

MEDICAL CONTESTED CASE HEARING 21010

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 not entitled to transforaminal lumbar interbody fusion (TLIF) at L3/4, posterior fusion at L2/3 and L3/4, hemilaminectomy with spine monitoring, and a 3-day inpatient length of stay for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On July 13, 2021, a medical contested case hearing was held to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to transforaminal lumbar interbody fusion (TLIF) at L3/4, posterior fusion at L2/3 and L3/4, hemilaminectomy with spine monitoring, and a 3-day inpatient length of stay for the compensable injury of (Date of Injury)?

PEOPLE PRESENT

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

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

JS, M.D., appeared during his testimony.

The hearing was held by audio/video-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 Claimant: JS, M.D.

For Insurance Carrier: No one

The following exhibits were admitted into evidence:

Administrative Law Judge's Exhibits ALJ-1 through ALJ-3

Claimant's Exhibits C-1 through C-7

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

BACKGROUND INFORMATION

Claimant sustained a compensable injury on (Date of Injury). He had a lumbar fusion by JS, M.D., in 1999. He returned to see Dr. S on July 25, 2017, for low back pain and leg numbness and weakness. Claimant has undergone epidural steroid injections and radiofrequency ablations. The effects of the last radiofrequency ablation lasted only about a month. Dr. S has recommended Claimant undergo a transforaminal lumbar interbody fusion (TLIF) at L3/4, posterior fusion at L2/3 and L3/4, hemilaminectomy with spine monitoring, and a 3-day inpatient length of stay. Dr. S requested the procedure. On November 02, 2020, GP, M.D., provided a peer review and opined the requested procedure was not medical necessary because there was a lack of evidence of lumbar instability and because Claimant had been authorized to undergo a radiofrequency ablation. Dr. S re-requested the procedure. On December 08, 2020, there was a reconsideration by SL, M.D., that upheld the denial. He also suggested waiting to see how the radiofrequency ablation worked. Dr. S requested an IRO doctor review the request. On January 24, 2021, the IRO board-certified orthopedic surgeon upheld the denial. Claimant requested this proceeding.

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."

The IRO board-certified doctor wrote Claimant had a previous fusion at L4-5 and LS-S1 with the most recent imaging from June of 2020 detailing adjacent segment disc disease at L2-3 and at L3-4. He noted there were previous laminectomy defects at these levels along with continuing impingement of the left L3 nerve root within the left lateral recess. He also noted there was moderate neuroforaminal stenosis at both levels due to continuing adjacent segment disc disease. He opined it was unlikely that a repeat attempt at radiofrequency ablation would be of substantial benefit. He noted in the medical records available to him that the November 23, 2020, evaluation noted that Claimant's pain radiated to the right leg which did not correlate with imaging findings which were to the left, specifically the left L3 nerve root. He felt the physical exam was equivocal for a left L3 radiculopathy and only a right straight leg raise was noted. The IRO board-certified doctor wrote:

Overall, the records do not indicate a clear pain generator at this point and it is unclear if the proposed revision and extension of the claimant's lumbar fusion to L2 would benefit the claimant functionally vs. the risks involved with the procedure. There are still conservative treatment recommendations pending as well as additional diagnostic testing ordered that should be completed. Therefore, it is this reviewer's opinion that medical necessity for the proposed procedures (Transforaminal lumbar interbody fusion (TLIF) at L3-L4, posterior fusion at L2-L3, L3-L4, hemilaminectomy with spine monitoring, 3-day inpatient length of stay) is not established.

Dr. S testified that he is treating Claimant for severe back pain and leg numbness and weakness. He wants to perform an L2/3 laminectomy/discectomy, removal of the sequestered disc fragment that is in Claimant's spinal canal, an L2/3 and L3/4 transforaminal interbody fusion and posterior fusion at L2/3 and L3/4. He testified that the MRI demonstrates a disc fragment that displaces the L3 nerve root with bilateral foraminal stenosis compressing the nerves at that point. He

testified he does not understand a denial when there is an MRI that demonstrated a disc fragment and there has been a failure of conservative care. He testified that was not the community standard.

