MEDICAL CONTESTED CASE HEARING NO. 11123
M6-11-31030-01

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 scheduled for February 22, 2011 but reset to and held on April 4, 2011 to decide the following disputed issues:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to the prescription Maxalt 10mg at onset of headache for the compensable injury of _____?

2. Did the claimant timely appeal the decision of the IRO?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by NG, ombudsman.
Respondent/Carrier appeared and was represented by JL, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on _____ when a door slammed against her right wrist. Claimant developed complex regional pain syndrome (CRPS) or Reflex Sympathetic Dystrophy (RSD) in her right upper extremity. Claimant has been treated with sympathetic blocks, multiple medications and a dorsal column stimulator. Claimant testified that she suffers from a multitude of conditions as a result of her CRPS including migraine headaches. Dr. A, a pain physician, has prescribed the prescription Maxalt 10mg for the treatment of the diagnosed migraine headaches. The request for the prescription Maxalt 10mg was denied by the Carrier and referred to an IRO who determined that the recommended medication was not medically necessary to treat the Claimant's compensable injury.

The IRO reviewer, a licensed D.O. specializing in anesthesiology and pain management, upheld the previous adverse determinations noting that there was no documentation indicating that the Claimant suffers from severe migraines for which this medication might be used to treat. The IRO referred to the ODG (Official Disability Guidelines) recommendation regarding appropriate pharmaceutical treatment of RSD which does not include Maxalt among the recommended medications for this syndrome. The IRO reviewer concluded that, based on the clinical information provided and the available evidence based guidelines, the prescription drug Maxalt would not be medically necessary for this Claimant.

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 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(t), "[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."

Pursuant to the *ODG*:

> **CRPS Medications**: Recommended only as indicated below. Most medications have limited effectiveness. (Ribbers, 2003) (Quisel2, 2005)
>
> 1. Regional inflammatory reaction: Commonly used drugs are NSAIDS, corticosteroids and free-radical scavengers. There is some evidence of efficacy for topical DMSO cream, IV bisphosphonates and limited courses of oral corticosteroids. Corticosteroids are most effective when positive response is obtained with sympathetic blocks. NSAIDs are recommended but no trials have shown effectiveness in CRPS-I, and they are recommended primarily in early or very late stages. (Stanton-Hicks, 2004) (Sharma, 2006) Because long-term controlled studies have not been conducted, DMSO should be considered investigational and used only after other therapies have failed. (FDA, 2010)
> 2. Stimulus-independent pain: The use of antidepressants, anticonvulsants, and opioids has been primarily extrapolated based on use for other neuropathic pain disorders. (See Antidepressants for neuropathic pain; Anticonvulsants for chronic pain; & Opioids for neuropathic pain.) Mexiletine (oral lidocaine), lidocaine patches and capsaicin are used but efficacy is not convincing. For central inhibition opiates, gabapentin, TCAs, GABA-enhancing drugs, and clonidine may be useful.
> 3. Stimulus-evoked pain: treatment is aimed at central sensitization. With NMDA receptor antagonists (ketamine and amantadine) convincing controlled trials are lacking, and these drugs are recognized for their side effects.
> 4. Sympathetically maintained pain (SMP): α1 adrenoceptor blocking agents (terazosin, prazocin, and phenoxybenzamine) have been shown to be effective in a case report.

(Ghostine, 1984) Sympathetic suppressors such as guanethadine, reserpine, droperidol, or atropine (in general or IV block) have shown low effectiveness. (Perez, 2001) (Quisel2, 2005) Phentolamine (IV) has been used as an alternative to determine responsiveness to α1 adrenoceptor blocking agents. See also Sympathetically maintained pain (SMP).
5. Treatment of bone resorption with bisphosphonate-type compounds and calcitonin. Significant improvement has been found in limited studies of intravenous clodronate and intravenous alendronate. Alendronate (Fosamax®) given in oral doses of 40 mg a day (over an 8 week period) produced improvements in pain, pressure tolerance and joint mobility. (Manicourt, 2004) Mixed results have been found with intranasal calcitonin (Miacalcin®). (Sahin, 2005) (Appelboom, 2002) (Rowbathan, 2006) (Sharma, 2006).

