

MEDICAL CONTESTED CASE HEARING 22003

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder. For the reasons discussed herein, the Administrative Law Judge (ALJ) determines that Claimant is not entitled to home health services provided by his wife 24/7 as aid care.

ISSUES

A contested case hearing (CCH) was held on January 26, 2022, 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 home health services provided by his wife 24/7 as aid care?

PARTIES PRESENT

Petitioner/Claimant (Claimant) was present, and assisted by KG, ombudsman. Respondent/Insurance Carrier (Insurance Carrier) appeared and was represented by BL, attorney. RW was also present.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: Claimant and RW.

For Insurance Carrier: None.

The following exhibits were admitted into evidence: Administrative Law Judge's Exhibits: ALJ-1 and ALJ-2.

Claimant's Exhibits C-1 through C-9.

Insurance Carrier's Exhibits CR-A through CR-D.

DISCUSSION

Claimant sustained a compensable injury on (Date of Injury), which extends to and includes a concussion. Claimant and RW both testified as to Claimant's need for 24 hour care from April 1, 2021, through July 22, 2021. Claimant returned home to Texas on April 1, 2021. Ms.W began

providing 24 hour care, which included tracking his vitals, dispensing medications, making meals, and supervising Claimant as he was at risk of choking and falling. In evidence are Ms. W's detailed notes regarding her care of Claimant from April 1, 2021, through May 13, 2021, and from May 25, 2021, through July 22, 2021. Claimant suffered a heart attack on May 13, 2021, for which he was hospitalized until May 24, 2021.

The Division of Workers' Compensation has adopted treatment guidelines by DWC 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 DWC 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, 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."

A Notice of Adverse Determination for the initial request for 24/7 home health care provided by Ms. W was issued on May 5, 2021, citing to the Official Disability Guidelines (ODG). Claimant filed an appeal, which was denied on June 14, 2021. The adverse determination was upheld in an Independent Review Decision which was issued on August 2, 2021, in IRO Case # (Case Number). The previous non-certifications were upheld for several reasons:

The duration of the request is not specified. The specific medical treatment to be provided is not specified. ODG guidelines justify the medical necessity of home health services requires documentation of the medical condition that necessitates home health services, including deficits in function and specific activities. There are also requirements of documentation for the expected kinds of services that will be required, with the exception of tasks and services that can be performed without charge by the worker's spouse or other household member, with an estimated frequency and duration of such services not to exceed 15 initial visits over three weeks. The submitted documentation does not indicate expected services to be rendered by the home health service. Therefore, medical necessity is not established in accordance with current evidence based guidelines.

The decision of the IRO is supported by the preponderance of the evidence. Claimant did not carry his burden of proof to establish, through evidence-based medical evidence, that the decision of the IRO should be overturned.

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. The Texas Department of Insurance, DWC has jurisdiction to hear this matter.
 - B. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - C. On (Date of Injury), Claimant was the employee of (Employer), Employer.
 - D. On (Date of Injury), Employer provided workers' compensation insurance coverage through Charter Oak Fire Insurance Company, Insurance Carrier.
 - E. On (Date of Injury), Claimant sustained a compensable injury.
 - F. The IRO determined that Claimant is not entitled to home health services provided by his wife 24/7 as aid care.
 - G. The compensable injury of (Date of Injury), extends to and includes a concussion.
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 Insurance Carrier's Exhibit CR-B.
3. The preponderance of the evidence is not contrary to the decision of the Independent Review Organization that Claimant is not entitled to home health services provided by his wife 24/7 as aid care.

CONCLUSIONS OF LAW

1. The Texas Department of Insurance, DWC, has jurisdiction to hear this case.
2. Venue is proper in the (City) Field Office.
3. Claimant is not entitled to the requested home health services provided by his wife 24/7 as aid care.

DECISION

Claimant is not entitled to the requested home health services provided by his wife 24/7 as aid care.

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 **CHARTER OAK FIRE 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, TEXAS 78701**

Signed on February 9, 2022.

Amber Morgan
Administrative Law Judge