On the date of this medical contested case hearing, the Official Disability Guidelines provided the following, in part, regarding transforaminal lumbar interbody fusion (TLIF) at L3/4, posterior fusion at L2/3 and L3/4, hemilaminectomy with spine monitoring, and a 3-day inpatient length of stay:

Fusion - Recommended as an option for spondylolisthesis, pseudarthrosis, unstable fracture, dislocation, acute spinal cord injury with post-traumatic instability, spinal infections with resultant instability, scoliosis, Scheuermann's kyphosis, or tumors, as indicated in the Patient Selection Criteria below. Not recommended in workers' compensation patients for degenerative disc disease (DDD), disc herniation, spinal stenosis without degenerative spondylolisthesis or instability, or nonspecific low back pain, due to lack of evidence or risk exceeding benefit.

Patient Selection Criteria for Lumbar Spinal Fusion:

(A) *Recommended* as an option for the following conditions with ongoing symptoms, corroborating physical findings and imaging, and after failure of non-operative treatment (unless contraindicated, e.g., acute traumatic unstable fracture, dislocation, spinal cord injury) subject to criteria below:

- (1) Spondylolisthesis (isthmic or degenerative) with at least one of these:
 - (a) instability, and/or
 - (b) symptomatic radiculopathy, and/or
 - (c) symptomatic spinal stenosis;
- (2) Disc herniation with symptomatic radiculopathy undergoing a third decompression at the same level;
- (3) Pseudoarthrosis (single revision attempt);
- (4) Unstable fracture;
- (5) Dislocation;
- (6) Acute spinal cord injury (SCI) with post-traumatic instability;
- (7) Spinal infections with resultant instability;

(8) Scoliosis with progressive pain, cardiopulmonary or neurologic symptoms, and structural deformity;

(9) Scheuermann's kyphosis;

(10) Tumors.

(B) *Not recommended* in workers' compensation patients for the following conditions:

(1) Degenerative disc disease (DDD);

(2) Disc herniation;

(3) Spinal stenosis without degenerative spondylolisthesis or instability;

(4) Nonspecific low back pain.

Dr. S explained that Claimant did not fit in the categories for workers' compensation patients in that he was not operating specifically on DDD or a disc herniation. He testified Claimant did have spinal stenosis but not central stenosis. His primary concern was the sequestered disc fragment that was displacing the L3 nerve root. In his undated letter found at C-4, Dr. S addressed the six pre-operative clinical surgical indications for spinal fusion, including that the pain generators have been identified through injections and that conservative care has failed.

However, as noted above, the ODG recommends fusion surgery for ten specific conditions. None of the ten apply in this case. Dr. S is wanting to perform the surgery to address the disc fragment, spinal stenosis, and leg weakness/numbness. He did not explain that Claimant has a spondylolisthesis with his spinal stenosis or symptomatic radiculopathy.

The ODG does recommend a laminectomy for spinal stenosis, which is part of the procedure Dr. S is recommending. However, a party cannot prevail where medical necessity of only part of the proposed health care has been established. Medical Contested Case Hearing Decision M6-10-25004-01.

Claimant did not meet his burden of proof to overcome the determination by the IRO board-certified doctor that transforaminal lumbar interbody fusion (TLIF) at L3/4, posterior fusion at L2/3 and L3/4, hemilaminectomy with spine monitoring, and a 3-day inpatient length of stay is not medically necessary.

The Administrative Law Judge considered all of the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all of the evidence whether or not the evidence is specifically discussed in this Decision and Order.

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 with Insurance Company of the State of Pennsylvania, Insurance Carrier.
 - D. On (Date of Injury), Claimant sustained a compensable injury.
 - E. The Independent Review Organization board-certified orthopedic surgeon determined Claimant should not have transforaminal lumbar interbody fusion (TLIF) at L3/4, posterior fusion at L2/3 and L3/4, hemilaminectomy with spine monitoring, and a 3-day inpatient length of stay.
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. Transforaminal lumbar interbody fusion (TLIF) at L3/4, posterior fusion at L2/3 and L3/4, hemilaminectomy with spine monitoring, and a 3-day inpatient length of stay is not 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 not contrary to the decision of the IRO that transforaminal lumbar interbody fusion (TLIF) at L3/4, posterior fusion at L2/3 and L3/4, hemilaminectomy with spine monitoring, and a 3-day inpatient length of stay is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to transforaminal lumbar interbody fusion (TLIF) at L3/4, posterior fusion at L2/3 and L3/4, hemilaminectomy with spine monitoring, and a 3-day inpatient length of stay for the compensable injury of (Date of Injury).

ORDER

Insurance Carrier is not 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 **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701.**

Signed this 14th day of July, 2021.

KEN WROBEL
Administrative Law Judge