

MEDICAL CONTESTED CASE HEARING NO 23007

Decision

For the reasons discussed, the administrative law judge determines that:

A lumbar transforaminal interbody fusion at L4/5 with posterior decompression, bilateral facetectomies, posterolateral fusion at L4/5 with pedicle fixation and three-day inpatient hospitalization is not medically necessary.

Statement of the Case

Judge Thomas Hight held a contested case hearing on May 24, 2023, to decide the following:

Is a lumbar transforaminal interbody fusion at L4/5 with posterior decompression, bilateral facetectomies, posterolateral fusion at L4/5 with pedicle fixation and three-day inpatient hospitalization medically necessary?
(The issue was amended by agreement.)

Persons Present

The petitioner/claimant appeared and was assisted by TW, ombudsman. The insurance carrier/respondent appeared and was represented by DK, attorney. The interpreter was JC. TP observed.

Evidence Presented

The following witnesses testified:

For the claimant: The claimant

For the insurance carrier: None

The judge admitted the following exhibits into evidence:

Judge's Exhibit: ALJ1

Claimant's Exhibits: C-1 through C-5

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

The claimant affirmed there were 67 pages of Claimant's Exhibits. The insurance carrier affirmed there were 120 pages of Insurance Carrier's Exhibits.

Discussion

The claimant sustained a compensable back injury on (Date of Injury). Treatment for the injury included an anterior lumbar interbody fusion at L5-S1 with posterior lumbar decompression, posterolateral fusion, and pedicle fixation at L5/S1 performed on July 23, 2014, and subsequent removal of painful hardware at L5/S1 on September 9, 2015.

Dr. FB requested preauthorization for the procedure at issue. The Independent Review Organization (IRO) upheld the previous denials, and the claimant appealed.

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 ODG entry on patient selection criteria for lumbar spinal fusion provides in part as follows:

- (A) Recommended as an option for the following conditions with ongoing symptoms, corroborating physical findings and imaging, and after failure of non-operative treatment...:
- (1) Spondylolisthesis ...
 - (2) Disc herniation with symptomatic radiculopathy undergoing a third decompression at the same level;
 - (3) Pseudarthrosis...
 - (4) Unstable fracture

- (5) Dislocation
- (6) Acute spinal cord injury (SCI) with post-traumatic instability
- (7) Spinal infections with resultant instability
- (8) Scoliosis ...
- (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.

The IRO doctor, an orthopedic surgeon, opined that the ODG for the requested spinal fusion had not been reasonably met, noting no spondylolisthesis was evident, and imaging only detailed minimal pathology at L4/5 without evidence of instability. The IRO doctor concluded the requested procedure was not medically necessary.

The claimant did not offer evidence-based medical evidence to overcome the IRO decision.

The judge considered all the evidence admitted and based his findings of fact and conclusions of law on the evidence, even if the judge did not specifically discuss all the evidence.

Findings of Fact

1. The parties stipulated to the following facts:
 - A. The (City) field office is the proper location for the hearing.
 - B. On (Date of Injury), the claimant was an employee of (Employer).
 - C. On (Date of Injury), the employer provided workers' compensation insurance through self-insurance with (Self-Insured).
 - D. On (Date of Injury), the claimant sustained a compensable injury.

- E. The Independent Review Organization determined the claimant should not have the requested treatment.
 - F. The procedure at issue was treatment for the compensable injury.
2. The insurance carrier delivered to the claimant a document stating the true corporate name of the insurance carrier, the name of the insurance carrier's registered agent, and the registered agent's street address, which was admitted into evidence.
 3. The preponderance of the evidence is not contrary to the decision of the IRO that a lumbar transforaminal interbody fusion at L4/5 with posterior decompression, bilateral facetectomies, posterolateral fusion at L4/5 with pedicle fixation and three-day inpatient hospitalization 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. A lumbar transforaminal interbody fusion at L4/5 with posterior decompression, bilateral facetectomies, posterolateral fusion at L4/5 with pedicle fixation and three-day inpatient hospitalization is not medically necessary.

Order

The insurance carrier is not liable for the benefits at issue in this decision. The claimant remains entitled to medical benefits for the compensable injury.

The true corporate name of the insurance carrier is **(SELF-INSURED)**, and the name and address of its registered agent for service of process is:

(NAME)
(SELF-INSURED)
(ADDRESS)
(CITY, STATE ZIPCODE)

Signed on May 24, 2023.

Thomas Hight
Administrative Law Judge