

**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 June 10, 2010 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 16 additional physical therapy sessions for the lumbar spine for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was assisted by FA, ombudsman.  
Respondent/Carrier appeared and was represented by NM, adjuster.

**BACKGROUND INFORMATION**

The Petitioner/Claimant sustained a compensable injury on \_\_\_\_\_ to the lumbar spine for which the claimant underwent a lumbar fusion on July 10, 2008. Post-operatively, the claimant had 12 physical therapy visits/sessions followed by another 12 physical therapy sessions. On or about August 2009, the claimant again was approved and underwent 12 more physical therapy sessions for a total of 36 physical therapy sessions up to this date. On February 16, 2010, the claimant's treating doctor, Dr. B, requested that the claimant be approved for 2 weekly physical therapy sessions for a period of 8 weeks. A utilization review decision dated February 22, 2010 and a reconsideration decision dated February 28, 2010 denied the requested treatment citing that the clinical findings did not appear to support the medical necessity of treatment, that the requested treatment exceeds the recommendations of the Official Disability Guidelines (ODG) and Dr. B, although given an opportunity to submit further information, did not do so. The Utilization Review Agent (URA) did note that the ODG allows for 1-2 physical therapy sessions following an epidural injection and that the claimant had recently undergone a caudal epidural injection, but noted that Dr. B had not submitted information to state that this was the purpose for his request and 16 physical therapy sessions would exceed the recommended physical therapy sessions for an epidural injection. The decision of the Independent Review Organization (IRO) upheld the denial and added that the claimant has had more than sufficient formal supervised therapy and should be capable of independently pursuing a self-directed home exercise program.

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 §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 §413.017 (i).

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."

#### **ODG Preface: Physical Therapy Guidelines**

There are a number of overall physical therapy philosophies that may not be specifically mentioned within each guideline: (1) As time goes by, one should see an increase in the active regimen of care, a decrease in the passive regimen of care, and a fading of treatment frequency; (2) The exclusive use of "passive care" (e.g., palliative modalities) is not recommended; (3) Home programs should be initiated with the first therapy session and must include ongoing assessments of compliance as well as upgrades to the program; (4) Use of self-directed home therapy will facilitate the fading of treatment frequency, from several visits per week at the initiation of therapy to much less towards the end; (5) Patients should be formally assessed after a "six-visit clinical trial" to see if the patient is moving in a positive direction, no direction, or a negative direction (prior to continuing with the physical therapy); & (6) When treatment duration and/or number of visits exceeds the guideline, exceptional factors should be noted.

**Post Epidural Steroid Injections:** ESIs are currently recommended as a possible option for short-term treatment of radicular pain (sciatica), defined as pain in dermatomal distribution with corroborative findings of radiculopathy. The general goal of physical therapy during the acute/subacute phase of injury is to decrease guarding, maintain motion, and decrease pain and inflammation. Progression of rehabilitation to a more advanced program of stabilization occurs in the maintenance phase once pain is controlled. There is little evidence-based research that addresses the use of physical therapy post ESIs, but it appears that most randomized controlled trials have utilized an ongoing, home directed program post injection. Based on current literature, the only need for further physical therapy treatment post ESI would be to emphasize the home exercise program, and this requirement would generally be included in the currently suggested maximum visits for the underlying condition, or at least not require more than 2 additional visits to reinforce the home exercise program. ESIs have been found to have limited effectiveness for

treatment of chronic pain. The claimant should continue to follow a home exercise program post injection. (Luijesterburg, 2007) (Luijsterburg2, 2007) (Price, 2005) (Vad, 2002) (Smeal, 2004)

### **ODG Physical Therapy Guidelines –**

Allow for fading of treatment frequency (from up to 3 or more visits per week to 1 or less), plus active self-directed home PT. Also see other general guidelines that apply to all conditions under Physical Therapy in the ODG Preface, including assessment after a "six-visit clinical trial".

