

MEDICAL CONTESTED CASE HEARING NO. 16019

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. For the reasons discussed herein, the Hearing Officer determines that Claimant is not entitled to a prescription for 90 Duexis 800 26.6mg with one refill for the compensable injury of (Date of Injury).

ISSUES

A contested case hearing was held on May 10, 2016 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 a prescription for 90 Duexis 800 26.6 mg with one refill for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Claimant appeared and was assisted by J H, ombudsman. S E appeared by telephone on behalf of the Petitioner. Respondent/Carrier appeared and was represented by P M, attorney.

BACKGROUND INFORMATION

On (Date of Injury), Claimant was shrink wrapping a pallet when she tripped and fell fracturing her right lower leg and ankle. Claimant underwent two surgeries that were performed by Dr. R V. Claimant has been prescribed various medications for her condition. Claimant has been diagnosed with complex regional pain syndrome.

Dr. V referred Claimant to Dr. J L, a pain management specialist. Dr. L initially evaluated Claimant on January 9, 2014. He recommended that Claimant begin taking Duexis 800 mg-26.6 mg tablet, one tablet, three times per day as needed for fourteen days. She was instructed to stop on January 23, 2014. Dr. Lai's records indicate that he began prescribing Duexis again on March 5, 2015. The medical records indicate that Claimant has been taking Duexis 800 mg since that time. According to Claimant's testimony, Duexis is the most effective medication that she has been prescribed.

On November 25, 2015, a request for 90 Duexis 800 26.6 mg with one refill was received by the Self-Insured from Dr. L. On December 1, 2015, Self-Insured's utilization review agent (URA) denied Dr. L's request because both of the medications in Duexis, ibuprofen and famotide, are available over the counter, and Claimant has been prescribed the medications without evidence

of significant improvements in pain or function. A second URA denied Dr. L's request for Duexis for the same reasons as the first URA.

Dr. L appealed the Self-Insured's decision to an IRO. The IRO upheld the Self-Insured's denial. The IRO stated that Claimant's physical examination is not consistent with complex regional pain syndrome, there is no history of gastrointestinal disease or ulcers, there is no support in the Official Disability Guidelines (ODG) for Duexis as a first-line agent in the absence of gastrointestinal disease, and there has been no significant change in Claimant's pain complaints or pain levels while the Claimant was taking Duexis. Dr. L appealed the IRO decision to this Medical Contested Case Hearing.

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. Healthcare 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 is considered a party 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."

With regard to Duexis (Ibuprofen & Famotidine) the ODG provides as follows:

Not recommended as a first-line drug. Horizon Pharma recently announced the launch of Duexis, a combination of ibuprofen 800 mg and famotidine 26.6 mg, indicated for rheumatoid arthritis and osteoarthritis. Ibuprofen (eg, Motrin, Advil) and famotidine (eg, Pepcid) are also available in multiple strengths OTC, and other strategies are recommended to prevent stomach ulcers in patients taking NSAIDs. See NSAIDs, GI symptoms & cardiovascular risk, where Proton pump inhibitors (PPIs) are recommended. With less benefit and higher cost, using Duexis as a first-line therapy is not justified.

Claimant testified that she tried other medications to help with her pain and her upset stomach due to ulcers, including taking prescription Ibuprofen with over-the-counter Pepcid. According to Claimant's testimony, the Duexis is the most effective medication that she has been prescribed for these symptoms. Claimant's testimony regarding her medical history and the effects of her medications on her condition was credible.

Skye Ellis, medical assistant, with Dr. J L's office also testified. Ms. E testified that Dr. L has documented that the Duexis has helped Claimant with her pain and her gastrointestinal problems. Ms. E stated that Claimant has tried different medications, but Duexis has helped her the most. According to Ms. E, Dr. L is trying to ensure that Claimant has the least amount of pain possible. Dr. L has referred Claimant to a specialist for her gastrointestinal issues.

The lay testimony of Claimant and Ms. E was considered. Claimant's medical records were also considered. However, the medical evidence presented was not sufficient to meet her burden of proof. Claimant has not shown by a preponderance of evidence-based medical evidence that the requested prescription for 90 Duexis 800 26.6 mg with one refill is health care reasonably required for the compensable 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), the employer provided workers' compensation insurance coverage as a Self-Insured.

- D. Claimant sustained a compensable injury on (Date of Injury).
2. Self-Insured delivered to Claimant a single document stating the true corporate name of Self-Insured, and the name and street address of Self-Insured's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
 3. The medication Duexis 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 a prescription for 90 Duexis 800 26.6 mg with one refill is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to a prescription for 90 Duexis 800 26.6 mg with one refill for the compensable injury of (Date of Injury).

ORDER

Self-Insured 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 **(Employer)**. **(SELF-INSURED)** and the name and address of its registered agent for service of process is:

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

Signed this 16th day of May, 2016.

Jacquelyn Coleman
Hearing Officer