MEDICAL CONTESTED CASE HEARING 21001

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 determines that Claimant is entitled to caudal epidural steroid injection at the L5/S1 interspace with fluoroscopy performed under anesthesia for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On January 06, 2021, a medical contested case hearing (MCCH) was held to decide the following disputed issue:

> Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to caudal epidural steroid injection at the L5/S1 interspace with fluoroscopy performed under anesthesia for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by CT, ombudsman.

Respondent/Insurance Carrier appeared and was represented by AS, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant

For Insurance Carrier: No one

The following exhibits were admitted into evidence:

Administrative Law Judge's Exhibits ALJ-1 and ALJ-2

Claimant's Exhibits C-1 through C-7

Insurance Carrier's Exhibits CR-A through CR-E

BACKGROUND INFORMATION

Claimant testified that he sustained a compensable injury on (Date of Injury), when he bent down to plug a computer into the electric socket. Before he made it all the way down, his back locked up and he fell to his side. He eventually was able to get up, but felt a rush of weakness in his legs down to his feet. Claimant has undergone two surgeries. On June 02, 2020, under the direction of NA, M.D., Claimant underwent an epidural steroid injection. After having relief for about thirty days, Dr. A requested a second injection. Both utilization review doctors determined the injection was not medically necessary and Claimant appealed the determination to an IRO doctor. The pain medicine doctor assigned to provide the IRO opinion agreed with the utilization review doctors that the caudal epidural steroid injection at the L5/S1 interspace with fluoroscopy performed under anesthesia was not medically necessary. Claimant requested this hearing.

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."

On the date of this medical contested case hearing, the Official Disability Guidelines provides the following with regard to a caudal epidural steroid injection at the L5/S1 interspace with fluoroscopy performed under anesthesia:

> *Caudal approach:* In a caudal approach, the injection is placed by inserting the needle through the sacral hiatus into the epidural space at the sacral canal. The procedure is not recommended for levels above L4-5.
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> A repeat injection has been suggested if there is question of accurate dermatomal diagnosis, if pain may be secondary to a different generator, or in the case of multilevel pathology. (*McLain, 2005*) There is a lack of support for a second epidural steroid injection if the first is not effective. (*Cuckler, 1985*) With fluoroscopic guidance, there is little support to do a second epidural if there is no response to the first injection. There is little to no guidance in current literature to suggest the basis for the recommendation of a third ESI, and the routine use of this practice is not recommended.
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> Patient criteria for epidural steroid injections (ESIs):
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> (1) Radiculopathy must be well documented, along with objective neurological findings on physical examination. Acute radiculopathy must be corroborated by imaging studies and when appropriate, electrodiagnostic testing, unless documented pain, reflex loss, and myotomal weakness abnormalities support a dermatomal radiculopathy diagnosis. A request for the procedure in a patient with chronic radiculopathy requires additional documentation of recent symptom worsening associated with deterioration of neurologic state.
>
> (2) Initially unresponsive to conservative treatment (exercises, physical methods, NSAIDs, muscle relaxants, and neuropathic drugs).
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> Criteria for use of ESIs:
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> *Note: The purpose of ESI is to reduce pain and inflammation, thereby facilitating progress in more active treatment programs during healing. There is no evidence that ESIs alone offer any meaningful long-term functional benefit.*
>
> (1) Injections should be administered using fluoroscopy (live X-ray) and injection of contrast for guidance. Ultrasound guidance is not recommended.
>
> (2) *Initial injection:* At the time of initial use of an ESI for an acute, new onset episode, a maximum of 1 to 2 injections should be administered. A repeat block is not recommended if there is inadequate response to the first block (with an initial adequate response defined as pain relief and improved function

of at least 50% for a minimum of 2-3 weeks). Approval of a second block requires documentation of the response to the first block. There should be an interval of at least 2 weeks between injections. This recommendation only applies to the initial injection treatment.

(3) *Repeat therapeutic injections:* Repeat blocks are not routinely recommended unless there is evidence of an acute pain exacerbation after a symptom-free period. This criterion is based on an emerging concept that the true natural history of lumbar radicular pain due to intervertebral disc herniation often follows that of a relapsing remitting disease, with temporary occurrences of symptoms over the years. (*Kennedy, 2018*) Evidence indicates that ESIs should be restricted to patients with continuous radicular pain for less than 6 months. (*Van Boxem, 2019*) Therefore, the following criteria should be considered:

(i) Repeat injection should require documentation that previous block/block(s) produced a minimum of 50-70% pain relief and improved function for at least 6-8 weeks.

(ii) Repeat block is better supported with documentation of decreased medication requirement after the previous procedure.

(iii) Based on general consensus, no more than 3 to 4 blocks per region should be administered within a 12-month period.

