

MEDICAL CONTESTED CASE HEARING NO 25009

Decision

For the reasons discussed, the administrative law judge determines that:

The Division has jurisdiction to determine whether the preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO case number ____) that the claimant is not entitled to Acidophilus Probiotic Blend 1 cap once a day QTY 30 refill 2x, Amitriptyline 50 MG 1 tab once a day at bedtime QTY 30 refill 2x, Diclofenac 1% Topical Gel 15 grams once a day QTY 525 grams refill 2x, Eszopiclone 3mg 1 tab once at bedtime Qty 30.00 Refill 2x, and Etodolac 500mg 1 tab 2 times a day with meals QTY 60.00 refill 2x medications for the compensable injury of (Date of Injury).

The preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO case number ____) that the claimant is not entitled to Acidophilus Probiotic Blend 1 cap once a day QTY 30 refill 2x, Amitriptyline 50 MG 1 tab once a day at bedtime QTY 30 refill 2x, Diclofenac 1% Topical Gel 15 grams once a day QTY 525 grams refill 2x, Eszopiclone 3mg 1 tab once at bedtime Qty 30.00 Refill 2x, and Etodolac 500mg 1 tab 2 times a day with meals QTY 60.00 refill 2x medications for the compensable injury of (Date of Injury).

Statement of the Case

Judge Cole Fulks held a hearing on June 30, 2025, with the record closing on July 9, 2025, to decide the following:

1. Does the Division have jurisdiction to determine whether the preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO case number ____) that the claimant is not entitled to Acidophilus Probiotic Blend 1 cap once a day QTY 30 refill 2x, Amitriptyline 50 MG 1 tab once a day at bedtime QTY 30 refill 2x, Diclofenac 1% Topical Gel 15 grams once a day QTY 525 grams refill 2x, Eszopiclone 3mg 1 tab once at bedtime Qty 30.00 Refill 2x, and Etodolac 500mg 1 tab 2 times a day with meals QTY 60.00 refill 2x medications for the compensable injury of (Date of

Injury)? (The judge added the issue and it was amended to conform to the issue actually litigated.)

2. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO case number ____) that the claimant is not entitled to acidophilus probiotic blend 1 cap once a day QTY 30 refill 2x, Amitriptyline 50 MG 1 tab once a day at bedtime QTY 30 refill 2x, Diclofenac 1% Topical Gel 15 grams once a day QTY 525 grams refill 2x, Eszopiclone 3mg 1 tab once at bedtime Qty 30.00 Refill 2x, and Etodolac 500mg 1 tab 2 times a day with meals QTY 60.00 refill 2x medications for the compensable injury of (Date of Injury)? (Amended to conform to the issue actually litigated.)

The record was re-opened to determine if the issues required amendment. After determining that the issues could be amended to conform to the issue actually litigated, the record was closed on July 9, 2025.

Persons Present

The claimant appeared and was assisted by PA, ombudsman. The insurance carrier was represented by GS, attorney.

Evidence Presented

The following witnesses testified:

For the claimant:	The claimant
For the insurance carrier:	None

The judge admitted the following exhibits into evidence:

Judge's Exhibit:	ALJ-1
Claimant's Exhibits:	C-1 through C-9
Insurance Carrier's Exhibits:	CR-A through CR-D

The claimant affirmed there were 171 pages of Claimant's Exhibits. The insurance carrier affirmed there were 55 pages of Insurance Carrier's Exhibits.

Discussion

On (Date of Injury), the claimant sustained a compensable injury. The claimant continues to receive medical treatment for the compensable injury and the claimant's treating physician prescribed the disputed medications. Preauthorization from the insurance carrier's utilization review agent was requested and the requested medications were denied. The claimant then requested an IRO review of the denial. The IRO upheld the insurance carrier's denial in IRO number _____. The claimant is now appealing that IRO decision.

With regards to whether the Division has jurisdiction to whether the preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO), Texas Labor Code Section 413.0311 provides for the review of medical necessity disputes, as applicable to the appeal of an IRO decision. The Texas Labor Code specifically provides for both network and non-network disputes. After a careful review, it was determined that the Division has jurisdiction to determine the issue in this case.

In IRO Number _____ dated May 15, 2025, the IRO provider upheld the previous adverse determinations and opined that the claimant is not entitled to Acidophilus Probiotic Blend 1 cap once a day QTY 30 refill 2x, Amitriptyline 50 MG 1 tab once a day at bedtime QTY 30 refill 2x, Diclofenac 1% Topical Gel 15 grams once a day QTY 525 grams refill 2x, Eszopiclone 3mg 1 tab once at bedtime Qty 30.00 Refill 2x, and Etodolac 500mg 1 tab 2 times a day with meals QTY 60.00 refill 2x medications for the compensable injury of (Date of Injury).

