MEDICAL CONTESTED CASE HEARING NO. 10148
M6-10-22532-01

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 March 16, 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 medication of Naprelan 375 mg 2 po every day #60-no refills for the compensable injury of _____?

PARTIES PRESENT

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

BACKGROUND INFORMATION

On _____ Claimant injured her left ankle while at work. She initially treated with Dr. B who performed a surgical lateral ankle reconstruction. Post operatively she was placed in a cast, received physical therapy, and returned to work in December 1999. She followed up with Dr. S who administered injections in her foot and ankle. On June 2, 2009 Dr. L diagnosed left plantar fasciitis, left ankle sprain/strain with associated sinus tarsi syndrome, left neuroma deformity 2nd and 3rd interspace, and tendonitis of the left posterior tibial tendon. Dr. L treated Claimant on June 2, 2009, June 9, 2009 and June 16, 2009 with repeat splinting, injections, and ordered new orthotic devices. On June 16, 2009 Dr. L noted there was good prognosis following a plantar fascia injection and prescribed the medication Naprelan. The request for Naprelan was denied by the carrier and is the subject of this dispute.

Claimant, through Dr. L, appealed the denial for the medication Naprelan and the dispute was forwarded to an Independent Review Organization (IRO) for decision. The IRO decision dated October 5, 2009 upheld Carrier's denial of the requested medication. The IRO decision concluded that even though the ODG does not discuss the use of NSAIDS for the acute treatment of plantar fasciitis pain, nothing in the records stated whether Claimant has experienced any relief or had any functional improvement with this medication.

Texas Labor Code Section 408.021 provides 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 that evidence 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, by 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 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 133.308 (t), "A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division is 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 places the medication Naprelan under the category of Naproxen that is defined:

> "Naproxen (Naprosyn®, EC-Naprosyn®, Anaprox®, Anaprox DS®, Aleve® [otc], Naprelan®)
>
> Naproxen is a nonsteroidal anti-inflammatory drug (NSAID) for the relief of the signs and symptoms of osteoarthritis. See NSAIDs (non-steroidal anti-inflammatory drugs); NSAIDs, GI symptoms & cardiovascular risk; NSAIDs, hypertension and renal function; & NSAIDs, specific drug list & adverse effects for general guidelines, as well as specific Naproxen (Naprosyn®, EC-Naprosyn®, Anaprox®, Anaprox DS®, Aleve® [otc], Naprelan®) listing for more information and references. See also Anti-inflammatory medications."
>
> As further explanation the ODG refers to NSAIDs as:
>
> "Anti-inflammatory medications (NSAIDs)
>
> Recommended. In treating acute ankle sprains, non-steroidal anti-inflammatory drugs (NSAIDS) provide increased pain relief and a more rapid return to activity compared with a placebo group. (Slatyer, 1997) However, in treating fractures NSAIDs are associated with side effects that are deleterious to treatment outcome, including delay in bone healing. (Biederman, 2005) For detailed information see the PAIN Chapter of *ODG Treatment*."

Specifically to treat pain for plantar fasciitis the ODG states

> "Medications for acute pain (analgesics)
>
> Recommended as indicated below. Pharmacologic agents are the main treatment of acute pain & acute exacerbations of chronic pain.
>
> Acetaminophen is the initial choice for treatment of acute pain & acute exacerbations of chronic pain in a dose of 1,000 mg. A recent study found that in a single dose,

aspirin was similar to acetaminophen (mg to mg comparison) for treatment of acute pain, although aspirin is more likely to produce GI side effects. (Edwards, 2006) (Sachs, 2005) The maximum daily dose of acetaminophen is 4,000 mg. There should be caution about daily doses of acetaminophen and liver disease if over 4,000 mg per day or in combination with other NSAIDs. (Watkins, 2006) A 2008 Cochrane review found that NSAIDs are not more effective than acetaminophen for acute low-back pain, but acetaminophen had fewer side effects, which support recommending NSAIDs as a treatment option after acetaminophen. (Roelofs-Cochrane, 2008)

NSAIDs are superior to acetaminophen for some types of pain, and can provide analgesia similar to opioids in some settings, including post-operatively. (Mason, 2006) They suffer from a ceiling effect above which no additional analgesic effect can be obtained. They also suffer from side effects such as GI disturbance, renal dysfunction, increased edema, and increased blood pressure. NSAIDs, and the Cox-2 NSAIDS in particular, also are associated with thrombotic cardiovascular events."

In the present case, Claimant credibly testified that she had been prescribed Naprelan by past treating doctors for several years. A letter by Dr. L explained that an anti-inflammatory medication such as Naprelan was needed to help the Claimant neutralize her overall pain and inflammation. But as the IRO physician reviewer noted, the ODG reports that: "Acetaminophen is the initial choice for treatment of acute pain and acute exacerbations of chronic pain." There was no documentation in the records that acetaminophen has been tried and failed. Additionally, the evidence lacked written records of patient education on the side-effects of Naprelan, the absence of assessment of any co-morbid conditions, and insufficient clinical information as to the pain relief and functional improvement associated with previous use of the medication. 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 medication Naprelan 375 mg 2 po every day #60-no refills 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) East Office of the Texas Department of Insurance, Division of Workers' Compensation.

   B. On _____, Claimant was the employee of (Employer).

   C. The IRO decision concluded that the medication Naprelan 375 mg 2 po every day #60-no refills is not medically reasonable and necessary for the compensable injury of _____.

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. There is no documented objective information regarding pain relief and functional improvement as recommended in the ODG associated with the previous use of the medication Naprelan.

4. The medication of Naprelan 375 mg 2 po every day #60-no refills 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 medication Naprelan 375 mg 2 po every day #60-no refills is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to the medication Naprelan 375 mg 2 po everyday #60 no refills 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 CASUALTY COMPANY**, and the name and address of its registered agent for service of process is:

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

Signed this 17th day of March, 2010.

Judy L. Ney
Hearing Officer