MEDICAL CONTESTED CASE HEARING NO 11168
M5-11-33594-01

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 held on July 22, 2011 to decide the following disputed issue:

> Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to reimbursement for the prescription medications Hydrocodone, Lunesta and Lorazepam charged on January 26, 2010 through October 5, 2010 for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared, by telephone, and was assisted by IE, ombudsman.
Respondent/Carrier appeared and was represented by WS, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury to his lumbar spine on (Date of Injury) when he was using a drill and twisted to the left. Claimant has undergone treatment in the form of an ESI, physical therapy, a TENS unit, pain medications, acupuncture, and he completed a pain management program. Claimant underwent spinal surgery on May 18, 2011. Claimant was prescribed Hydrocodone for pain, Lunesta for anxiety and sleep and Lorazepam for anxiety. The Claimant paid out of pocket for these prescriptions for the period from January 26, 2010 through October 5, 2010. The Carrier denied payment for these medications and the request was referred to an IRO, identified as board certified in anesthesiology and pain management, who determined that the medications were not medically necessary pursuant to the recommendations in the Official Disability Guidelines (ODG).

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."

ODG Recommendations:

CRITERIA FOR USE OF OPIOIDS

Long-term Users of Opioids (6-months or more)

1) Re-assess

(a) Has the diagnosis changed?
(b) What other medications is the patient taking? Are they effective, producing side effects?
(c) What treatments have been attempted since the use of opioids? Have they been effective? For how long?
(d) Document pain and functional improvement and compare to baseline. Satisfactory response to treatment may be indicated by the patient's decreased pain, increased level of function, or improved quality of life. Information from family members or other caregivers should be considered in determining the patient's response to treatment. Pain

should be assessed at each visit, and functioning should be measured at 6-month intervals using a numerical scale or validated instrument.
(e) Document adverse effects: constipation, nausea, vomiting, headache, dyspepsia, pruritis, dizziness, fatigue, dry mouth, sweating, hyperalgesia, sexual dysfunction, and sedation.
(f) Does the patient appear to need a psychological consultation? Issues to examine would include motivation, attitude about pain/work, return-to-work, social life including interpersonal and work-related relationships.
(g) Is there indication for a screening instrument for abuse/addiction. See Substance Abuse Screening.

2) Strategy for maintenance

(a) Do not attempt to lower the dose if it is working
(b) Supplemental doses of break-through medication may be required for incidental pain, end-of dose pain, and pain that occurs with predictable situations. This can be determined by information that the patient provides from a pain diary or evaluation of additional need for supplemental medication.
(c) The standard increase in dose is 25 to 50% for mild pain and 50 to 100% for severe pain (Wisconsin)

3) Visit Frequency

(a) There is no set visit frequency. This should be adjusted to the patient's need for evaluation of adverse effects, pain status, and appropriate use of medication, with recommended duration between visits from 1 to 6 months.

ODG Recommendations for Sedatives:

Recommend that treatment be based on the etiology, with the medications recommended below. See Insomnia. Pharmacological agents should only be used after careful evaluation of potential causes of sleep disturbance. Failure of sleep disturbance to resolve in a 7 to 10 day period may indicate a psychiatric and/or medical illness. (Lexi-Comp, 2008) Primary insomnia is generally addressed pharmacologically. Secondary insomnia may be treated with pharmacological and/or psychological measures. The specific component of insomnia should be addressed: (a) Sleep onset; (b) Sleep maintenance; (c) Sleep quality; & (d) Next-day functioning.
Pharmacologic Treatment: There are four main categories of pharmacologic treatment: (1) Benzodiazepines; (2) Non-benzodiazepines; (3) Melatonin receptor agonists; & (4) Over-the-counter medications. The majority of studies have only evaluated short-term treatment (i.e., ≤ 4 weeks) of insomnia; therefore more studies are necessary to evaluate

