

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.

ISSUE

A benefit contested case hearing was held on March 28, 2008, to decide the following disputed issue:

Whether the preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO) that aquatic therapy of the left shoulder is not reasonable and necessary medical care for the compensable injury of ___?

PARTIES PRESENT

Petitioner appeared and was assisted by an (Attorney). Respondent appeared and was represented by an (Attorney).

BACKGROUND

Claimant sustained a compensable injury to his left shoulder on ____. A subsequent MRI revealed a full-thickness tear of the supraspinatus tendon. He received over 13 months of conservative care, in which he was noted to have regained full passive and active movement. Still, Claimant continued to experience pain in his left shoulder. On August 30, 2006, he underwent surgery by Dr. S. The surgical report noted "a very complex tear with complete detachment of the supraspinatus with vertical tears anteriorly and posteriorly with a considerable amount of tendon degeneration and retraction." Dr. S performed a left shoulder glenohumeral arthroscopy and subacromial decompression with open rotator cuff repair. Following his surgery, Claimant completed post-operative physical therapy.

On September 11, 2007, Claimant began treating with Dr. E, orthopedic surgeon, for left shoulder pain and stiffness. Dr. E noted that a recent MRI indicated full-thickness rotator cuff tear with minimal retraction. Dr. E recommended injections and additional physical therapy, in the form of aquatic therapy, to resolve Claimant's shoulder stiffness, followed by a revision of the rotator cuff repair, if necessary. Claimant completed 14 visits of aquatic and land therapy, with some improvement. Dr. E recommended additional aquatic therapy of the left shoulder, five times a week for two months.

The request for preauthorization of additional aquatic therapy of the left shoulder was denied by the Carrier, and the denial was appealed. After reviewing the requested procedure and Claimant's medical records, the IRO upheld Carrier's denial, as not medically necessary under the circumstances presented here. In its decision, the IRO noted that the use of aquatic therapy is not specifically addressed in the Official Disability Guidelines (ODG) for shoulder conditions.

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 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. Texas Labor Code Section 401.011 (22a). Evidence based medicine means the use of the current best qualified 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. Texas Labor Code Section 401.011 (18a). In accordance with the above statutory guidance, Rule 137.100 directs health care providers to provide treatment in accordance with the current edition of the ODG, and such treatment is presumed to be reasonably required.

Claimant offered a report from Dr. E, explaining the need to resolve shoulder stiffness prior to undergoing additional surgery, as well as several medical articles supporting his opinion. This evidence, however, fails to address the specific treatment requested in this proceeding. Indeed, Claimant failed to rebut the determination of the IRO, based upon either evidence-based medicine or the generally accepted standard of medical practice, that additional aquatic therapy of the left shoulder, five times a week for two months, is not medically necessary.

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).
 - C. On ____, Claimant sustained a compensable injury.
 - D. The compensable injury of ____, includes the left shoulder.
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 preponderance of the evidence is not contrary to the IRO decision that additional aquatic therapy of the left shoulder, five times a week for two months, is not reasonable and necessary medical care 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. Aquatic therapy of the left shoulder is not reasonable and necessary medical care for the compensable injury of ____.

DECISION

Aquatic therapy of the left shoulder is not reasonable and necessary medical care for the compensable injury of ____.

ORDER

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

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

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST #300
IRVING, TEXAS 75063**

Signed this 1st day of April 2008.

Edward Vilano
Hearing Officer