

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E603975

HENRY HAMILTON

CLAIMANT

GREGORY TRUCKING

RESPONDENT

HOUSTON GENERAL INSURANCE,
INSURANCE CARRIER

RESPONDENT

OPINION FILED OCTOBER 6, 2003

Prehearing conference by ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG, in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by DIANE GRAHAM, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on July 15, 2003, in Fort Smith, Arkansas. A pre-hearing order had been entered in this claim on March 28, 2003. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Immediately prior to the commencement of the hearing, two additional stipulations were entered. A copy of the pre-hearing order with those amendments noted thereon, was made Commission's Exhibit No. I to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. The prior Opinion of December 10, 1996, and February 17, 1999, have become final and are res judicata of all issues raised and addressed therein.
2. There was no managed care agreement, at any time, between the respondent and any certified MCO.
3. Dr. Terry Brackman has refused to submit to deposition for the amount provided by Rule 30 of the Commission.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. The claimant's entitlement to the payment of expenses incurred for specific

This purpose or goal is not limited to active medical treatment intended to resolve or improve the actual physical damage produced by the compensable injury, but may also include services directed solely toward providing relief of chronic symptoms related to the compensable injury.

A history of the present case reflects that the claimant has experienced difficulties with his lower back for many years, even prior to his compensable injury on May 5, 1995. According to his testimony, he has had at least three separate surgeries to his back, one of which was clearly prior to his current compensable injury. The last of these surgeries appears to have occurred on November 2, 1995. Following this surgery, the claimant continued to experience chronic pain involving his lower back and lower extremities. Prior to his last surgery, the claimant received conservative treatment modalities from Dr. Kale, primarily in the form of epidural steroid injections. Approximately three years prior to the hearing, the claimant again came under the treatment of Dr. Kale for his chronic pain complaints. He has been under continuous treatment by Dr. Kale, until Dr. Kale's license was suspended.

It appears from the evidence presented, that Dr. Kale's course of treatment for the claimant's chronic pain complaints has involved the prolonged use of massive doses of rather strong narcotics, primarily Oxycontin and Roxicodone. In addition to these primary narcotics, Dr. Kale was also prescribing various other medications, such as Amitriptyline, Effexor, Clorez Dipot, Metodopramide, Axid, and Oxyir. The claimant testified that when Dr. Kale involuntarily ceased treating him (Dr. Kale's license was temporarily suspended), he was taking six 80 mg. Oxycontin three times a day. When this no longer provided relief, he would also take his prescribed "break through medication" (apparently the Roxicodone).

When Dr. Kale reluctantly closed his practice, the claimant returned to Dr. Zufari for follow up. However, when Dr. Zufari refused to prescribe the same medication regimen the claimant had been provided by Dr. Kale, the claimant sought treatment elsewhere.

The claimant then began treatment with a Dr. Brackman. Dr. Brackman is an osteopathic physician operating a family practice clinic. His expertise in the area of chronic pain treatment is unknown. However, it appears that Dr. Brackman reinstated the claimant's prescription for Oxycontin, but may have reduced the dosage (according to the claimant's testimony his dosage of Oxycontin was reduced from the 1440 mg. per day prescribed by Dr. Kale to a mere 1080 mg. per day). It further appears that the actual prescribing of this pain medication was spread out by Dr. Brackman over his various associates in his family practice clinic, a curious procedure.

Subsequently, the claimant was also seen by a Dr. Raymond F. Sorensen of the Pain Institute of Tulsa. This treatment was obtained through referral from Dr. Brackman's office. It is difficult to ascertain from Dr. Sorensen's handwritten notation exactly what treatment he has provided or recommended to the claimant.

While massive dosages of powerful narcotics, such as Oxycontin, would clearly act to significantly reduce any pain symptoms the claimant may have experienced, the prolonged continuous use of such massive doses of powerful narcotics is not generally recognized by the medical community as being appropriate treatment for long term chronic pain management. In fact, it is generally accepted that over a relatively brief period of time the therapeutic effectiveness of such powerful narcotics begins to lessen, requiring more and more massive dosage to accomplish the same degree of pain relief. Ultimately, all that is left is the addiction to the medication, itself.

In the present case, the claimant testified that the medication provided him by Dr. Kale only reduced his pain from a level of 8 or 9 to a level of 2. Clearly, 1440 mg. of Oxycontin over a 24 hour period would normally be expected to do more than this, particularly when large doses of Roxicodone are added. In fact, such a massive dosage of narcotics would be reasonably expected to prevent the claimant from feeling anything at all.

It is obvious from the evidence presented that the claimant now has a substantial addiction to these narcotics. This fact is best demonstrated by the claimant's actions in essentially "firing" Dr. Zufari, Dr. Fisher, and other physicians who refused to provide him with the large doses of narcotics he now desires and "needs". It is also apparent in his testimony, wherein he states that he wants this Commission to appoint a new treating physician, but only one who will provide him with large doses of narcotics three times per day and additional narcotics for "break through" purposes.

I have been involved in other similar cases where Dr. Kale was the treating physician. As a result, I am aware of his theory that chronic pain can be alleviated by using massive doses of strong narcotics to "break the pain cycle". This theory has not found acceptance by the general medical community. However, it is apparent in this case that these massive doses of strong narcotics have not "broken" the claimant's "pain cycle" after a period of approximately three years. Clearly, if this treatment modality had a reasonable expectation of accomplishing this desired goal, it would have done so within this period of time. Even medically appropriate treatment which initially has a reasonable expectation of success, loses this expectation when it fails to successfully accomplish its purpose within a reasonable period of time.

