

MEDICAL CONTESTED CASE HEARING NO 23010

Decision

For the reasons discussed below, the administrative law judge decides:

For the compensable injury of (Date of Injury), the claimant is not entitled to 97535 self-care/home management training (e.g. activities of daily living (ADL) and compensatory training, meal preparation, safety procedures, and instructions in the use of assistive technology devices/adaptive equipment), direct one-on-one contact by provider, each 15 minutes.

Statement of the Case

The claimant appealed the decision of the Independent Review Organization.

Judge Francisca N. Okonkwo held a hearing for this appeal October 30, 2023, with the record closing on November 7, 2023, to decide the following:

For the compensable injury of (Date of Injury), is the claimant entitled to 97535 self-care/home management training (e.g. activities of daily living (ADL) and compensatory training, meal preparation, safety procedures, and instructions in the use of assistive technology devices/adaptive equipment), direct one-on-one contact by provider, each 15 minutes?

Persons Present

The claimant appeared and was assisted by AE, ombudsman.

The Insurance carrier appeared and was represented by BR, attorney.

Evidence Presented

The following witnesses testified:

For the claimant: The claimant; SK

For the insurance carrier: None

The judge admitted the following exhibits into evidence:

Judge's Exhibits: ALJ-1 through ALJ-4

Claimant's Exhibits: C-1 through C-4

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

The claimant affirmed there were 117 pages of Claimant's Exhibits. The insurance carrier affirmed there were 6 pages of Insurance Carrier's Exhibits. The record was reopened after the hearing in order to request access to the *Official Disability Guidelines*. The record closed on November 7, 2023.

Discussion

The claimant sustained a compensable injury on (Date of Injury). The compensable injury includes at least a fracture of the lower end of the left humerus.

The claimant treated with AR, M.D., who recommended the disputed treatment. Preauthorization from the insurance carrier's utilization review agent was requested and denied.

The claimant then requested an Independent Review Organization review of the denials. In the decision letter dated May 21, 2023, the Independent Review Organization upheld the insurance carrier's denials. The claimant is now appealing the Independent Review Organization decision.

To determine if treatment is medically necessary, Texas law requires the Division of Workers' Compensation 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 Section 413.011(e) and 413.017(1).) The Division uses the current edition of the *Official Disability Guidelines*. If the *Official Disability Guidelines* 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 Independent Review Organization decision is wrong.

The claimant relied on his testimony, the testimony of his wife, (wife), the medical records in evidence, and letters from treating physicians Dr. R, Dr. RL, and Dr. SC to support his position of entitlement to the disputed treatment. The letters in evidence did not provided evidence-based medical rationale to support claimant's entitlement to the disputed treatment.

Board certified orthopedic surgeon, Dr. JG, performed the independent review using his medical judgement, clinical experience, and expertise in accordance with the accepted medical standards. Dr. G found that the previous adverse determination should be upheld. He further determined that the medical records did not establish that the services requested were medically necessary according to generally accepted standards of care. Dr. G opined that no information was provided which would overturn the previous denial.

The *Official Disability Guidelines* did not address the requested treatment as a treatment option for the (Date of Injury), compensable injury. There is no other evidence-based medicine supporting the 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 independent review organization that the claimant is not entitled to 97535 self-care/home management training (e.g. activities of daily living (ADL) and compensatory training, meal preparation, safety procedures, and instructions in the use of assistive technology devices/adaptive equipment), direct one-on-one contact by provider, each 15 minutes, for the (Date of Injury), compensable injury.

The judge considered all the evidence admitted and based her 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 with Hartford Underwriters Insurance Company.
 - D. On (Date of Injury), the claimant sustained a compensable injury.
 - E. The requested treatment is for the (Date of Injury), compensable injury that includes at least a fracture of the lower end of the left humerus.
 - F. The independent review organization decision upheld the insurance carrier's denials of 97535 self-care/home management training (e.g. activities of daily living (ADL) and compensatory training, meal preparation, safety procedures, and instructions in the use of assistive technology devices/adaptive equipment), direct one-on-one contact by provider, each 15 minutes.
- 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-based medical evidence is not contrary to the decision of the independent review organization that the claimant is not entitled to 97535 self-care/home management training (e.g. activities of daily living (ADL) and compensatory training, meal preparation, safety procedures, and instructions in the use of assistive technology devices/adaptive equipment), direct one-on-one contact by provider, each 15 minutes 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 claimant is not entitled to 97535 self-care/home management training (e.g. activities of daily living (ADL) and compensatory training, meal preparation, safety procedures, and instructions in the use of assistive technology devices/adaptive

equipment), direct one-on-one contact by provider, each 15 minutes, for the compensable injury of (Date of Injury).

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 **HARTFORD UNDERWRITERS INSURANCE COMPANY**. The name and address of its registered agent for service of process is:

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136**

Signed on November 7, 2023.

Francisca N. Okonkwo
Administrative Law Judge