

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. E603265**

**RONNY L. BRYAN, EMPLOYEE**

**CLAIMANT**

**GEORGIA-PACIFIC CORP.,  
SELF-INSURED EMPLOYER**

**RESPONDENT**

**SEDGWICK CLAIMS MANAGEMENT, INC., TPA**

**RESPONDENT**

**OPINION FILED JUNE 24, 2005**

This matter comes before Administrative Law Judge J. Mark White on the record.

Claimant represented by Mr. Greg Giles, Attorney at Law, Texarkana, Arkansas.

Respondents represented by Mr. Mark Peoples, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

Pursuant to the Prehearing Order filed May 9, 2005, the parties agreed to submit consideration of this claim on a stipulated record. The record is comprised of the Prehearing Order filed May 9, 2005; the letter brief and attached exhibits submitted by the claimant dated June 2, 2005; and the brief and attached exhibits submitted by the respondents dated June 9, 2005.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee/self-insured employer relationship existed at all relevant times, including February 23, 1996; that on February 23, 1996, the claimant sustained a compensable injury to his back; that

respondents accepted the February 23, 1996, injury as compensable and paid benefits; and that the claimant was found to be permanently totally disabled as of January 1, 1999, in a Full Commission opinion filed November 19, 2003, which decision is *res judicata*.

The parties agreed that the issues to be presented were whether additional medical treatment, specifically medication prescribed by the claimant's physician, is reasonably necessary in connection with the compensable injury; and controversion and attorney's fees.

The claimant contends that the medical treatment being prescribed by Dr. William Ackerman is reasonable and necessary; and that respondents should be ordered to pay for this additional medical treatment.

Respondents contend that claimant has been and is being provided all benefits and compensation to which he is entitled relative to his compensable back injury; that respondents question the appropriateness of Dr. Ackerman's prescribing of Actiq and have undertaken to clarify whether an alternative medication is more appropriate; and that an independent medical examination may be appropriate under these circumstances, and pursuant to Ark. Code Ann. § 11-9-511, respondents ask the Commission to direct the claimant to submit to such IME with a physician of the Commission's designation.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include the parties' briefs, documentary exhibits, and other matters properly before the Commission, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has proven by a preponderance of the evidence that Dr. Ackerman's prescription of Actiq is reasonably necessary in connection with the compensable injury.
4. The claimant has proven by a preponderance of the evidence that Dr. Ackerman's prescription of AndroGel is reasonably necessary in connection with the compensable injury.
5. The respondents have failed to prove by a preponderance of the evidence that an independent medical evaluation is reasonably necessary.
6. The respondents have controverted all benefits sought herein.

## DISCUSSION

In 1996, the claimant sustained a compensable injury to his back. He was eventually found by the Commission to be permanently totally disabled as of January 1, 1999. His treating physician, Dr. William Ackerman, has prescribed (among other drugs) AndroGel and Actiq, and the respondents now object to these two prescriptions as not reasonably necessary.

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. ARK. CODE ANN. § 11-9-508(a). What constitutes reasonably necessary medical treatment is a question of fact. *Ark. Dept. of Correction v. Holybee*, 46 Ark. App. 232, 878 S.W.2d 420 (1994).

The respondent's objections appear to be based in a prescription drug review performed by an outside company. The author of the review, pharmacist Roberta Tyler, has not seen the claimant. Though her report is dated August 9, 2004, the most recent medical records Tyler reviewed were from six months earlier, in March 2004. The earliest records Tyler reviewed were from October 2001, and she reviewed records from only two physicians – Dr. Ackerman and Dr. Reginald Rutherford.

Tyler writes:

Clinical assessment of this patient's drug therapy has been complicated by the incomplete nature of the

provided medical history. There is no description of the Workers' Compensation accident or the injuries that were incurred as a result of it. In fact, no records are provided for a period of 5 years immediately following the date of the accident.

