

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 held on October 13, 2009, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to Darvocet 100mg. #120 for 30 days for the compensable injury of _____?

PARTIES PRESENT

The Petitioner/Claimant appeared and was assisted by PG, ombudsman. The Respondent/Self-Insured appeared and was represented by CP, attorney, and MS.

BACKGROUND INFORMATION

It was stipulated that the claimant sustained a compensable back injury on _____. He received non-surgical treatments without success. Claimant entered a pain management program in 1997. He has been treated with hydrocodone, lidoderm, zoloft and neurontin for his chronic pain. Claimant denies having received hydrocodone; however, medical records indicate that he was prescribed this drug and that Darvocet, another opioid medication, was substituted in an attempt to wean him from the hydrocodone approximately four years ago. In May, 2009, the requested medication was denied authorization. A request for reconsideration was also denied. A request for an independent review organization (IRO) review was made in June, 2009. The IRO reviewer upheld the adverse determination. The reviewer indicated that the Official Disability Guidelines (ODG) recognizes a role for the use of opioid medications if there is effective relief and improved function. In this case, the claimant's medical records described his function as "fair" and his comfort level as "poor." The records offered no details about claimant's improved function.

DISCUSSION

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 ODG. Also, in accordance with Division Rule 133.208 (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."

The ODG discuss the use of opioid medications, in relevant part, as follows:

Chronic back pain: Appears to be efficacious but limited for short-term pain relief. Long-term efficacy is unclear (>16 weeks), and there is also limited evidence for the use of opioids for chronic low back pain. (Martell-Annals, 2007) Failure to respond to a time-limited course of opioids has led to the suggestion of reassessment and consideration of alternative therapy. There is no evidence to recommend one opioid over another. In patients taking opioids for back pain, the prevalence of lifetime substance use disorders has ranged from 36% to 56% (a statistic limited by poor study design). Limited information indicated that up to one-fourth of patients who receive opioids exhibit aberrant medication-taking behavior. (Martell-Annals, 2007) (Chou, 2007) There are three studies comparing Tramadol to placebo that have reported pain relief, but this increase did not necessarily improve function. (Deshpande, 2007)

In the contested case hearing the claimant testified that the Darvocet is helpful to him, primarily because it relieves some of the pain and helps his stress level. Claimant notes that he gets along with his family better when he has the medication. Claimant had no side effects from the drug and was monitored by Dr. H, a pain management physician, every ninety days. Claimant offered several articles which cited efficacy in the limited use of opioid medication; however, these alone did not rise to the level of evidence-based medicine necessary to overcome the decision of the IRO in this case. The preponderance of the evidence-based medicine is not contrary to the decision of the IRO and, consequently, the claimant is not entitled to Darvocet 100mg. #120 for 30 days.

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 Workers' Compensation Division of the Texas Department of Insurance.
 - B. On _____, the claimant was the employee of (Self-Insured), Employer.
 - C. On _____, the claimant sustained a compensable injury.
2. The self-insured delivered to the claimant a single document stating the true corporate name of the carrier, and the name and street address of the carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
 3. (IRO) was appointed to act as Independent Review Organization by the Texas Department of Insurance.
 4. The Independent Review Organization determined that the claimant was not entitled to Darvocet 100mg. #120 for 30 days.
 5. Darvocet 100 mg. #120 for 30 days is not health care reasonably required for the compensable injury of _____.

CONCLUSIONS OF LAW

1. The Workers' Compensation Division of the Texas Department of Insurance 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 Darvocet 100mg. #120 for 30 days is not health care reasonably required for the compensable injury of _____.

DECISION

The claimant is not entitled to Darvocet 100mg. #120 for 30 days.

ORDER

Self-insured 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 self-insured is **(SELF-INSURED)** and the name and address of its registered agent for service of process is:

**JG, WCI MANAGER
(STREET ADDRESS)
(CITY), TEXAS (ZIP CODE)**

Signed this 14th day of October, 2009.

Carolyn Cheu
Hearing Officer