

MEDICAL CONTESTED CASE HEARING NO. 15019

DECISION AND ORDER

This case is decided pursuant to 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 prescriptions for Hydrocodone, Promethazine 25 mg, lidocaine 5% patch, Robaxin 250 mg, and a duragesic patch 100mcg for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

A contested case hearing was held on January 15, 2015, to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to prescriptions for Hydrocodone, Promethazine 25 mg, lidocaine 5% patch, Robaxin 250 mg, and a duragesic patch 100mcg for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by RH, ombudsman. Petitioner/Provider did not appear. Respondent/Carrier appeared and was represented by MH, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: AP

For Carrier: None

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits HO-1 and HO-2.

Claimant's Exhibits C-1 through C-8.

Carrier's Exhibits CR-1 through CR-3.

DISCUSSION

Claimant sustained a compensable back injury on (Date of Injury), when cases of canned fruit fell on her as she was involved in her regular duties in the cafeteria of (Employer), Employer. She has undergone multiple spinal surgeries since the date of injury, but none have afforded

lasting relief. She came under the care of JOC, MD, a pain management specialist. Dr. C has prescribed a number of drugs that he believes are medically necessary to relieve Claimant's pain. Carrier reviewed the necessity for the drugs in light of the Official Disability Guidelines (ODG) and refused to authorize their purchase. Claimant appealed the denial and an Independent Review Organization was appointed by the Texas Department of Insurance in accordance with Rule 133.308. After consideration of the information provided, the IRO upheld Carrier's denial of the requested prescriptions as not reasonably necessary for treatment of the compensable injury. Dr. C thereafter filed a request for a contested case hearing as provided for by Rule 133.308(s). The contested case hearing was held on January 15, 2015.

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 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 adopted treatment guidelines by Division Rule 137.100. The 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. A decision issued by an IRO is not considered an agency decision and the Department and the Division are not considered parties to an appeal. In a contested case hearing, the party appealing the IRO decision has the burden of overcoming the decision issued by the IRO by a preponderance of the evidence-based medical evidence. (Rule 133.308 (s).)

On August 1, 2014, preauthorization was requested for the drugs prescribed by Dr. C. In a report dated August 6, 2014, PL, MD determined that the request should be denied because the clinical

documentation provided in support of the request did not specifically discuss functional improvement or pain reduction obtained with the use of the duragesic patches or Hydrocodone and Claimant was “substantially exceeding the maximum amount of narcotics to be prescribed on a daily basis” recommended in the ODG. Dr. L also commented that the efficacy of the narcotics was not established and that the side effects of the drugs, which was cited as the basis for the anti-nausea medication, was a contraindication for their continued use. Dr. L also wrote that current evidence-based medicine does not support the long-term use of muscle relaxers such as Robaxin.

Claimant appealed Carrier’s denial based upon Dr. L’s recommendation and the prescription requests were reviewed by HK, MD. Dr. K concurred with Dr. L’s recommendation that the requested drugs be denied. She based her analysis of the appropriateness of the requested drugs on the ODG Pain Chapter criteria for the use of opioids, lidoderm patches, and antispasmodics. Dr. K’s analysis also noted that antiemetics (such as the Promethazine) were not recommended in the ODG for nausea and vomiting secondary to chronic opioid use.

Dr. C requested that an IRO be appointed to review Carrier’s denial of preauthorization of the prescriptions for Hydrocodone, Promethazine 25 mg, lidocaine 5% patch, Robaxin 250 mg, and duragesic patch 100mcg. The Division appointed US Decisions Inc. as the IRO. US Decisions Inc. submitted the request for review of the prescriptions to a doctor of osteopathy who is board certified in physical medicine and rehabilitation and in pain medicine. The physician reviewer upheld the denial of the prescriptions, citing his medical judgment, clinical experience and expertise in accordance with accepted medical standards and the ODG as the bases for his determination. In part, the physician reviewer wrote:

While [Claimant] reported benefit from medication, pain scores were substantially increased with the highest scores between 7-8/10 VAS. There was no clear documentation of reduction in pain scores as a result of the medication use. [Claimant] had substantial side effects from medications, including constipation, insomnia, and nausea and vomiting. Per guidelines for patients with substantial side effects from medications such as nausea and vomiting, antiemetics are not recommended for long term use. Guidelines would recommend there be consideration for altering the med pain medication to avoid these side effects. There is limited clinical documentation of the efficacy of any of the requested medications, including duragesic patches, Robaxin, Lidoderm patches, or Norco. There is no clear evidence of any functional improvement or reduction in VAS pain scores. Furthermore, guidelines do not recommend long term use of muscle relaxers due to lack of evidence regarding their efficacy over time. Although the use of muscle relaxants can be considered for acute exacerbation of musculoskeletal complaints, this is not evident in the clinical documentation.

Claimant argues that the recommendations of the ODG regarding the use of the drugs prescribed by Dr. C should not be followed because her case is outside of the norm, she should be considered an outlier, and the IRO determination should be overturned. There is, however, no expert medical evidence that would tend to show that the recommendations contained in the ODG do not apply to Claimant or that the drugs prescribed by Dr. C are reasonably required for the compensable injury of (Date of Injury). Under the facts presented, Claimant has failed to prove, by a preponderance of the evidence-based medical evidence, that the determination of the IRO is incorrect.

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. On (Date of Injury), Employer provided workers' compensable insurance with Fairmont Insurance Company, Carrier.
 - D. Claimant sustained a compensable injury on (Date of Injury).
 - E. US Decisions Inc. was appointed as the IRO to review Carrier's denial of prescriptions for Hydrocodone, Promethazine 25 mg, lidocaine 5% patch, Robaxin 250 mg, and a duragesic patch 100mcg 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. Long term use of Hydrocodone, Promethazine 25 mg, lidocaine 5% patches, Robaxin 250 mg, and duragesic patches 100mcg for treatment of chronic pain and nausea as a result of the compensable injury of (Date of Injury), and chronic opioid use is not supported by the ODG or other evidence-based medical evidence.
4. The IRO upheld Carrier's denial of prescriptions for Hydrocodone, Promethazine 25 mg, lidocaine 5% patch, Robaxin 250 mg, and a duragesic patch 100mcg for the compensable injury of (Date of Injury).

5. The preponderance of the evidence-based medical evidence is not contrary to the IRO's determination that prescriptions for Hydrocodone, Promethazine 25 mg, lidocaine 5% patch, Robaxin 250 mg, and a duragesic patch 100mcg do not constitute reasonable and necessary health care for the compensable injury of (Date of Injury).
6. Prescriptions for Hydrocodone, Promethazine 25 mg, lidocaine 5% patch, Robaxin 250 mg, and a duragesic patch 100mcg are not reasonably required health care for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to prescriptions for Hydrocodone, Promethazine 25 mg, lidocaine 5% patch, Robaxin 250 mg, and a duragesic patch 100mcg 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 **FAIRMONT INSURANCE COMPANY**, and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TX 75201-3136**

Signed this 21st day of January, 2015.

KENNETH A. HUCHTON
Hearing Officer