

MEDICAL CONTESTED CASE HEARING NO 12001
M6-11-34435-01

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 benefit contested case hearing was opened on June 27, 2011, and closed on August 16, 2011, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to ongoing use of Percocet and office visits x3 for pain/medical management for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by PG, ombudsman. Respondent/Carrier appeared and was represented by WS, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury to her lumbar spine on (Date of Injury) while working at a wholesale nursery. During the first month after the injury, claimant received conservative care from both her chiropractor and physical medicine specialists. She also received physical therapy. Claimant's physicians, including Drs. L (1) and L (2), believed that the Claimant's symptoms were consistent with a strain injury. Claimant was referred for trigger point injections, but received no relief from them.

An MRI performed on October 21, 2006 found no significant disc herniation or protrusion except for a small area of herniation at L5/S1, normal vertebral bodies, and some disc degeneration in the lower thoracic spine at the T8-9, T9-10 and T10-11. The MRI further diagnosed a compression fracture at T-9 of unknown duration, with no evidence of compression of the spinal cord or nerve root compression. Claimant had Kyphoplasty for the compression fracture at T9. Claimant had surgery to her lumbar spine in December, 2008 by Dr. N. Beginning August, 2010 Claimant was prescribed Percocet by Dr. M of (Healthcare Provider). She was seen monthly for medication checks. In October, 2010, claimant reported that without her medication, the pain was 4-8 on a scale of 1-10. With the medication, her pain was 2-4. She felt that overall her pain was worse. At her December, 2010 visit, claimant reported that she did

not feel that the Percocet was beneficial and wanted to change medication. Her pain was reported as an 8 without medication, 4-6 with the medication.

Claimant filled prescriptions for MS Contin and Neurontin, but reported that she did not take these due to her fear of the side effects of the medication. A prescription for Percocet was subsequently denied by the carrier in March, 2011 and April, 2011.

A review by an Independent Review Organization (IRO) upheld the carrier's denial of Percocet. The IRO reviewer, a physician board certified in Anesthesiology and Pain Management, denied the request because the accompanying medical documentation did not indicate that claimant had significant benefit or pain relief from the use of Percocet.

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. 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 133.208 (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."

On the date of this medical contested case hearing, the ODG provides the following with regard to the use of Opioids:

CRITERIA FOR USE OF OPIOIDS

- 6) When to Discontinue Opioids:** See Opioid hyperalgesia. Also see Weaning of Medications. Prior to discontinuing, it should be determined that the patient has not had treatment failure due to causes that can be corrected such as under-dosing or inappropriate dosing schedule. Weaning should occur under direct ongoing medical supervision as a slow taper except for the below mentioned possible indications for immediate discontinuation. The patient should not be abandoned.
- (a) If there is no overall improvement in function, unless there are extenuating circumstances
 - (b) Continuing pain with the evidence of intolerable adverse effects; lack of significant benefit (persistent pain and lack of improved function despite high doses of opiates- e.g. > 120 mg/day morphine equivalents)
 - (c) Decrease in functioning
 - (d) Resolution of pain
 - (e) If serious non-adherence is occurring
 - (f) The patient requests discontinuing
 - (g) Immediate discontinuation has been suggested for: evidence of illegal activity including diversion, prescription forgery, or stealing; the patient is involved in a motor vehicle accident and/or arrest related to opioids, illicit drugs and/or alcohol; intentional suicide attempt; aggressive or threatening behavior in the clinic. It is suggested that a patient be given a 30-day supply of medications (to facilitate finding other treatment) or be started on a slow weaning schedule if a decision is made by the physician to terminate prescribing of opioids/controlled substances.
 - (h) Many physicians will allow one "slip" from a medication contract without immediate termination of opioids/controlled substances, with the consequences being a re-discussion of the clinic policy on controlled substances, including the consequences of repeat violations.
 - (i) If there are repeated violations from the medication contract or any other evidence of abuse, addiction, or possible diversion it has been suggested that a patient show evidence of a consult with a physician that is trained in addiction to assess the ongoing situation and recommend possible detoxification. (Weaver, 2002)

- (j) When the patient is requesting opioid medications for their pain and inconsistencies are identified in the history, presentation, behaviors or physical findings, physicians and surgeons who make a clinical decision to withhold opioid medications should document the basis for their decision.

7) When to Continue Opioids

- (a) If the patient has returned to work
- (b) If the patient has improved functioning and pain
(Washington, 2002) (Colorado, 2002) (Ontario, 2000) (VA/DoD, 2003)
(Maddox-AAPM/APS, 1997) (Wisconsin, 2004) (Warfield, 2004)

At the contested case hearing, claimant testified that since she has been without the prescribed Percocet, her pain level has increased and she is unable to perform a number of the activities of daily living she had accomplished with the medication. In support of claimant's position, Dr. M, claimant's pain management doctor, wrote in a brief letter that claimant should continue her pain management office visits so that her chronic pain can be adequately managed and, further, that she has been prescribed Percocet for her pain. Dr. M provides neither an explanation of his prior office notes nor any evidence-based medicine to support claimant's need for Percocet for her pain. The preponderance of the evidence is not contrary to the IRO determination that the claimant is not entitled to the requested medication and office visits.

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 (Date of Injury), claimant was the employee of (Employer).
 - C. On (Date of Injury), claimant sustained a compensable injury.
 - D. On (Date of Injury), the employer provided workers' compensation insurance through Argonaut Insurance Company, carrier.
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 found that ongoing use of Percocet and office visits x3 for pain/medical management is not health care reasonably required for the compensable injury.

4. Claimant did not provide evidence-based medical evidence in support of her position.

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 claimant is not entitled to ongoing use of Percocet and office visits x3 for pain/medical management for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to ongoing use of Percocet and office visits x3 for pain/medical management for the compensable injury of (Date of Injury).

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 **ARGONAUT INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**NATIONAL REGISTERED AGENTS, INC.
16055 SPACE CENTER BLVD., SUITE 235
HOUSTON, TEXAS 77062-6212**

Signed this 17th day of August, 2011.

Carolyn Cheu Mobley
Hearing Officer