

MEDICAL CONTESTED CASE HEARING 21002

DECISION

The parties attended a medical contested case hearing on January 13, 2021. For the reasons discussed below, the administrative law judge (ALJ) decides that:

The preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that a home health care aide for twenty-four hours per day for seven days per week for three months is not health care reasonably required for the compensable injury of (Date of Injury).

ISSUE

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

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that a home health care aide for twenty-four hours per day for seven days per week for three months is not health care reasonably required for the compensable injury of (Date of Injury)?

PERSONS PRESENT

The claimant appeared and was assisted by LM, ombudsman. The insurance carrier appeared and was represented by JS, attorney. 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.

For the insurance carrier: None.

The following exhibits were admitted into evidence:

Administrative Law Judge Exhibit: ALJ-1.

Claimant Exhibits: C-1 through C-7.

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

DISCUSSION

The claimant sustained a compensable injury on (Date of Injury), when he was involved in a motor vehicle accident. The compensable injury includes at least an injury to the right lower extremity and a right shoulder strain.

According to the claimant, his case worker, EB, has allowed him to have a home health care aide twenty-four hours per day for seven days per week since that date of his (Date of Injury), injury. Claimant stated that the around-the-clock care continued until mid-September, 2020, when he and Ms. B had an argument and Ms. B became angry, and stopped the home health care.

On June 30, 2020, Dr. MH, requested the disputed service for continuity of care following a June 24, 2020, revision of total knee, right. 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 22, 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 his testimony and the medical records in evidence to support his position of entitlement to the disputed treatment. The insurance carrier relied on the medical records and the IRO decision in evidence to support its position that the claimant is not entitled to the requested medical services.

According to the record, on June 24, 2020, Claimant underwent revision of right distal femoral replacement with polyethylene insert exchange. On August 3, 2020, AB, PAC, examined the claimant for a wound check and opined that lack of a home health care aide and nursing would delay the claimant's post-operative healing and place the claimant at risk for post-operative complications.

Dr. BB, the peer reviewer for the insurance carrier's utilization review agent, noted that the *ODG* provides that home health services are recommended on a short-term basis, not initially exceeding fifteen visits over three weeks, following major surgical procedures or in-patient

hospitalization, to prevent hospitalization, or to provide in-home medical care and domestic care services for those whose condition would otherwise require extended inpatient care. An extension may be required to continue in-home physical therapy when the claimant remains homebound and unable to transition to outpatient care. Beyond the initial period, the treating physician must periodically conduct re-assessments of the medical necessity of home health care services approximately every thirty days, considering the claimant's condition and needs. Such reassessments can include repeat evaluations in the home.

Dr. B noted that the claimant underwent right knee joint revision on June 24, 2020, which required substantial assistance and the claimant could not leave the home unassisted. The claimant was authorized fifteen days of home health assistance for twenty-four hours per day on July 1, 2020. According to Dr. B, there were no subsequent notes or documentation supporting extension of that authorization. The criteria for extension were not met, and a three-month duration exceeds the referenced guidelines. Dr. B recommended non-certification.

According to the IRO reviewer, a board certified orthopedic surgeon, the ODG recommends home health care services to deliver recommended medical treatment, for those who are homebound, on a part-time or intermittent basis. The ODG only supports personal care services when skilled care is also needed. Based on the documentation provided, the claimant underwent a right revision total knee arthroplasty on June 24, 2020. The IRO reviewer noted that as of the August 3, 2020, report the claimant had fallen postoperatively, continued to have drainage from the knee, and continued to use a wheelchair due to feelings of instability when ambulating. The reviewer stated that physical therapy was recommended; but it was unclear if the claimant attended outpatient physical therapy or at-home physical therapy.

According to the reviewer, it was unclear what current findings are present. The reviewer also stated that it was unclear for what reason the home health care aide twenty-four hours per day for seven days per week was being requested because the documentation did not suggest a need for skilled nursing care; therefore, personal care services would not be supported. The IRO reviewer opined that based on the ODG and available information, a home health care aide for twenty-four hours per day for seven days per week for three months is not health care medically necessary for the compensable injury of (Date of Injury).

In summary, the evidence offered, 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 a home health care aide for twenty-four hours per day for seven days per week for three months is not health care medically necessary for the compensable injury of (Date of Injury).

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 (Date of Injury), compensable injury includes at least injury to the right lower extremity and a right shoulder strain.
 - F. The Independent Review Organization decision upheld the insurance carrier's denial of a home health care aide for twenty-four hours per day for seven days per week for three months.
 - G. The Independent Review Organization decision was sent to the parties on September 22, 2020.
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 as an exhibit.
3. On October 2, 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.
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 does not support that a home health care aide for twenty-four hours per day for seven days per week for three months is medically necessary 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 preponderance of the evidence is not contrary to the decision of the Independent Review Organization (IRO) that a home health care aide for twenty-four hours per day for seven days per week for three months is not health care reasonably required 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 January, 2021.

Early Moye
Administrative Law Judge