

MEDICAL CONTESTED CASE HEARING NO. 19014

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 determined that Claimant is not entitled to Fioricet 50mg/300mg/40mg tabs Q day prn #30 with 2 refills for the (Date of Injury), compensable injury.

STATEMENT OF THE CASE

On September 30, 2019, Britt Clark, a Division administrative law judge, held a contested case hearing to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the Claimant/Petitioner is not entitled to Fioricet 50mg/300mg/40mg tabs Q day prn #30 with 2 refills for the (Date of Injury), compensable injury?

PARTIES PRESENT

Claimant/Petitioner appeared and was assisted by EM, ombudsman. Insurance Carrier/Respondent appeared and was represented by AS, attorney.

DISCUSSION

Claimant sustained a compensable injury on (Date of Injury). During the course of his treatment, his treating doctor began prescribing Fioricet for his headaches. The Carrier denied this medication based on the lack of medical necessity for the medication. An IRO was requested, which concluded that the Fioricet was not medically necessary medical treatment for the compensable injury of (Date of Injury). Claimant disagreed with the IRO and relied on the opinion of his treating doctor and the Required Medical Examination (RME) doctor. Carrier argued that the utilization review doctors and the IRO doctor correctly determined that the medication was not medically necessary.

Texas Workers' Compensation Act: Texas Labor Code §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 Labor Code §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 Labor Code §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. Labor Code §413.011(e). Medical services consistent with the medical policies and fee guidelines adopted by the Commissioner are presumed reasonable in accordance with Labor Code §413.017(1).

In accordance with the above statutory guidance, the Division of Workers' Compensation has adopted treatment guidelines by 28 TAC §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 Labor Code. Thus, the focus of any health care dispute starts with the health care set out in the ODG. Also, in accordance with 28 TAC §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."

On the date of this medical contested case hearing, the ODG provides the following with regard to Fioricet:

Not recommended.

See Barbiturate-containing analgesic agents (BCAs).

The ODG provides the following with regard to Barbiturate-containing analgesic agents (BCAs):

Not recommended for chronic pain.

The potential for drug dependence is high and no evidence exists to show a clinically important enhancement of analgesic efficacy of BCAs due to the barbiturate constituents. (*McLean, 2000*) Fioricet is commonly used for acute headache, with some data to support it, but there is a risk of medication overuse as well as rebound headache. (*Friedman, 1987*) The AGS updated Beers criteria for inappropriate medication use includes barbiturates. (*AGS, 2015*)

As noted in the ODG, Fioricet is not recommended for chronic pain. While there is some notation for use for acute headache, there was a lack of medical evidence indicating that this condition was prescribed for acute headaches given Claimant's testimony as to the chronicity of his condition. Moreover, even when used for acute headache, the ODG cautions about the risk of overuse. The utilization review doctors and the IRO doctor relied on the ODG and concluded that this medication is not medically necessary.

Claimant relied on the opinion of his treating doctor, Dr. SW, and her nurse practitioner, PS. Dr. W opined that Fioricet was medically necessary because it is "very effective in relieving [Claimant's] post-traumatic headaches." Dr. W does not reference the ODG or provide evidence-based medical studies to support her opinion. In another letter, Dr. W address that the ODG states that Fioricet is commonly used for acute headache and states "the ODG guidelines do not apply in this situation as [Claimant] has episodic headache therefore Floricet was denied for an erroneous reason." It is unclear how the ODG does not apply in Claimant's situation, and Dr. W does not provide an adequate explanation as to why this medication is medically necessary for episodic headaches. Claimant also cited to the opinion of Dr. WB, the RME doctor, who opined that Claimant's medical treatment is medically necessary based on several examinations. His opinion, which is not specific to Floricet, does not provide sufficient evidence-based medical support regarding the specific medication at issue.

While the undersigned considered Claimant's testimony as the improvement of his headaches from the medication, a qualified expert medical opinion with reference to evidence-based medicine was necessary for Claimant meet his burden of proof on this matter. The required evidence-based medical evidence was lacking in this case. Therefore, the preponderance of the evidence is not contrary to the decision of the IRO that Claimant is not entitled to Fioricet 50mg/300mg/40mg tabs Q day prn #30 with 2 refills.

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 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.
 - B. On (Date of Injury), Employer provided workers' compensation insurance through American Home Assurance Company, Insurance Carrier.

- C. On (Date of Injury), Claimant sustained a compensable injury.
2. Insurance Carrier/Respondent delivered to Claimant/Petitioner a single document stating the true corporate name of Insurance Carrier/Respondent, and the name and street address of Insurance Carrier/Respondent's registered agent, which document was admitted into evidence as Administrative Law Judge's Exhibit Number 2.
 3. Fioricet 50mg/300mg/40mg tabs Q day prn #30 with 2 refills is not health care reasonably required for the compensable injury of (Date of Injury).

CONCLUSIONS OF LAW

1. The Texas Department of Insurance, DWC, 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 Claimant/Petitioner is not entitled to Fioricet 50mg/300mg/40mg tabs Q day prn #30 with 2 refills for the (Date of Injury), compensable injury.

DECISION

The preponderance of the evidence is not contrary to the decision of the IRO that the Claimant/Petitioner is not entitled to Fioricet 50mg/300mg/40mg tabs Q day prn #30 with 2 refills for the (Date of Injury), compensable injury.

ORDER

Insurance Carrier/Respondent is not liable for the benefits at issue in this hearing. Claimant/Petitioner remains entitled to medical benefits for the compensable injury in accordance with Labor Code § 408.021.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY**, and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7th STREET, SUITE 620
AUSTIN, TX 78701-3218**

Signed this 1st day of October, 2019.

BRITT CLARK
Administrative Law Judge