

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 November 19, 2009 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the Medical Fee Dispute Resolution Findings and Decision that Petitioner is not entitled to \$438.00 in reimbursement for out-of-pocket costs incurred in obtaining brand name prescription medication, specifically, Vicodin and Dilaudid?

PARTIES PRESENT

Claimant appeared, and was assisted by Ombudsman SC; Carrier appeared by telephone, and was represented by Attorney RJ.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on _____, and has been prescribed analgesic medication for the pain of that injury.

Claimant testified that he requires brand name medication, because he is allergic to the contents of generic alternatives. However, in reliance upon Division Rule 134.504(b), Carrier has denied liability for costs beyond the price of generic medication.

The record of the Contested Case Hearing contains no medical evidence regarding the necessity of brand name medication.

DISCUSSION

As Carrier has correctly noted, Division Rule 134.504(b) limits Carrier's financial liability to the cost of generic medication. This Rule further states that in a situation of this nature, a claimant's choice to obtain a brand name medication and pay the cost difference between the generic medication and the brand name medication is considered a final transaction between the claimant and the pharmacist, and is not subject to medical dispute resolution by the Division. Under these circumstances, a decision in favor of Carrier must be entered as to the sole issue presented for resolution in this case.

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. On _____, Claimant was employed by (Employer).
2. On _____, Employer subscribed to a policy of workers' compensation insurance issued by the Liberty Insurance Corporation, Carrier.
3. On _____, Claimant's residence was located within seventy-five miles of the (City) office of the Texas Department of Insurance, Division of Workers' Compensation.
4. 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.
5. On _____, Claimant sustained an injury arising out of the course and scope of his employment with Employer.
6. Claimant was prescribed analgesic medication for his compensable injury of _____.
7. Claimant obtained and paid for brand name medication, specifically Vicodin and Dilaudid, rather than the generic alternatives, hydrocodone and hydromorphone.
8. On July 16, 2009, the Division issued Medical Fee Dispute Resolution Findings and Decision stating that Claimant was not entitled to reimbursement of \$438.00 spent in obtaining brand name medication for the compensable injury of _____.
9. Brand name medication, as opposed to generic medication, is neither reasonable nor necessary for Claimant's 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 Medical Fee Dispute Resolution Findings and Decision that Claimant, Petitioner, is not entitled to receive \$438.00 as reimbursement for brand name prescription medication for the compensable injury of _____.

DECISION

Claimant is not entitled to reimbursement of \$438.00 spent in obtaining brand name prescription medication for his 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 **LIBERTY INSURANCE CORPORATION**, and the name and address of its registered agent for service of process is

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

Signed this 30th day of November, 2009.

Ellen Vannah
Hearing Officer