

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 contested case hearing was opened on December 11, 2007, and closed on February 20, 2008, to decide the following disputed issue:

1. Whether the preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO) that three months of prescriptions for Klonopin, Lyrica, Gaclofen, and Anafranil are reasonable and necessary health care services for the compensable injury of ___?

PARTIES PRESENT

Carrier appeared and was represented by an (Attorney). Claimant did not appear at the hearing and also did not respond to a 10-day letter.

BACKGROUND INFORMATION

The Claimant did not appear for the Contested Case Hearing scheduled for December 11, 2007, at 9:00 a.m. A letter was sent to the Claimant on December 11, 2007, offering her an opportunity to request that the hearing be reset to permit her to present evidence on the disputed issue. Further, an amended letter was sent to the Claimant and Dr. NA on February 5, 2008, again offering an opportunity to request that the hearing be reset to permit Claimant and her health care to present evidence on the disputed issue. No response to either letter was received.

The IRO found that the prescriptions requested are reasonable and necessary health care services for the compensable injury of ___. Carrier correctly asserts that the findings of the IRO are contrary to the requirements of the Official Disabilities Guidelines because the documentation submitted to the IRO does not support the effectiveness of the requested medications. Carrier further asserts that there are no quantitative assessments of decrease in pain, increased inactivity or increase in function.

Under the Official Disability Guidelines in reference to Pain, Medications for subacute & chronic pain, the following recommendation is made:

"There are few studies of the use of medications in the subacute period (7 to 12 weeks) or chronic period of pain treatment. Relief of pain with the use of medications is generally temporary, and measures of the lasting benefit from this modality should include evaluating the effect of pain relief in relationship to improvements in function and increased activity. Before prescribing any medication for pain the following should occur: (1) determine the aim of use of the medication; (2) determine the potential benefits

and adverse effects; (3) determine the patient's preference. Only one medication should be given at a time, and interventions that are active and passive should remain unchanged at the time of the medication change. A trial should be given for each individual medication. Analgesic medications should show effects within 1 to 3 days, and the analgesic effect of antidepressants should occur within 1 week. A record of pain and function with the medication should be recorded. (Mens, 2005) The recent AHRQ review of comparative effectiveness and safety of analgesics for osteoarthritis concluded that each of the analgesics was associated with a unique set of benefits and risks, and no currently available analgesic was identified as offering a clear overall advantage compared with the others."

Without documentation supporting the criteria required above to "(1) determine the aim of use of the medication; (2) determine the potential benefits and adverse effects; [and] (3) determine the patient's preference," the findings of the IRO must be overturned **because Carrier relies upon the findings of the utilization review doctors who rendered their opinions based upon well founded scientific methodology. Whereas, the utilization review doctors made findings based upon the ODG, the IRO reviewer did not rely upon criteria required by the ODG. Under Maritime Overseas Corporation v. Richard Ellis, 971 S.W.2d 402 (Tex. 1998), the requirement that the experts used reliable scientific evidence in reaching their result has been met. The IRO rendered its decision without competent evidence that was legally and factually correct.**

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 Carrier 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 she sustained a compensable injury.
2. The Division sent a single document stating the true corporate name of the Carrier and name and street address of Carrier's registered agent with the 10-day letter to the Claimant at Claimant's address of record. That document was admitted into evidence as Hearing Officer Exhibit Number 2.
3. Claimant failed to appear for the December 11, 2007 Contested Case Hearing and did not respond to the Division's letter offering her an opportunity to have the hearing rescheduled.
4. Dr. NA was also sent a single document stating the true corporate name of the Carrier and name and street address of Carrier's registered agent with the 10-day letter
5. Dr. NA failed to appear for the December 11, 2007 Contested Case Hearing and did not respond to the Division's letter offering an opportunity to have the hearing rescheduled.

6. The preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO) that three months of prescriptions for Klonopin, Lyrica, Gaclofen, and Anafranil are reasonable and necessary health care services 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. Three months of prescriptions for Klonopin, Lyrica, Gaclofen, and Anafranil are not reasonable and necessary health care services for the compensable injury of ____.

DECISION

Three months of prescriptions for Klonopin, Lyrica, Gaclofen, and Anafranil are not reasonable and necessary health care services 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 **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA**, and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201**

Signed this 20th day of February, 2008.

Charles T. Cole
Hearing Officer