#### **Lumbar sprains and strains (ICD9 847.2):**

10 visits over 8 weeks

#### **Sprains and strains of unspecified parts of back (ICD9 847):**

10 visits over 5 weeks

#### **Sprains and strains of sacroiliac region (ICD9 846):**

Medical treatment: 10 visits over 8 weeks

#### **Lumbago; Backache, unspecified (ICD9 724.2; 724.5):**

9 visits over 8 weeks

#### **Intervertebral disc disorders without myelopathy (ICD9 722.1; 722.2; 722.5; 722.6; 722.8):**

Medical treatment: 10 visits over 8 weeks

Post-injection treatment: 1-2 visits over 1 week

Post-surgical treatment (discectomy/laminectomy): 16 visits over 8 weeks

Post-surgical treatment (arthroplasty): 26 visits over 16 weeks

Post-surgical treatment (fusion, after graft maturity): 34 visits over 16 weeks

#### **Intervertebral disc disorder with myelopathy (ICD9 722.7)**

Medical treatment: 10 visits over 8 weeks

Post-surgical treatment: 48 visits over 18 weeks

#### **Spinal stenosis (ICD9 724.0):**

10 visits over 8 weeks

See 722.1 for post-surgical visits

#### **Sciatica; Thoracic/lumbosacral neuritis/radiculitis, unspecified (ICD9 724.3; 724.4):**

10-12 visits over 8 weeks

See 722.1 for post-surgical visits

#### **Curvature of spine (ICD9 737)**

12 visits over 10 weeks

See 722.1 for post-surgical visits

#### **Fracture of vertebral column without spinal cord injury (ICD9 805):**

Medical treatment: 8 visits over 10 weeks

Post-surgical treatment: 34 visits over 16 weeks

#### **Fracture of vertebral column with spinal cord injury (ICD9 806):**

Medical treatment: 8 visits over 10 weeks

Post-surgical treatment: 48 visits over 18 weeks

#### **Work conditioning (See also Procedure Summary entry):**

10 visits over 8 weeks

Dr. B's request for physical therapy was noted on a prescription pad. Other than the medical records, Dr. B did not provide oral testimony or a written letter as to his opinion regarding the request. The claimant contended that her injury and pain has changed since her date of injury and she needs to undergo physical therapy tailored to her distinct needs at this juncture of her recovery process. The claimant did not present evidence based medical evidence to show why a departure of the ODG's recommended 34 physical therapy sessions/visits following a lumbar

fusion should apply in her situation or as to physical therapy sessions following epidural steroid injections.

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 \_\_\_\_\_, Claimant was the employee of (Employer), and sustained a compensable lumbar spine injury on \_\_\_\_\_.
  - C. The IRO issued a decision upholding the denial for the requested 16 additional sessions of physical therapy for the lumbar spine.
2. Carrier delivered to Claimant and Provider 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. The ODG recommends 34 physical therapy sessions/visits for a lumbar fusion.
4. The claimant has been approved and has had 36 physical therapy sessions for the compensable injury.
5. The Petitioner/Claimant did not present evidence based medical evidence to overcome the IRO's decision that the claimant is not entitled to the requested 16 additional physical therapy sessions for the lumbar spine for the compensable injury of \_\_\_\_\_.
6. The requested 16 additional physical therapy sessions for the lumbar spine is not health care reasonably required for the compensable injury of \_\_\_\_\_.

### **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 16 additional physical therapy sessions for the lumbar spine is not health care reasonably required for the compensable injury of \_\_\_\_\_.

**DECISION**

Claimant is not entitled to 16 additional physical therapy sessions for the lumbar spine for the compensable injury of \_\_\_\_\_.

**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 §408.021.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
211 EAST 7<sup>TH</sup> STREET #620  
AUSTIN, TEXAS 78701-3218**

Signed this 15th day of June, 2010.

Virginia Rodríguez-Gómez  
Hearing Officer