judge (ALJ) decides that:

The claimant is not entitled to a dorsal column stimulator for the compensable injury of (Date of Injury).

ISSUE

At the hearing, Early Moye, an ALJ, considered the following unresolved issue:

Is the claimant entitled to a dorsal column stimulator for the compensable injury of (Date of Injury)?

PERSONS PRESENT

The claimant appeared and was assisted by DS, ombudsman. The insurance carrier appeared and was represented by GS, attorney. Dr. EL attended as a witness. The hearing was held by teleconference in accordance with Commissioner Cassie Brown's March 24, 2020, memo to system participants regarding workers' compensation operations in light of COVID-19.

EVIDENCE PRESENTED

The following witnesses testified:

For the claimant: The claimant.

Dr. EL.

For the insurance carrier: None

The following exhibits were admitted into evidence:

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

Claimant Exhibits: C-1 through C-6

Insurance Carrier Exhibits: CR-A through CR-G

DISCUSSION

The claimant sustained a compensable injury on (Date of Injury), while carrying an air condition unit upstairs. The compensable injury includes at least disc displacement at L4-L5. According to the claimant, in the past, she had success with a dorsal column stimulator (DCS) which eventually malfunctioned. The DCS that is the subject of this hearing is a replacement.

The claimant treated with Dr. EL, a neurosurgeon, who recommended the disputed treatment. Preauthorization from the insurance carrier's utilization review agent was requested and denied.

The claimant then requested an Independent Review Organization (IRO) review of the denial. In the decision letter dated September 28, 2020, the IRO upheld the insurance carrier's denial. The claimant is now appealing 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* 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 has the burden of showing by a preponderance of the medical evidence that the IRO decision is wrong. The claimant relied on her testimony, the medical records in evidence, and the opinion from Dr. L to support her position of entitlement to the disputed treatment.

The insurance carrier relied on the medical records in evidence to support its position that the claimant is not entitled to the requested treatment.

According to the record, on July 27, 2020, the claimant underwent implantation of trial leads for a DCS, and the claimant reported good pain relief with the trial. The claimant continued to take medications of gabapentin, hydroxyzine, Topamax, Ibuprofen, and oxycodone/acetaminophen.

According to the testimony of Dr. L, the claimant had pain relief and was able to reduce the use of pain medications during the trial. The claimant stated that during the trial DCS, she was able to better function, perform more activities, and cut back on her medications. The plan was to schedule the claimant for permanent placement of a DCS.

Dr. JG, the peer reviewer for the insurance carrier's utilization review agent, noted that the claimant underwent a trial DCS. Dr. G stated that it is appreciated that the patient reported symptom relief with reduction of pain from the trial DCS; however, the medical records do not

establish reduction in specific medication use and functional benefits including specific activities performed, as required by the guidelines. The request was denied.

According to the IRO reviewer, a neurosurgeon, there is insufficient information to support a change in determination, and the previous non-certification is upheld. Current evidence based guidelines note that following a trial of DCS, pain and function should improve by at least 50%, with documentation provided. Documentation should also include whether any changes were made to pain medications. Although the patient subjectively reports pain relief following the DCS trial, there are no objective measures of improvement documented. The patient's medication regimen during the DCS trial is not documented to establish that medication usage was decreased. Therefore, medical necessity is not established in accordance with current evidence-based guidelines.

In summary, the evidence offered, including the opinion of Dr. L, does not provide a persuasive explanation using evidence-based medicine of how the disputed treatment is necessary.

The ODG does not support the necessity of the disputed treatment and the generally accepted standards of practice recognized in the medical community do not support the necessity of the disputed treatment. Therefore, the preponderance of the evidence is not contrary to the decision of the IRO that the claimant is not entitled to the DCS.

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), Employer.
 - C. On (Date of Injury), the employer provided workers' compensation insurance with Insurance Company of the State of Pennsylvania, the insurance carrier.
 - 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 at least disc displacement at L4-L5.

- F. The Independent Review Organization decision upheld the insurance carrier's denial of permanent placement of the dorsal column stimulator.
 - G. The Independent Review Organization decision was sent to the parties on September 28, 2020.
 - H. On October 15, 2020, the claimant filed this appeal of the Independent Review Organization decision with the Division of Workers' Compensation. The appeal was filed within twenty days from the date the Independent Review Organization decision was sent to the parties.
- 2. The insurance carrier delivered to the claimant and health care provider a document stating the insurance carrier's true corporate name and the registered agent's name. This document was admitted into evidence.
 - 3. The claimant did not provide the documentation of change in function, pain, and medication as required by the guidelines.
 - 4. The decision of the Independent Review Organization has not become final because the Division of Workers' Compensation timely received the request for appeal.
 - 5. The preponderance of the evidence-based medical evidence is not contrary to the decision of the Independent Review Organization that the claimant is not entitled to the dorsal column stimulator 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 not entitled to the dorsal column stimulator for the compensable injury of (Date of Injury).

ORDER

The insurance carrier is not 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 insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA**. The name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TX 78701-3218**

Signed on 15th day of December, 2020.

Early Moye
Administrative Law Judge