The insurance carrier argued that the opinion of the IRO provider in number _____ was correct. The claimant disagreed with the adverse determination and pointed to IRO number _____ dated May 15, 2025 (amendments May 16, 2025, and June 11, 2025) where the new IRO provider opined that claimant is entitled to Acidophilus Probiotic Blend 1 cap once a day QTY 30 refill 2x, Amitriptyline 50 MG 1 tab once a day at bedtime QTY 30 refill 2x, Diclofenac 1% Topical Gel 15 grams once a day QTY 525 grams refill 2x, Eszopiclone 3mg 1 tab once at bedtime Qty 30.00 Refill 2x, and Etodolac 500mg 1 tab 2 times a day with meals QTY 60.00 refill 2x medication for the compensable injury of (Date of Injury). She also relied on a June 25, 2025, letter from her treating provider, Ranil Ninala, M.D., to support her position. Of interest, the competing IROs relate to the same services in this case.

The evidence relied upon by the claimant provided a persuasive explanation through the use of evidence-based medical evidence as to how the requirements of the Official Disability Guides (ODG) were met for the requested Acidophilus Probiotic Blend 1 cap once a day QTY 30 refill 2x, Amitriptyline 50 MG 1 tab once a day at bedtime QTY 30 refill 2x, Diclofenac 1% Topical Gel 15 grams once a day QTY 525 grams refill 2x, Eszopiclone 3mg 1 tab once at bedtime Qty 30.00 Refill 2x, and Etodolac 500mg 1 tab 2 times a day with meals QTY 60.00 refill 2x medications. Consequently, the claimant met her burden to show that the requested health care was reasonably required for the compensable injury of (Date of Injury).

The judge considered all the evidence admitted and based the findings of fact and conclusions of law on the evidence, even if the judge did not specifically discuss all the evidence.

Findings of Fact

1. The parties stipulated to the following facts:
 - A. The (City) field office is the proper location for the hearing.
 - B. On (Date of Injury), the claimant was an employee of (Employer).
 - C. On (Date of Injury), the employer provided workers' compensation insurance with New Hampshire Insurance Company.
 - D. On (Date of Injury), the claimant sustained a compensable injury.
 - E. The claimant reached maximum medical improvement on December 28, 2020.
 - F. The claimant's impairment rating is 14%.
2. The insurance carrier delivered to the claimant a document stating the true corporate name of the insurance carrier, the name of the insurance carrier's registered agent, and the registered agent's street address, which was admitted into evidence.
3. The Independent Review Organization (IRO) determined in IRO number ____ that the requested health care services were not medically necessary for the compensable injury of (Date of Injury).

4. In IRO number ____ dated May 15, 2025, (Amendments May 16, 2025, and June 11, 2025) a new IRO provider opined that claimant was entitled to the same requested services that were initially denied.
5. The preponderance of the evidence is contrary to the decision of the initial IRO's determination in number ____ that the claimant was not entitled to the requested health care services.
6. Acidophilus Probiotic Blend 1 cap once a day QTY 30 refill 2x, Amitriptyline 50 MG 1 tab once a day at bedtime QTY 30 refill 2x, Diclofenac 1% Topical Gel 15 grams once a day QTY 525 grams refill 2x, Eszopiclone 3mg 1 tab once at bedtime Qty 30.00 Refill 2x, and Etodolac 500mg 1 tab 2 times a day with meals QTY 60.00 refill 2x medications is 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 Division has jurisdiction to determine whether the preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO number ____) that the claimant is not entitled to Acidophilus Probiotic Blend 1 cap once a day QTY 30 refill 2x, Amitriptyline 50 MG 1 tab once a day at bedtime QTY 30 refill 2x, Diclofenac 1% Topical Gel 15 grams once a day QTY 525 grams refill 2x, Eszopiclone 3mg 1 tab once at bedtime Qty 30.00 Refill 2x, and Etodolac 500mg 1 tab 2 times a day with meals QTY 60.00 refill 2x medications for the compensable injury of (Date of Injury).
4. The preponderance of the evidence is contrary to the decision in IRO number ____ that the claimant is not entitled to Acidophilus Probiotic Blend 1 cap once a day QTY 30 refill 2x, Amitriptyline 50 MG 1 tab once a day at bedtime QTY 30 refill 2x, Diclofenac 1% Topical Gel 15 grams once a day QTY 525 grams refill 2x, Eszopiclone 3mg 1 tab once at bedtime Qty 30.00 Refill 2x, and Etodolac 500mg 1 tab 2 times a day with meals QTY 60.00 refill 2x medications for the compensable injury of (Date of Injury).

Order

The insurance carrier is ordered to pay benefits pursuant to this decision. The insurance carrier shall pay any accrued but unpaid income benefits in a lump sum with interest as provided by law.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE INSURANCE 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, TEXAS 78701-3218**

Signed on July 16, 2025.

Cole Fulks
Administrative Law Judge