Tyler questions Dr. Ackerman's prescription of Actiq as follows:

Mr. Bryant has been prescribed Actiq, a powerful short-acting narcotic painkiller since at least 9/03 according to Dr. Ackerman's treatment records. It is commonly accepted practice in pain management protocols to use a long-acting opiate analgesic to help control chronic pain and to add a second, short-acting, agent on a prn basis to treat occasional breakthrough pain. It should also be noted that Actiq® is indicated only for the management of breakthrough cancer pain in patients with malignancies who are **already receiving and who are tolerant to opioid therapy for their underlying persistent cancer pain.** There are no studies to date which document the safety of the use of Actiq for other than cancer pain. Furthermore, there are many equally effective and much less expensive alternatives available which do not appear to have been tried for managing this patient's breakthrough pain.

(emphasis in original, citations omitted) Tyler recommends "consultation" with Dr. Ackerman to reevaluate the continued need for Actiq and to consider the use of less expensive alternatives. There is no evidence in the record to show that respondents ever engaged in this recommended consultation with Dr. Ackerman.

In a letter of August 31, 2004, to the claimant's attorney, Dr. Ackerman defended his prescription for Actiq, saying the claimant "has had a work related

injury, has had surgery, and will require opioid medications long term for his failed back syndrome." He opined that Actiq "is required for breakthrough pain to be used when he increases his activities. Both of these drugs are related to his case."

Tyler's objections to the Actiq prescription appear to be, essentially, that (a) it is expensive, and (b) it is not proven effective other than for cancer patients. Dr. Ackerman, though, has flatly said that Actiq is needed for the claimant's work injury. I place greater weight on the opinion of Dr. Ackerman, in that his opinion is based on his personal, specific experience with this claimant and with other patients, while Tyler's opinion appears to be based solely on generic research. Therefore, I find that the claimant has proven by a preponderance of the evidence that Dr. Ackerman's prescription of Actiq is reasonably necessary in connection with the compensable injury.

Tyler does not specifically mention AndroGel, the other prescription made by Dr. Ackerman, though she does object to the prescription of other testosterone replacement medications as unrelated to the claimant's work injury. Dr. Ackerman, however, explains that a side effect of Actiq is "a decrease in testosterone levels" which in turns results in "an increase in incidents of osteoporosis and depression and decreases the efficacy of opioids within the central nervous system." Nowhere in her report does Tyler address this explanation of Dr. Ackerman, nor does any

evidence in the record contradict Dr. Ackerman's opinions in this regard. Given Dr. Ackerman's explanation, it is clear that the use of AndroGel is related to, and is required by, the use of Actiq. Therefore, given my finding above that the prescription of Actiq is reasonably necessary, I find that the claimant has proven by a preponderance of the evidence that Dr. Ackerman's prescription of AndroGel is reasonably necessary in connection with the compensable injury.

The respondents have asked in the alternative that the Commission order an independent medical evaluation to consider Dr. Ackerman's prescriptions. The Workers' Compensation Act grants the Commission power to order physical examination or treatment by a physician of the Commission's choosing at a location reasonably convenient to the claimant. ARK. CODE ANN. § 11-9-511. The granting of an IME is not automatic; the threshold question is whether it is reasonable and necessary. *King v. Willow Oaks Acres*, A.W.C.C. E903202 (Jan. 25, 2001). As is clear from the discussion above, I am persuaded there is sufficient evidence in the record to decide this claim without the input of a second physician. Therefore, I find that the respondents have failed to prove by a preponderance of the evidence that an independent medical evaluation is reasonably necessary.

## **AWARD**

The claimant has proven by a preponderance of the evidence that Dr. Ackerman's prescriptions of Actiq and AndroGel are reasonably necessary in connection with the compensable injury. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein, including payment of all outstanding bills for these prescriptions.

The claimant's attorney, Mr. Greg Giles, is hereby awarded the maximum statutory attorney's fee on the entire Award pursuant to Ark. Code Ann. § 11-9-715 as it applies to injuries sustained prior to July 1, 2001.

**IT IS SO ORDERED.**

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**HON. J. MARK WHITE**  
Administrative Law Judge