(4) Best evidence does not support routine use of "series-of-three" injections for initial or repeat treatment. No more than two ESIs are recommended for the initial phase, and rarely more than two (total) for repeat treatment for exacerbation of symptoms, particularly for treatment of mono-radiculopathy.

(5) No more than two nerve root levels should be injected using transforaminal blocks.

(6) No more than one interlaminar level should be injected per treatment session.

(7) The lowest effective corticosteroid dose is recommended per injection. Research is available on injections with local anesthetic only (i.e., without corticosteroid).

(8) Administering epidural blocks on the same day as other injections (e.g., facet injections, sacroiliac injections, lumbar sympathetic blocks, or trigger point injections) is not recommended, as this can lead to improper diagnosis or unnecessary treatment.

(9) Cervical and lumbar ESIs should not be administered on the same day to avoid excessive steroid dosing and other adverse effects.

(10) Sedation is not generally recommended. When required for extreme anxiety, a patient should remain alert enough to reasonably converse.

(11) Epidural injection is not a stand-alone procedure. There should be evidence of active rehabilitation in association with injection. This can include a continuing home exercise program.

The IRO doctor reviewed Dr. A's medical records that were provided and the utilization review denials. He then stated, "There is insufficient information to support a change in determination, and the previous non-certifications are upheld. Although the patient subjectively reported 70% pain relief following prior epidural steroid injection, there are no post-procedure VAS scores submitted for review. There are no imaging studies/electrodiagnostic results submitted for review. Therefore, medical necessity is not established in accordance with current evidence based guidelines, so the denials are upheld."

When addressing repeat epidural steroid injections, the ODG notes two criteria:

(i) Repeat injection should require documentation that previous block/block(s) produced a minimum of 50-70% pain relief and improved function for at least 6-8 weeks.

(ii) Repeat block is better supported with documentation of decreased medication requirement after the previous procedure.

On June 24, 2020, Dr. A documented Claimant experienced 90% improvement of his back, buttock, and leg pain. Claimant's right drop foot improved. Dr. A wrote, "The criteria has been met. He got more than 70% pain relief with improved function, and decreased medications in order for second block to be offered. He is cutting down on his Lyrica or Neurontin as well. His CESD has improved accordingly, 0/60 on his CESD and 2/21 on his GAD—7 test. He received this care void of side effect." This was written only about three weeks after the first injection, so the requirement of improved function for six to eight weeks was not met.

On July 23, 2020, Dr. A wrote, "I look back on June 02, 2020, that is over a month-and-a half ago, he got excellent relief of pain, improved function, and decreased medications He states today for the fact that he was able to get along much easier and took less oral medicine. His pain was more than 70% relieved and a criteria for the ODG to have a second block was made."

Dr. A's records discuss Claimant's radiculopathy. The ODG states "acute radiculopathy" must be documented with imaging studies or electrodiagnostic studies. Claimant's radiculopathy is

chronic. There is no requirement for VAS scores to document pain relief. The IRO doctor is requiring elements that are not required by the ODG.

Dr. A noted Claimant's fear of needles and related anxiety made doing the procedure under anesthesia medically necessary.

With respect to the report offered by Claimant's treating doctor, EN, D.C., subject to the timely exchange rules, an administrative law judge shall accept all written reports signed by a healthcare provider. §410.165(b). Medical records not provided to the IRO but that were created prior to the date of the IRO review may be considered by the administrative law judge in determining the necessity of proposed medical treatment. See MCCH Decision Number 08046. However, records of medical treatment that were created following the IRO review cannot be considered by the administrative law judge in deciding the necessity of proposed medical treatment, though such reports may be the basis for a resubmission request to Insurance Carrier.

Because Dr. N's report was created after the IRO review, it cannot be considered.

Claimant met both criteria for the repeat injection. Claimant met his burden of proof to establish the requested caudal epidural steroid injection at the L5/S1 interspace with fluoroscopy performed under anesthesia is medically necessary.

Even though all the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

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 with New Hampshire Insurance Company, Insurance Carrier.

   D. On (Date of Injury), Claimant sustained a compensable injury.

   E. The Independent Review Organization pain medicine doctor determined Claimant should not have a caudal epidural steroid injection at the L5/S1 interspace with fluoroscopy performed under anesthesia.

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 an Insurance Carrier exhibit.

3. A caudal epidural steroid injection at the L5/S1 interspace with fluoroscopy performed under anesthesia is 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 contrary to the decision of the IRO that a caudal epidural steroid injection at the L5/S1 interspace with fluoroscopy performed under anesthesia is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is entitled to caudal epidural steroid injection at the L5/S1 interspace with fluoroscopy performed under anesthesia for the compensable injury of (Date of Injury).

ORDER

Insurance Carrier is liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE INSURANCE COMPANY** and 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 this 08th day of January, 2021.

KEN WROBEL
Administrative Law Judge