

MEDICAL CONTESTED CASE HEARING NO. 15004

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 October 1, 2014 to decide the following disputed issue:

Is the preponderance of the evidence-based medical evidence contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to 30 tablets of Protonix 40 mg for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by EB, ombudsman. Respondent/Carrier appeared and was represented by SS, attorney.

BACKGROUND INFORMATION

It was undisputed that the Claimant sustained a compensable cervical injury on (Date of Injury) while working for (Employer). The evidence showed that the injury occurred when a pipe fell and struck the Claimant's head. As a result of this injury, the Claimant underwent a cervical decompression and fusion surgery from C4-C7 in September 2001. The Claimant has been followed by Dr. C for chronic neck pain, and he has been prescribed various narcotic pain medications to alleviate his pain. One of those narcotics has been Avinza, and while it apparently has been effective for pain control, it causes an irritation of the Claimant's stomach. The disputed medication, Protonix, has been prescribed for the Claimant by Dr. C to alleviate the stomach irritation caused by Avinza.

At the outset, it is important to note the relevant procedural history as it relates to the dispute herein. On September 27, 2013, Dr. C sought pre-authorization for 30 tablets of Protonix 40 mg and 60 capsules of Avinza 30 mg for the Claimant. On October 1, 2013, a Carrier utilization review agent (URA) denied the request based on insufficient information being provided to establish the medical necessity for either medication. On October 29, 2013, upon reconsideration, a second URA denied the request on similar grounds. Thereafter, Dr. C made a request for review by an IRO, but the request was denied because it was untimely. Subsequently, Dr. C made another request for pre-authorization for the same amounts and dosages of these same medications, which was denied by a Carrier URA on April 8, 2014 on the

basis that the information provided did not establish the medical necessity of either medication. The URA noted that the Claimant was currently taking two opioid pain medications. On April 17, 2014, a second URA denied the request upon reconsideration on similar grounds. Thereafter, on April 22, 2014, Dr. C made a timely request for review by an IRO, and it is the decision of this IRO that is in dispute at this hearing. Dr. C's request for this IRO seeks review of the denial of both the Protonix and the Avinza, but for some reason that was not developed by either party at this hearing, the IRO decision only addresses the denial of the Protonix. *See Claimant's Exhibits C-2 and C-3, p. 3; Carrier's Exhibit CR-F.* The IRO upheld the denial of the Protonix by the Carrier's URAs on the basis that the records and information provided by Dr. C did not reflect that the Claimant's use of his various medications caused any side effects like gastritis or acid reflux. The IRO determined that the information provided did not indicate the need for a proton pump inhibitor, such as Protonix. The IRO states that its decision is based upon medical judgment, clinical experience and expertise in accordance with accepted medical standards, along with the *Official Disability Guidelines* (ODG).

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 in making decisions about the care of individual patients. 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(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 medical necessity of Protonix in the Pain chapter, under proton pump inhibitors (PPIs), as follows:

Recommended for patients at risk for gastrointestinal events. See NSAIDs, GI symptoms & cardiovascular risk. Prilosec® (omeprazole), Prevacid® (lansoprazole) and Nexium® (esomeprazole magnesium) are PPIs. Omeprazole provides a statistically significantly greater acid control than lansoprazole. (Miner, 2010) Healing doses of PPIs are more effective than all other therapies, although there is an increase in overall adverse effects compared to placebo. Nexium and Prilosec are very similar molecules. For many people, Prilosec is more affordable than Nexium. Nexium is not available in a generic (as is Prilosec). Also, Prilosec is available as an over-the-counter product (Prilosec OTC®), while Nexium is not. (Donnellan, 2010) In general, the use of a PPI should be limited to the recognized indications and used at the lowest dose for the shortest possible amount of time. PPIs are highly effective for their approved indications, including preventing gastric ulcers induced by NSAIDs. Studies suggest, however, that nearly half of all PPI prescriptions are used for unapproved indications or no indications at all. Many prescribers believe that this class of drugs is innocuous, but much information is available to demonstrate otherwise. If a PPI is used, omeprazole OTC tablets or lansoprazole 24HR OTC are recommended for an equivalent clinical efficacy and significant cost savings. Products in this drug class have demonstrated equivalent clinical efficacy and safety at comparable doses, including esomeprazole (Nexium), lansoprazole (Prevacid), omeprazole (Prilosec), pantoprazole (Protonix), dexlansoprazole (Dexilant), and rabeprazole (Aciphex). (Shi, 2008) A trial of omeprazole or lansoprazole is recommended before Nexium therapy. The other PPIs, Protonix, Dexilant, and Aciphex, should also be second-line. According to the latest AHRQ Comparative Effectiveness Research, all of the commercially available PPIs appeared to be similarly effective. (AHRQ, 2011)

Dr. C makes it clear that he has prescribed Protonix for the Claimant because of the stomach irritation effect of Avinza. The prescription for Avinza, however, has been denied because it was not shown to be medically necessary. Therefore, the prescription for Protonix has not been shown to be medically necessary. The reports of the URAs and the IRO establish that Dr. C did not provide enough documentation in connection with their reviews to demonstrate that the Protonix is medically necessary, and the record developed at this hearing does not establish that there is evidence-based medical evidence presented to oppose the IRO’s decision or the

recommendations in the ODG. For these reasons, it is determined that the record does not establish that the preponderance of the evidence-based medicine is contrary to the IRO decision. It is, therefore, determined that the record does not establish that the requested 30 tablets of Protonix 40 mg is health care reasonably required for the Claimant's compensable (Date of Injury) 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 (Employer), Employer.
 - C. On (Date of Injury), Employer had workers' compensation insurance coverage through self-insurance.
 - D. On (Date of Injury), the Claimant sustained a compensable cervical injury while in the course and scope of his employment with (Employer).
 - E. The IRO decision dated May 7, 2014 upheld the Carrier's denial of the 30 tablets of Protonix 40 mg.
2. The 30 tablets of Protonix 40 mg is not shown to be health care reasonably required for the Claimant's compensable (Date of Injury) injury.
3. The Carrier delivered to Claimant a single document stating the true corporate name of the Carrier, and the name and street address of the Carrier's registered agent, which was admitted into evidence as Hearing Officer's Exhibit Number 1.

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-based medicine is not contrary to the decision of the IRO that 30 tablets of Protonix 40 mg is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

The Claimant is not entitled to 30 tablets of Protonix 40 mg for the compensable injury of (Date of Injury).

ORDER

The Carrier is not liable for the benefits at issue in this hearing. The Claimant remains entitled to medical benefits for the compensable injury in accordance with Section 408.021 of the Act.

The true corporate name of the Self-Insured Carrier is **JACOBS ENGINEERING GROUP, INC.**, and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEM
1999 BRYAN STREET, STE. 900
DALLAS, TX 75201**

Signed this 15th day of October, 2014.

Patrice Fleming-Squirewell
Hearing Officer