

MEDICAL CONTESTED CASE HEARING 21004

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 (DWC). For the reasons discussed herein, the Administrative Law Judge determines that Claimant is entitled to physical therapy rehabilitation X12, right shoulder (97110: Therapeutic Exercises and Treatment for Strength and Movement Recovery; 97124: Massage, Each 15 Minutes, Without Direct Provider Contact; 97112: Re-learning Neuromuscular Movement) for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On February 24, 2021, Jeff Carothers, a DWC administrative law judge, held a contested case hearing to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that Claimant is not entitled to physical therapy rehabilitation X12, right shoulder (97110: Therapeutic Exercises and Treatment for Strength and Movement Recovery; 97124: Massage, Each 15 Minutes, Without Direct Provider Contact; 97112: Re-learning Neuromuscular Movement) for the compensable injury of (Date of Injury)?

PERSONS PRESENT

The contested case hearing was held by teleconference due to the COVID-19 pandemic. Claimant appeared and was assisted by JP, ombudsman. Insurance Carrier appeared and was represented by RR, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant

For Insurance Carrier: None

The following exhibits were admitted into evidence:

Administrative Law Judge Exhibit: ALJ-1

Claimant Exhibits: C-1 through C-7

DISCUSSION

Claimant sustained a compensable injury to her right shoulder on (Date of Injury), while she was closing overhead bins on a large commercial passenger aircraft. The parties stipulated that Claimant sustained a compensable injury in the form of a right shoulder sprain/strain and right shoulder rotator cuff tear.

Claimant's initial treatment for the compensable injury included 12 sessions of physical therapy performed from March 19, 2020, through April 30, 2020. Claimant then underwent arthroscopic surgery on her right shoulder on June 18, 2020, which included a repair of the rotator cuff tear. This surgical procedure was followed by an additional course of 12 sessions of physical therapy conducted from July 8, 2020, through August 13, 2020.

On July 29, 2020, SB, PA-C, referred Claimant for an additional 12 sessions of physical therapy. Insurance Carrier denied this requested treatment as not medically necessary. Insurance Carrier's denial was upheld on reconsideration and Claimant then requested review by an Independent Review Organization (IRO). The IRO, identified as a board-certified orthopedic surgeon, upheld Insurance Carrier's denial. The IRO stated, "The ODG supports up to 24 visits of physical therapy following a rotator cuff repair." The IRO further stated, "Based on the clinical documentation provided, the injured worker underwent a right shoulder rotator cuff repair and acromioplasty on June 18, 2020. They have completed 24 visits of physical therapy as of August 13, 2020." Claimant now appeals this determination by the IRO. Claimant has the burden of showing by a preponderance of the medical evidence that the IRO decision is wrong.

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.

After careful review of all the evidence presented, it is determined that the preponderance of the evidence is contrary to the decision of the IRO. The ODG recommends 24 visits of physical therapy following arthroscopic surgery for a rotator cuff tear. The IRO stated that Claimant completed these 24 physical therapy sessions on August 13, 2020. While the medical evidence shows that Claimant did complete 24 sessions of physical therapy by August 13, 2020, only 12 of those 24 physical therapy sessions were post-surgical. The IRO's decision appears to be based on a review by the IRO of an incomplete set of medical records. The preponderance of the

evidence supports that the additional 12 sessions of physical therapy at issue in this case is supported by the ODG, and therefore, medically necessary.

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), Claimant was the employee of (Employer), Employer.
 - C. On (Date of Injury), Employer provided workers' compensation insurance coverage with New Hampshire Insurance Company, Insurance Carrier.
 - D. Claimant sustained a compensable injury on (Date of Injury), in the form of a right shoulder sprain/strain and right shoulder rotator cuff tear.
2. Insurance Carrier delivered to Claimant a document stating the insurance carrier's true corporate name and the registered agent's name and address. This document was admitted into evidence.
3. The Independent Review Organization decision upheld the insurance carrier's denial of physical therapy rehabilitation X12, right shoulder (97110: Therapeutic Exercises and Treatment for Strength and Movement Recovery; 97124: Massage, Each 15 Minutes, Without Direct Provider Contact; 97112: Re-learning Neuromuscular Movement).
4. Claimant does meet the requirements of the *Official Disability Guidelines* for physical therapy rehabilitation X12, right shoulder (97110: Therapeutic Exercises and Treatment for Strength and Movement Recovery; 97124: Massage, Each 15 Minutes, Without Direct Provider Contact; 97112: Re-learning Neuromuscular Movement).
5. Physical therapy rehabilitation X12, right shoulder (97110: Therapeutic Exercises and Treatment for Strength and Movement Recovery; 97124: Massage, Each 15 Minutes, Without Direct Provider Contact; 97112: Re-learning Neuromuscular Movement) 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 Independent Review Organization that Claimant is not entitled to physical therapy rehabilitation X12, right shoulder (97110: Therapeutic Exercises and Treatment for Strength and Movement Recovery; 97124: Massage, Each 15 Minutes, Without Direct Provider Contact; 97112: Re-learning Neuromuscular Movement) for the compensable injury of (Date of Injury).

DECISION

Claimant is entitled to physical therapy rehabilitation X12, right shoulder (97110: Therapeutic Exercises and Treatment for Strength and Movement Recovery; 97124: Massage, Each 15 Minutes, Without Direct Provider Contact; 97112: Re-learning Neuromuscular Movement) 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 Texas Labor Code §408.021.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE INSURANCE COMPANY**. The name and address of its registered agent for service of process is:

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

Signed this 1st day of March 2021.

Jeff Carothers
Administrative Law Judge