

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 16, 2010 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is entitled to a pre-surgical psychological evaluation for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Carrier appeared, by telephone, and was represented by RJ, attorney.
Respondent/Provider did not appear. Claimant appeared and was assisted by MC, ombudsman.

BACKGROUND INFORMATION

Claimant sustained a compensable lumbar spine injury on _____. Claimant has been diagnosed with herniated discs at L4-5 and L5-S1 with clinical instability. Dr. E, an orthopedic surgeon, opined that the Claimant had failed conservative treatment and recommended spinal surgery. Pursuant to the surgery recommendation by Dr. E, Claimant's treating doctor, Dr. B, D.C. requested a pre-surgical psychological evaluation. This request was denied by the Carrier and referred to an IRO. The IRO, a psychologist, determined that the previous adverse determinations should be overturned and that the pre-surgical psychological evaluation was medically reasonable and necessary pursuant to the Official Disability Guidelines (ODG).

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 in making decisions about the treatment of individual patients.

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 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.

Pursuant to the ODG for psychological screenings:

Recommended as an option prior to surgery, or in cases with expectations of delayed recovery. Before referral for surgery, clinicians should consider referral for psychological screening to improve surgical outcomes, possibly including standard tests such as MMPI (Minnesota Multiphasic Personality Inventory) and Waddell signs. However, the screening should be performed by a neutral independent psychologist or psychiatrist unaffiliated with treating physician/ spine surgeon to avoid bias. (Scalzitti, 1997) (Fritz, 2000) (Gaines, 1999) (Gatchel, 1995) (McIntosh, 2000) (Polatin, 1997) (Riley, 1995) (Block, 2001) (Airaksinen, 2006) A recent study concluded that psychological distress is a more reliable predictor of back pain than most diagnostic tests. (Carragee, 2004) The new ACP/APS guideline as compared to the old AHCPR guideline is a bit stronger on emphasizing the need for psychosocial assessment to help predict potentially delayed recovery. (Shekelle, 2008) Two factors from the adapted stress process model, *cognitive appraisal* and *emotional distress*, were identified as significant predictive factors of number of days of absence at 12 months and functional disability at 6 and 12 months. The adapted stress process model suggested that psychological variables act differently according to the variable predicted and to the period of time considered. (Truchon, 2010) The most helpful components for predicting persistent disabling low back pain were maladaptive pain coping behaviors, nonorganic signs, functional impairment, general health status, and presence of psychiatric comorbidities. (Chou, 2010) For more information, see the Pain Chapter and the Stress/Mental Chapter.

The Carrier argued that the IRO's determination should not be upheld because the surgical procedure requested by Dr. E was not medically necessary. The Carrier failed to offer an evidence-based medicine medical opinion contrary to the determination of the IRO regarding the necessity of a pre-surgical psychological evaluation and the request is consistent with the recommendations in the ODG. Therefore, the preponderance of the evidence is not contrary to the IRO decision that Claimant is entitled to a pre-surgical psychological evaluation for treatment of the compensable injury of _____.

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) when he sustained a compensable injury.

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. The IRO determined that the pre-surgical psychological evaluation was medically reasonable and necessary pursuant to the recommendations in the ODG.
4. A pre-surgical psychological evaluation is 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 a pre-surgical psychological evaluation is health care reasonably required for the compensable injury of _____.

DECISION

Claimant is entitled to a pre-surgical psychological evaluation for the compensable injury of _____.

ORDER

Carrier is 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 **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY
211 EAST 7th STREET, SUITE 620
AUSTIN, TX 78701-3232**

Signed this 16th day of December, 2010.

Carol A. Fougerat
Hearing Officer