

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 July 8, 2009, 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 the prescribed medications Tramadol, Sertraline, Amitriptyline and Neurontin for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was assisted by AT, Ombudsman.

Carrier appeared and was represented by NI, Attorney.

BACKGROUND INFORMATION

Claimant worked as a waitress/dishwasher in the Employer's restaurant. She lifted a tub of dishes and felt her right wrist pop on _____. She was initially treated for a wrist sprain and developed cervical problems.

Claimant began treating with the present treating doctor in March 1999. The treating doctor ultimately provided a diagnosis of cervical degenerative disc disease, along with reflex sympathetic dystrophy of the right upper extremity. In December 1999, the treating doctor prescribed Neurontin for treatment of Claimant's compensable injury. By 2003, the treating doctor had added Ultracet, Amitriptyline and Zoloft to the treatment plan for Claimant's chronic pain. Some time between 2003 and 2007, the medications were changed to Tramadol, Sertraline, Amitriptyline and Neurontin. These are the four medications that are the subject of this dispute.

Claimant was last evaluated by the treating doctor on January 21, 2008. Claimant testified that she had been denied any further visits to the treating doctor because the Carrier refused to pay the treating doctor.

The record indicates that the Carrier received a preauthorization request dated February 27, 2009 for the four prescription medications that are the subject of this hearing. Although the Carrier had approved these drugs for several years, the preauthorization request was denied. Claimant appealed and the dispute was forwarded to an Independent Review Organization (IRO) for decision. The IRO decision dated April 30, 2009 upheld the Carrier's denial of the requested medication. The IRO decision provided a clinical history summary and concluded that the medical treatment requested does not meet 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 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 Official Disability Guidelines (ODG).

Division Rule 133.308(t) provides that 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. In the present case, the Claimant testified creditably that she had been prescribed those medications by the treating doctor for several years and the medications had been approved by the Carrier. She testified that the medications reduced her pain and helped her to function better. Claimant also provided a memo from her treating doctor stating that it is his opinion that the four drugs in question are reasonable and necessary to control the chronic symptoms in the Claimant's right upper extremity. No evidence-based medical evidence was presented by the Claimant.

The Claimant failed to meet her burden of overcoming the decision of the IRO by a preponderance of the evidence-based medical evidence. Claimant is not entitled to the prescribed medications Tramadol, Sertraline, Amitriptyline and Neurontin for 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).
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 decision based on the ODG concluded that the prescription medications Tramadol, Sertraline, Amitriptyline and Neurontin are not medically reasonable and necessary for the compensable injury of _____.
4. The prescription medications Tramadol, Sertraline, Amitriptyline and Neurontin are 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 the prescribed medications Tramadol, Sertraline, Amitriptyline and Neurontin are not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to the prescribed medications Tramadol, Sertraline, Amitriptyline and Neurontin 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 **NEW HAMPSHIRE INSURANCE COMPANY**, and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701**

Signed this 14th day of July, 2009.

Donald E. Woods
Hearing Officer