

MEDICAL CONTESTED CASE HEARING NO. 18010

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 Administrative Law Judge determines that the preponderance of the evidence is not contrary to the decision of the IRO that Claimant is not entitled to prescriptions for Risperidone 0.25 mg tablets #90 with 1 refill and Clonazepam 0.5 mg #180 with 0 refills for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

A contested case hearing was held on September 26, 2013, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to prescriptions for Risperidone 0.25 mg tablets #90 with 1 refill and Clonazepam 0.5 mg #180 with 0 refills for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by MG, ombudsman. Respondent/Carrier appeared and was represented by TS, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: SH

For Carrier: None

The following exhibits were admitted into evidence:

Administrative Law Judge's Exhibits ALJ-1 and ALJ-2.

Claimant's Exhibits C-1 through C-11.

Carrier's Exhibits CR-A through CR-I.

DISCUSSION

Claimant sustained a compensable injury on (Date of Injury), that included avascular necrosis of the left hip and thigh, a low back strain and a groin strain. In a Decision and Order dated December 8, 2017, the Division held that Claimant's injury includes depression, psychosis and anxiety. The Administrative Law Judge's decision was upheld by the Division's Appeals Panel, but it is currently on judicial appeal. Claimant has been receiving treatment from EC, M.D., a psychiatrist in (City), Texas, for the psychological components of his compensable injury. Dr. C has been prescribing Risperidone and Clonazepam for Claimant's anxiety, depression and psychosis since at least June 6, 2014. In January of 2018, Dr. C prescribed the medications again, but Carrier refused to preauthorize the payment for the prescriptions. Claimant appealed Carrier's denial and the utilization review agent (URA) on appeal upheld the initial denial. Claimant then appealed Carrier's denial through the Independent Review Organization (IRO) review process and the Texas Department of Insurance (TDI) appointed True Resolutions Inc. as the IRO.

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 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 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 for the care of an individual patient. 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 foregoing statutory guidance, the Division of Workers' Compensation 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. The focus of any health care dispute starts with the health care set out in the ODG.

The IRO report indicates that the review was submitted to a physician qualified in family medicine. In his report, the physician reviewer wrote that the ODG does not support the use of

drugs such as Risperidone as monotherapy, although they may be used as an adjunct to an antidepressant, and that the submitted documentation failed to establish objective findings of the efficacy of the requested Risperidone. The physician reviewer also wrote that benzodiazepines such as Clonazepam are not recommended for long-term use. The physician reviewer noted that there was evidence of the chronic use of Clonazepam with minimal findings of objective efficacy. The physician reviewer cautioned that a tapering program for the Risperidone and Clonazepam should be considered and upheld Carrier's denial of the prescriptions.

A decision issued by an Independent Review Organization (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. (Division Rule 133.308 (s).) In support of his contention that the IRO decision should be overturned, Claimant offered several URA determinations approving earlier prescriptions and Dr. C's January 3, 2018, letters of necessity for the currently requested prescriptions. Dr. C's letters of medical necessity do not set forth a basis founded in evidence-based medicine for the requested prescriptions and he does not discuss why Claimant's situation is an outlier that should be treated as an exception to the ODG recommendations. The mere fact that Carrier had approved earlier prescriptions does not necessitate a finding that the continuing use of the drugs are reasonably required health care for the compensable injury. Without expert medical evidence to show why the preponderance of the evidence based medicine is contrary to the IRO decision, Claimant has failed to meet his burden of proof in this matter.

The Administrative Law Judge 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 as follows:
 - 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 provided workers' compensation insurance with Travelers Indemnity Insurance Company of Connecticut, Carrier.
 - D. The Division has determined that Claimant sustained a compensable injury on (Date of Injury).

- E. True Resolutions, Inc. is the Independent Review Organization appointed by the Texas Department of Insurance to review Carrier's denial of the prescriptions at issue in this matter.
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 Administrative Law Judge's Exhibit Number 2.
 3. The IRO determined that the requested prescriptions for Risperidone 0.25 mg #90 with one refill and Clonazepam 0.5 mg #180 with no refills are not consistent with health care recommended by the ODG and that Carrier's denial of those prescriptions should be upheld.
 4. The preponderance of the evidence-based medicine is not contrary to the IRO decision upholding Carrier's denial of the requested prescriptions for Risperidone and Clonazepam.
 5. The preponderance of the medical evidence did not establish that the recommendations of the ODG do not apply to Claimant's situation and that the requested prescriptions are consistent with generally accepted standards of medical practice recognized in the medical community.

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. Prescriptions for Risperidone 0.25 mg tablets #90 with 1 refill and Clonazepam 0.5 mg #180 with 0 refills are not reasonably required health care for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to prescriptions for Risperidone 0.25 mg tablets #90 with 1 refill and Clonazepam 0.5 mg #180 with 0 refills 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 Section 408.021.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY INSURANCE COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

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

Signed this 6th day of April, 2018.

KENNETH A. HUCHTON
Administrative Law Judge