Pain management: (a) *Pharmacological*: antidepressants (particularly amitriptyline); anticonvulsants (particularly gabapentin); steroids; NSAIDS; opioids; calcitonin; bisphosphonates; α1 adrenoceptor antagonists (terazosin or phenoxybenzamine). The latter class of drugs has been helpful in SMP. Clonidine has been given transdermally and epidurally. (See CRPS, medications.) Bisphosphonates have some literature support in the presence of osteopenia. (Rho, 2002) (b) *Minimally invasive*: depends on degree of SMP, stage of rehabilitation (passive or active movement), and response to blocks. (See CRPS, sympathetic blocks.) Responders to sympathetic blocks (3 to 6 blocks with concomitant PT) may be all that is required. For non-responders somatic block or epidural infusion may be required to optimize analgesia for PT. (c) *More invasive*: After failure of progression or partial relief, consider tunneled epidural catheters for prolonged sympathetic or somatic blocks or neurostimulation with SCS in CRPS-I and II. See CRPS, spinal cord stimulators. Also consider peripheral nerve stimulation in CRPS-II and intrathecal drug delivery in patients with dystonia, failed neurostimulation, long-standing disease, multi-limb involvement and requirement of palliative care. (d) *Surgical*: Sympathectomy is not generally recommended, but has been considered in patients that respond to sympathetic blocks. Pre-procedure the patient should have outcomes assessed with radiofrequency and neurolytic procedures. (See CRPS, sympathectomy.) Motor Cortex Stimulation has been considered.

The Claimant testified that she has suffered from severe headaches since the date of the injury on _____. Claimant testified that she has taken various medications for treatment of the headaches but the Maxalt is the only one to date that has provided significant relief. Dr. N, a board certified orthopedic surgeon, testified that Maxalt is recommended for treatment of migraine headaches but that there was no objective evidence reflected in the medical documentation that the Claimant suffers from "migraine" headaches. Dr. N testified that Maxalt is not recommended for treatment of CRPS and that, generally, migraine headaches are not associated with CRPS or RSD. Dr. N suggested that the Claimant suffers from medication-induced headaches or reactive headaches which would be treated by reducing or changing the medications. Dr. N also testified that Dr. A failed to provide documentation to support the rationale for prescribing Maxalt. The Claimant offered medical records which document a diagnosis of migraine headaches; however, she failed to provide an evidence-based medical opinion regarding the medical necessity of the prescription Maxalt for treatment of her compensable injury. Based on the evidence presented, the Claimant failed to produce evidence-based medical evidence sufficient to overcome the determination by the IRO.

In regard to the timely appeal issue, Rule 133.308(t)(1)(B)(i) states that the written appeal must be filed with the Division's Chief Clerk no later than the later of the 20th day after the effective

date of this section or 20 days after the date the IRO decision is sent to the appealing party and must be filed in compliance with Division rules. The IRO decision was signed and dated November 30, 2010. Claimant testified that she received the IRO decision on December 4, 2010. Rule 102.4(h) states that, unless the great weight of evidence indicates otherwise, written communications shall be deemed to have been sent on the date received, if sent by fax, personal delivery or electronic transmission, or the date postmarked, if sent by mail via United States Postal Service regular mail. If the postmark date is unavailable, the later of the signature date on the written communication or the date it was received minus five days is the date it is deemed to have been sent. The IRO decision was sent to Claimant by mail. The Claimant offered no evidence of the postmark date on the IRO decision and it is deemed to have been sent on November 30, 2010. Rule 133.308(t)(1)(B)(i) states that the request for hearing must be filed within 20 days from the date to decision is sent by the IRO. In accordance with Rule 102.3(a)(1), Claimant's appeal of the IRO decision was due on December 20, 2010. The appeal, filed with the Division on December 21, 2010, was not timely.

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. 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 _____, Claimant was the employee of (Self-Insured), Employer.

   C. Claimant sustained a compensable injury on _____.

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. The requested prescription drug Maxalt 10mg at onset of headache is inconsistent with the recommendations in the ODG for treatment of CRPS and the Claimant failed to present other evidence-based medical evidence supporting the necessity for the prescription Maxalt.

4. The requested prescription drug Maxalt 10mg at onset of headache is not health care reasonably required for the compensable injury of _____.

5. Claimant filed a written request for appeal of the IRO decision with the Division on December 21, 2010 a period of more than 20 days after the decision had been sent to the Claimant on November 30, 2010.

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 prescription drug Maxalt 10mg at onset of headache is not health care reasonably required for the compensable injury of _____.

4. The IRO decision was not timely filed and the Claimant's appeal is hereby dismissed.

DECISION

Claimant is not entitled to the prescription drug Maxalt 10mg at onset of headache for the compensable injury of _____. The IRO decision was not timely filed and the Claimant's appeal is hereby dismissed.

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)** and the name and address of its registered agent for service of process is

J C
(STREET ADDRESS)
(CITY), TX (ZIP CODE)

Signed this 5th day of April, 2011.

Carol A. Fougerat
Hearing Officer