MEDICAL CONTESTED CASE HEARING NO. 10108
M6-10-22577-01

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 January 19, 2010, 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 Restoril and Soma for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was assisted by MH, Ombudsman. Carrier appeared and was represented by JC, Attorney.

BACKGROUND INFORMATION

Claimant has sustained multiple injuries to multiple body parts as a result of compensable injuries. Claimant has undergone numerous surgeries including a percutaneous L4-L5 discectomy in January 1992, a lumbar laminectomy/discectomy in April 1992, a posterior fusion in June 1992 and an anterior fusion at L4-L5 in November 1992. Claimant also underwent a C5 through C7 cervical fusion in October 2001 and a right carpal tunnel release with ulnar transposition in October 1997. The Claimant's treating neurologist has provided the Claimant with medication for numerous years. The Claimant testified that he has taken Soma on a daily basis for the past 10 years to control muscle spasms and that he has suffered no side effects. The Claimant testified that he takes Restoril as a sleep aid but he is willing to take an alternate drug if it will be as effective. The Claimant's currently prescribed medications include Restoril, Tramadol, Elavil, Neurotin, Soma and Darvocet.

Although the Carrier paid for these drugs for several years, the preauthorization request was denied. Claimant appealed and the dispute was forwarded to an Independent Review Organization (IRO) for resolution. The IRO decision upheld the Carrier's denial of the requested medications. The IRO reviewer provided a clinical history summary and concluded that the medical treatment requested does not meet the Official Disability Guidelines (ODG). The Claimant maintains that the only medications that are the subject of this dispute are the Restoril and Soma, although the IRO addressed necessity for all the prescriptions as stated above. The parties agreed at the pre-hearing that the only prescriptions requiring adjudication at this hearing were Soma and Restoril.

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. The Commissioner of the Division of Workers' compensation is required to adopt treatment guidelines that are evidence-based, scientifically valid, outcome-focused and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. Texas Labor Code Section 413.011(e). Medical services consistent with the medical policies and fee guidelines adopted by the commissioner are presumed reasonable in accordance with Texas Labor Code Section 413.017(1).

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. Also, in accordance with Division Rule 133.308 (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 addresses the necessity for the prescribed medications as follows:

Benzodiazepines (Temazepam - Restoril)

Not recommended for long-term use because long-term efficacy is unproven and there is a risk of dependence. Most guidelines limit use to 4 weeks. Their range of action includes sedative/hypnotic, anxiolytic, anticonvulsant, and muscle relaxant. Chronic benzodiazepines are the treatment of choice in very few conditions. Tolerance to hypnotic effects develops rapidly. Tolerance to anxiolytic effects occurs within months and long-term use may actually increase anxiety. A more appropriate treatment for anxiety disorder is an antidepressant. Tolerance to anticonvulsant and muscle relaxant effects occurs within weeks.

Carisoprodol (Soma®)

Not recommended. This medication is FDA-approved for symptomatic relief of discomfort associated with acute pain in musculoskeletal conditions as an adjunct to rest and physical therapy. (AHFS, 2008) This medication is not indicated for long-term use. Carisoprodol is a commonly prescribed, centrally acting skeletal muscle relaxant whose primary active metabolite is meprobamate (a schedule-IV controlled substance). Carisoprodol is now scheduled in several states but not on a federal level. It has been suggested that the main effect is due to generalized sedation and treatment of anxiety. Abuse has been noted for sedative and relaxant effects. In regular abusers the main concern is the accumulation of meprobamate. Carisoprodol abuse has also been noted in order to augment or alter effects of other drugs. This includes the following: (1) increasing sedation of benzodiazepines or alcohol; (2) use to prevent side effects of

cocaine; (3) use with tramadol to produce relaxation and euphoria; (4) as a combination with hydrocodone, an effect that some abusers claim is similar to heroin (referred to as a "Las Vegas Cocktail"); & (5) as a combination with codeine (referred to as "Soma Coma"). (Reeves, 1999) (Reeves, 2001) (Reeves, 2008) (Schears, 2004) There was a 300% increase in numbers of emergency room episodes related to carisoprodol from 1994 to 2005. (DHSS, 2005) Intoxication appears to include subdued consciousness, decreased cognitive function, and abnormalities of the eyes, vestibular function, appearance, gait and motor function. Intoxication includes the effects of both carisoprodol and meprobamate, both of which act on different neurotransmitters. (Bramness, 2007) (Bramness, 2004) A withdrawal syndrome has been documented that consists of insomnia, vomiting, tremors, muscle twitching, anxiety, and ataxia when abrupt discontinuation of large doses occurs. This is similar to withdrawal from meprobamate. (Reeves, 2007) (Reeves, 2004) There is little research in terms of weaning of high dose carisoprodol and there is no standard treatment regimen for patients with known dependence. Most treatment includes treatment for symptomatic complaints of withdrawal. Another option is to switch to phenobarbital to prevent withdrawal with subsequent tapering. A maximum dose of phenobarbital is 500 mg/day and the taper is 30 mg/day with a slower taper in an outpatient setting. Tapering should be individualized for each patient

The Claimant testified that he has been prescribed these medications by his treating doctors for many years and the medications have always been approved by the Carrier. The Claimant testified that the Soma relieves his muscle spasms and that he has been told by his treating doctor that there is no alternative medication he could prescribe that would be comparable to Soma. The Claimant testified that he suffers no side effects from the Soma and that he has taken it for so long that there is no way he can be completely cut off at this time. Claimant's treating doctor has not offered a program to begin tapering the Claimant off his current medications. Claimant testified that he would be willing to take an alternate sleep aid if the medication was comparable to the currently prescribed Restoril; however, no alternative has been offered. In response to the IRO's determination, the Claimant's treating doctor provided a note stating that the Claimant suffers from severe muscle spasms in his back and he has been taking the medication, Soma, for ten years without showing signs of abuse. The treating doctor noted that the Claimant shows good response to the medication which is why he has taken it for so long and that the Claimant will be placed at risk of increased pain and suffering if his pain medications were to be changed. Claimant's treating doctor did not address the recommendations in the ODG for the prescriptions of Soma and Restoril and no evidence-based medical evidence was presented by the Claimant regarding the medical necessity for the continued, long-term use of these prescriptions.

Based on the evidence presented, the Claimant failed to meet his 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 Soma and Restoril 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), 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 decision was based on the ODG and concluded that the prescription medications Restoril and Soma are not medically reasonable and necessary for the compensable injury of _____.

4. The on-going use of the prescription medications Restoril and Soma is 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 Restoril and Soma are not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to the prescribed medications Restoril and Soma 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 **CONTINENTAL INSURANCE COMPANY**, and the name and address of its registered agent for service of process is:

CT CORPORATION
350 N. ST. PAUL STREET
DALLAS, TEXAS 75201

Signed this 20th day of January, 2010.

Carol A. Fougerat
Hearing Officer