

MEDICAL CONTESTED CASE HEARING NO. 15001

**DECISION AND ORDER**

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and the Rules of the Texas Department of Insurance, Division of Workers' Compensation. For the reasons discussed herein, the Hearing Officer determines that Claimant is not entitled to the prescription Fioricet 50-300-40 mg capsules, quantity 30 for 30 day supply, for the compensable injury of (Date of Injury).

**STATEMENT OF THE CASE**

On September 22, 2014, Carol A. Fougerat, a Division hearing officer, held a contested case hearing 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 prescription Fioricet 50-300-40 mg capsules, quantity 30 for 30 day supply, for the compensable injury of (Date of Injury)?

**PARTIES PRESENT**

Claimant appeared and was assisted by MH, ombudsman. Carrier appeared and was represented by CM, attorney.

**DISCUSSION**

Claimant sustained a compensable injury on (Date of Injury), when she fell down a flight of stairs. Claimant testified that, as a result of her injury, she experiences periodic, severe neck pain that radiates to her head. Claimant's treating doctor has prescribed Fioricet, which is typically prescribed for severe headaches. Upon review and reconsideration by Carrier's utilization review agents, preauthorization for this prescription 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 medication. The IRO reviewer noted that the requested medication is listed as a "NO" drug in the formulary and this medication is not supported by the treatment guidelines. The IRO reviewer stated that, per the ODG (Official Disability Guidelines), this medication is not recommended for chronic pain. Additionally, the medication carries a high potential for dependence and no evidence exists to show a clinically important enhancement of analgesic efficacy of BCAs (Barbiturate-containing analgesic agents) due to the barbiturate constituents.

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 133.308(s), "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:

**Barbiturate-containing analgesic agents (BCAs):**

Not recommended for chronic pain. The potential for drug dependence is high and no evidence exists to show a clinically important enhancement of analgesic efficacy of BCAs due to the barbiturate constituents. (McLean, 2000) Fioricet is commonly used for acute headache, with some data to support it, but there is a risk of medication overuse as well as rebound headache. (Friedman, 1987) The AGS updated Beers criteria for inappropriate medication use includes barbiturates. (AGS, 2012) See also Opioids.

Claimant testified that her treating doctor prescribes Fioricet for headaches, which manifests as radiating pain from the back of her head. Claimant has undergone injections to her cervical spine

which relieved some of her headache pain, but she requires the Fioricet for intermittent flare-ups. Claimant testified that she has requested that her doctor prescribe an alternative medication for her headaches, but he suggested a narcotic and she does not want to take narcotics. Claimant's treating doctor did not address the recommendations in the ODG for the prescription Fioricet and no evidence-based medical evidence was presented by Claimant regarding the medical necessity of this prescription. Based on the evidence presented, 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 Fioricet for the compensable injury of (Date of Injury).

The Hearing Officer considered all of the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all of the evidence whether or not the evidence is specifically discussed in this Decision and Order.

### **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 the (Employer), Employer.
  - C. Claimant sustained a compensable injury on (Date of Injury).
  - D. The IRO determined that the proposed prescription Fioricet 50-300-40 mg capsules, quantity 30 for 30 day supply, is not medically necessary for the compensable injury of (Date of 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. Claimant does not meet the requirements of the ODG for the prescription medication Fioricet 50-300-40 mg capsules, quantity 30 for 30 day supply, and she failed to present other evidence-based medicine supporting the necessity for this medication.
4. The ongoing use of Fioricet 50-300-40 mg capsules, quantity 30 for 30 day supply is not health care reasonably required for the compensable injury of (Date of Injury).

## 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 medication Fioricet 50-300-40 mg capsules, quantity 30 for 30 day supply, is not health care reasonably required for the compensable injury of (Date of Injury).

## DECISION

Claimant is not entitled to the prescribed medication Fioricet 50-300-40 mg capsules, quantity 30 for 30 day supply, 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 (Self-Insured) (**SELF-INSURED**), and the name and address of its registered agent for service of process is:

**(SELF-INSURED)**  
**(STREET)**  
**(CITY), TX (ZIPCODE)**

Signed this 22<sup>nd</sup> day of September, 2014.

Carol A. Fougerat  
Hearing Officer