In summary, I find the claimant has failed to prove that the massive doses of Oxycontin and Roxicodone prescribed over an extended period of time by Dr. Kale and Dr. Zufari constitute reasonably necessary medical services. Thus, liability to any unpaid expenses for these narcotics cannot be imposed on the respondents herein.

This leaves the remaining medications prescribed by Dr. Kale and Dr. Zufari, in the form of Amitriptyline, Effexor, Cloraz Dipot, Metodopramide, Axid, and Oxyir. Oxyir is simply a brand name for Oxycodone Hydrochloride. It is a central nervous system depressant and essentially the same as Oxycontin and Roxicodone. Cloraz Dipot is actually Clorazepate Dipotassium. It, too, is a central nervous system depressant.

Curiously, it is recommended that it not be prescribed in conjunction with any other central nervous system depressants, such as Oxycontin, Roxicodone, and Oxyir. It is an anti-anxiety medication, but has addictive effects. Effexor is another anti-anxiety and anti-depressant. Amitriptyline is an anti-depressant with sedative effects. Metodopramide is used for the short term treatment of gastroesophageal reflux. Axid is used in both the short term and long term treatment of ulcers and esophagitis.

Anti-depressants, such as Amitriptyline and Effexor are commonly recognized by the general medical community as an acceptable long term treatment modality to provide relief in cases of chronic pain, rather than the long term use of narcotics or even non steroidal anti-inflammatories.

After consideration of the evidence presented, I find that the claimant has failed to prove that the prescribed medications Oxyir and Cloraz Dipot constitute reasonably necessary medical services associated with his compensable injury. The reasons for this finding are essentially the same as those heretofore stated for the continued use of the Oxycontin and Roxicodone.

I further find that the claimant has failed to prove by the greater weight of the credible evidence that the Metodopramide and Axid were necessitated by or related to his compensable injury. Thus, he has failed to prove that these medications represent reasonably necessary medical services associated with his compensable injury.

In regard to the Amitriptyline and the Effexor, I find that the long term use of this medication does constitute reasonably necessary medical services associated with the claimant's compensable injury. Thus, the expenses incurred by the claimant for obtaining this medication is properly the liability of the respondents herein, pursuant to Ark. Code Ann. §11-9-508.

II. CHANGE OF PHYSICIANS

The remaining issue concerns the claimant's request for a change of physicians. There is no indication that the claimant has previously received a change of physicians, pursuant to Ark. Code Ann. §11-9-514. Thus, he is entitled to his one time change of physicians provided by this subsection.

Based upon the evidence presented, it appears that any medical treatment the claimant may now require for his compensable injury would be in the form of chronic pain management and possible narcotic addition or withdrawal. Therefore, it would be appropriate to grant the claimant a change of physicians to a specialist in this field. As the respondents are not a member of any certified MCO, this chronic pain specialist need only be associated with any MCO certified by this Commission. I find that the appropriate physician to provide the claimant with continued treatment for his compensable injury is Dr. William Money, of Fayetteville, Arkansas. Dr. Money is a member of a MCO certified by this Commission (i.e. TyNet).

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On May 5, 1995, the relationship of employee-employer-carrier existed between the parties.
3. On May 5, 1995, the claimant sustained a compensable injury to his low back or lumbar spine.
4. The prior Opinions of December 10, 1996, and February 17, 1999, have become final and are res judicata of all issues raised and addressed therein.
5. The claimant has proven by the greater weight of the credible evidence that outstanding expenses incurred for medication in the form of Amitriptyline and Effexor constitute expenses incurred for reasonably necessary medical

services. Pursuant to Ark. Code Ann. §11-9-508, these expenses are the liability of the respondents herein, subject to the medical fee schedule established by this Commission.

6. The claimant has failed to prove by the greater weight of the credible evidence that any of the outstanding medical expenses for medication in the form of Oxycontin, Roxicodone, Oxyir, Cloraz Dipot, Metodopramide, and Axid constitute expenses incurred for reasonably necessary medical services, as that term is used in the Act. Therefore, the respondents are not liable for any outstanding expenses incurred for these medications.
7. The claimant is entitled to his one time change of physicians, pursuant to Ark. Code Ann. §11-9-514, to Dr. William Money, a chronic pain management specialist in Fayetteville, Arkansas. Dr. Money is a member of an MCO certified by this Commission (i.e. TyNet).
8. The respondents are not a member of any MCO, certified by this Commission.
9. The respondents have controverted the claimant's entitlement to the payment of any expenses incurred for medication that were outstanding and unpaid as of the date of hearing.
10. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on any of these controverted expenses herein awarded.

ORDER

The respondents shall be liable for any outstanding expenses incurred by the claimant in obtaining the prescription drugs Amitriptyline and Effexor. Such liability shall be subject to the medical fee schedule established by this Commission.

The respondents shall pay to the claimant's attorney one-half of the maximum statutory attorney's fee on these controverted medical expenses herein awarded. The

claimant's attorney is hereby authorized to receive from any sums which may hereinafter become due and payable to the claimant, the remaining one-half of this maximum statutory attorney's fee.

The claimant is hereby authorized to obtain at the respondents expense (subject to the medical fee schedule established by this Commission) any additional reasonably necessary medical services for his compensable injury from Dr. William Money, a chronic pain management specialist in Fayetteville, Arkansas.

For the reasons heretofore set forth in this Opinion, the claimant's request for the payment of any outstanding expenses incurred in obtaining the medications Oxycontin, Roxicodone, Oxyir, Cloraz Dipot, Metodopramide, and Axid should be and hereby is denied.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge