

MEDICAL CONTESTED CASE HEARING 15052

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 Hearing Officer determined that Claimant/Petitioner is not entitled to Vestibular PT rehabilitation 2-3 x 8 for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On July 29, 2015, Gerri Thomas, a Division hearing officer, held a contested case hearing to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to Vestibular PT rehabilitation 2-3 x 8?

PARTIES PRESENT

Claimant/Petitioner appeared and was assisted by JBT, ombudsman. Carrier/Respondent appeared and was represented by KP, attorney.

DISCUSSION

Medical Necessity

Evidence Based Medicine (EBM)

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."

On the date of this medical contested case hearing, the Official Disability Guidelines provides the following with regard to Vestibular PT rehabilitation:

Recommended for patients with vestibular complaints (dizziness and balance dysfunction), such as with mTBI/ concussion. Vestibular rehabilitation has been shown to be associated with improvements in independence and dynamic visual acuity. (Cohen, 2006) Vestibular rehabilitation should be considered in the management of individuals post concussion with dizziness and gait and balance dysfunction that do not resolve with rest. (Alsalaheen, 2010) Vestibular complaints are the most frequent sequelae of mTBI, and vestibular physical therapy has been established as the most important treatment modality for this group of patients. (Gottshall, 2011) The use of vestibular rehabilitation for persons with balance and vestibular disorders improves function and decreases dizziness symptoms. (Whitney, 2011) A 6-month physical therapist-prescribed balance and strength home exercise program, based on the Otago Exercise Program and the Visual Health Information Balance and Vestibular Exercise Kit, significantly improved outcomes relative to the control group. (Yang, 2012) Patients with vestibular symptoms after concussion may have slower reaction times, putting them at risk for new injury compared with those who have concussions without these symptoms. A patient who is identified as having a convergence insufficiency should be prescribed in-office and home-based vision therapy designed to improve this visual deficit. In contrast, a patient identified as having predominately dizziness-related vestibular impairment from post-traumatic migraine or cervicogenic factors might be targeted with specific medications for migraine symptoms or physical therapy if it is neck-related. (Kontos, 2013).

The parties stipulated that Claimant's compensable injury of (Date of Injury), extends to include post-concussion syndrome. Carrier represented that it agreed that the requested treatment was submitted as treatment for Claimant's compensable injury. Claimant/Petitioner testified that she sustained a compensable injury on (Date of Injury), when a manual pull down screen with a thirty-five pound metal bar fell on her head. Pre-authorization was requested for Vestibular PT rehabilitation 2-3 x 8.

The initial request for the Vestibular PT rehabilitation 2-3 x 8 was non-certified on January 28, 2015. The clinical reviewer, DB, M.D., noted that Claimant was indicated to have undergone previous vestibular PT rehabilitation, but stated that there was a lack of documentation in regard to the previous sessions. Dr. BD documented that she discussed the case with KT, M.D. (Claimant's neurologist), and Dr. T was unable to verify previous vestibular physical therapy treatment. The reviewer noted that in the absence of documentation from the previous vestibular PT rehabilitation to determine objective functional improvement, the request was not supported by the evidence based guidelines.

A subsequent request for Vestibular PT rehabilitation 2-3 x 8 was also non-certified on February 27, 2015. The clinical reviewer in that case, CK, M.D., noted under the history reviewed that Claimant's "[o]ther treatments included continuation of medications, a follow-up visit, vestibular rehab." Dr. K recorded that the clinical information indicated that Claimant had completed previous vestibular rehabilitation. In addition, Dr. K also indicated that he discussed the case with Dr. T who stated that the previous physical therapy and vestibular history was not available. Consequently, Dr. K concluded that given the absence of that information, the requested therapy was not supported.

In an IRO dated April 21, 2015, the IRO Reviewer upheld the previous denials. Specifically, the IRO reviewer noted that Claimant had completed previous vestibular rehabilitation; however the reviewer stated that the number of sessions completed to date was not documented. The reviewer also stated that there were no functional measures of improvement provided to establish efficacy of treatment and support ongoing sessions in accordance with the ODG. Finally, the reviewer stated that the current request was excessive and did not allow for adequate interim follow up to assess the patient's progress and adjust her treatment plan accordingly. As such, the reviewer opined that the request for Vestibular PT rehabilitation 2-3 x 8 was not recommended as medically necessary.

Claimant/Petitioner relied on her testimony, the medical records offered, and an undated opinion from one of her treating doctors, JR, M.D., to support her position regarding the issue in dispute. The evidence offered, including the opinion of Dr. R, did not provide a persuasive explanation through the use of evidence-based medical evidence as to how Claimant/Petitioner met the requirements of ODG for the requested Vestibular PT rehabilitation 2-3 x 8. Claimant/Petitioner also did not establish the necessity of the requested Vestibular PT rehabilitation at issue through

other evidence-based medical evidence. As such, insufficient evidence-based medical evidence existed to explain that the requested Vestibular PT rehabilitation 2-3 x 8 was medically reasonable and necessary. Therefore, the preponderance of the evidence is not contrary to the decision of the IRO that Claimant/Petitioner is not entitled to Vestibular PT rehabilitation 2-3 x 8.

The Hearing Officer 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. The Texas Department of Insurance, Division of Workers' Compensation 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/Petitioner was the employee of Responsive Education Solutions, Employer.
 - D. On (Date of Injury), Employer provided workers' compensation insurance with Hartford Accident & Indemnity Company, Carrier/Respondent.
 - E. On (Date of Injury), Claimant/Petitioner sustained a compensable injury.
 - F. The Independent Review Organization determined Claimant/Petitioner should not have the requested treatment of Vestibular PT rehabilitation 2-3 x 8.
 - G. Claimant/Petitioner filed his appeal of the decision of the IRO on May 7, 2015, which was timely.
 - H. Claimant's compensable injury of (Date of Injury), extends to include post-concussion syndrome.
2. Carrier/Respondent delivered to Claimant/Petitioner a single document stating the true corporate name of Carrier/Respondent, and the name and street address of Carrier/Respondent's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. Based on the evidence offered, Vestibular PT rehabilitation 2-3 x 8 is not health care reasonably required for the compensable injury of August 23, 2013.

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 Claimant is not entitled to Vestibular PT rehabilitation 2-3 x 8.

DECISION

Claimant/Petitioner is not entitled to Vestibular PT rehabilitation 2-3 x 8 for the compensable injury of (Date of Injury).

ORDER

Carrier/Respondent is not liable for the benefits at issue in this hearing. Claimant/Petitioner remains entitled to medical benefits for the compensable injury in accordance with § 408.021.

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

**CT CORPORATION SYSTEM
1999 BRYAN STREET, STE. 900
(CITY), TX 75201**

Signed this 29th day of July, 2015.

Gerri Thomas
Hearing Officer