the efficacy and safety of treatments for long-term treatment of insomnia. In 2007, the FDA requested that manufacturers of all sedative-hypnotic drugs strengthen product labeling regarding risks (i.e., severe allergic reactions and complex sleep-related behaviors, such as sleep driving). It is recommended that treatments for insomnia should reduce time to sleep onset, improve sleep maintenance, avoid residual effects and increase next-day functioning. (Morin, 2007) (Reeder, 2007) (1) Benzodiazepines: FDA-approved benzodiazepines for sleep maintenance insomnia include estazolam (ProSom®), flurazepam (Dalmane®), quazepam (Doral®), and temazepam (Restoril®). Triazolam (Halcion®) is FDA-approved for sleep-onset insomnia. These medications are only recommended for short-term use due to risk of tolerance, dependence, and adverse events (daytime drowsiness, anterograde amnesia, next-day sedation, impaired cognition, impaired psychomotor function, and rebound insomnia). These drugs have been associated with sleep-related activities such as sleep driving, cooking and eating food, and making phone calls (all while asleep). Particular concern is noted for patients at risk for abuse or addiction. Withdrawal occurs with abrupt discontinuation or large decreases in dose. Decrease slowly and monitor for withdrawal symptoms. Benzodiazepines are similar in efficacy to benzodiazepine-receptor agonists; however, the less desirable side-effect profile limits their use as a first-line agent, particularly for long-term use. (Holbrook, 2000) (Ramakrishnan, 2007) (Buscemi, 2007) (Morin, 2007) (Wafford, 2008) (Benca, 2005).

The Claimant testified that he was taking the Hydrocodone for pain, Lunesta to help him sleep and the Lorazepam for anxiety. Claimant testified that he did not take the Lunesta on a regular basis and that the anxiety and depression he was experiencing was a result of his compensable injury. A Decision and Order dated July 3, 2010 determined that the claimed depression, anxiety and adjustment disorder were not part of the compensable injury. The Claimant offered medical records from his treating surgeon, Dr. S, dated between May 18, 2011 and June 28, 2011 which indicate that Dr. S was prescribing Hydrocodone, Lorazepam and Zanaflex post-spinal surgery and a "peer to peer" call on April 8, 2011 with Dr. B regarding the necessity for Hydrocodone and Lorazepam pre-surgery; however, the records in evidence do not address the necessity for the medications for the period from January 26, 2010 through October 5, 2010. The Claimant failed to provide an evidence-based medical opinion sufficient to overcome the determination of the IRO; therefore, the preponderance of the evidence-based medical evidence is not contrary to the IRO decision that Claimant is not entitled to reimbursement for the prescription medications Hydrocodone, Lunesta, Lorazepam charged on January 26, 2010 to October 5, 2010 for the compensable injury of (Date of Injury).

Even though all the evidence presented may not have been discussed in detail, 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 (Date of Injury), Claimant was the employee of (Employer).
   C. Claimant sustained a compensable injury on (Date of Injury).

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. Claimant does not meet the requirements of the ODG for the prescription medications Hydrocodone, Lunesta and Lorazepam for the period from January 26, 2010 through October 5, 2010 and he failed to present other evidence based medicine sufficient to overcome the determination of the IRO.

4. Prescription medications Hydrocodone, Lunesta and Lorazepam were not health care reasonably required for Claimant's compensable injury of (Date of Injury) for the period of January 26, 2010 through October 5, 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 based medical evidence is not contrary to the decision of the IRO that the prescription medications Hydrocodone, Lunesta and Lorazepam was not health care reasonably required for Claimant's compensable injury of (Date of Injury) for the period from January 26, 2010 through October 5, 2010.

DECISION

Claimant is not entitled to reimbursement for prescription medications Hydrocodone, Lunesta and Lorazepam charged on January 26, 2010 through October 5, 2010 for his 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 §408.021.

The true corporate name of the insurance carrier is **ACE FIRE UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is:

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TX 75201

Signed this 22nd day of July, 2011.

Carol A. Fougerat
Hearing Officer