MEDICAL CONTESTED CASE HEARING NO. 13036

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.

ISSUES

A contested case hearing was held on December 31, 2012 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to anterior lumbar interbody fusion at L34-5 and L5-S1 for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was represented by LC, attorney. Respondent/Carrier appeared and was represented by SB, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable low back injury on (Date of Injury). Dr. FB requested preauthorization of an anterior interbody fusion at L4-5 and L5-S1. The IRO doctor, a neurological surgeon, upheld the previous denials. Claimant appealed.

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 (t), "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 provides the following patient selection criteria for spinal fusion:

Patient Selection Criteria for Lumbar Spinal Fusion:

For chronic low back problems, fusion should not be considered within the first 6 months of symptoms, except for fracture, dislocation or progressive neurologic loss. Indications for spinal fusion may include:

(1) Neural Arch Defect - Spondylolytic spondylolisthesis, congenital neural arch hypoplasia.

(2) Segmental Instability (objectively demonstrable) - Excessive motion, as in degenerative spondylolisthesis, surgically induced segmental instability and mechanical intervertebral collapse of the motion segment and advanced degenerative changes after surgical discectomy, with relative angular motion greater than 20 degrees. (Andersson, 2000) (Luers, 2007)]

(3) Primary Mechanical Back Pain (i.e., pain aggravated by physical activity)/Functional Spinal Unit Failure/Instability, including one or two level segmental failure with progressive degenerative changes, loss of height, disc loading capability. In cases of workers' compensation, patient outcomes related to fusion may have other confounding variables that may affect overall success of the procedure, which should be considered. There is a lack of support for fusion for mechanical low back pain for subjects with failure to participate effectively in active rehab pre-op, total disability over 6 months, active psych diagnosis, and narcotic dependence. Spinal instability criteria includes lumbar inter-segmental movement of more than 4.5 mm. (Andersson, 2000)

(4) Revision Surgery for failed previous operation(s) if significant functional gains are anticipated. Revision surgery for purposes of pain relief must be

approached with extreme caution due to the less than 50% success rate reported in medical literature.

(5) Infection, Tumor, or Deformity of the lumbosacral spine that cause intractable pain, neurological deficit and/or functional disability.

(6) After failure of two discectomies on the same disc, fusion may be an option at the time of the third discectomy, which should also meet the ODG criteria. (See ODG Indications for Surgery -- Discectomy.)

Pre-Operative Surgical Indications Recommended: Pre-operative clinical surgical indications for spinal fusion should include all of the following:

(1) All pain generators are identified and treated; &
(2) All physical medicine and manual therapy interventions are completed; &
(3) X-rays demonstrating spinal instability and/or myelogram, CT-myelogram, or discography (see discography criteria) & MRI demonstrating disc pathology correlated with symptoms and exam findings; &
(4) Spine pathology limited to two levels; &
(5) Psychosocial screen with confounding issues addressed.
(6) For any potential fusion surgery, it is recommended that the injured worker refrain from smoking for at least six weeks prior to surgery and during the period of fusion healing

(Colorado, 2001) (BlueCross BlueShield, 2002)

For average hospital LOS after criteria are met, see Hospital length of stay (LOS).

The IRO doctor thought the requested surgery was not medically necessary because Claimant had no clear indications for fusion per ODG criteria and observed that there was no spondylolisthesis or other instability noted at L4-5 or L5-S1.

Dr. B provided a “rebuttal letter” in response to the IRO decision, and Dr. PE testified in support of Claimant’s case. Both took the position that there would be surgically induced segmental instability at the time of the requested surgery, after the removal of lumbar articular facet structure and L4-5 and L5-S1 to decompress the L5 and S1 nerve roots. The segmental instability must exist at the time of the request for preauthorization. The requested surgery did not include removal of articular facet structure.

Claimant failed to overcome the IRO decision by the preponderance of evidence based medical evidence.

There was no objection to the testimony, reports, or qualifications of any doctor.

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. 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 with (City)National Insurance Company, Carrier.

   D. On (Date of Injury) Claimant sustained a compensable injury.

   E. The Independent Review Organization determined Claimant should not have the requested treatment.

2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.

3. Anterior lumbar interbody fusion at L4-5 and L5-S1 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 anterior lumbar interbody fusion at L4-5 and L5-S1 is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to anterior lumbar interbody fusion at L4-5 and L5-S1 for the compensable injury of (Date of Injury).

ORDER

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 Section 408.021 of the Act.

The true corporate name of the insurance carrier is **DALLAS NATIONAL INSURANCE COMPANY,** and the name and address of its registered agent for service of process is

CHRIS NEHLS
5501 LBJ FREEWAY, SUITE 1100
DALLAS, TEXAS 75254

Signed this 31st day of December, 2012.

Thomas Hight
Hearing Officer