

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. E911072/F100246

TAMMY MCCULLOUGH, Employee	CLAIMANT
FAMILY DOLLAR, Employer	RESPONDENT
TRAVELERS INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED JULY 20, 2005

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant appearing *pro se*.

Respondents represented by PHILLIP CUFFMAN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 13, 2005, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on April 7, 2005, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The prior opinions in this case are final.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Whether respondent is liable for payment of certain medications including Ambien, Emitrex, antidepressants, Xanax, or any other medication prescribed by Dr. Beachy besides Loracet Plus, Bextra, and Protonics.

The claimant contends that respondent is liable for payment of unpaid medical prescriptions from Dr. Beachy.

The respondents contend that unpaid prescriptions are not related to the

compensable injury.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on April 7, 2005, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that respondent is liable for payment of certain medications including Ambien, Emitrex, antidepressants, Xanax, or any other medications prescribed by Dr. Beachy other than Bextra, Loracet Plus, and Protonix.

#### FACTUAL BACKGROUND

This claim has been the subject of two prior hearings. The parties stipulated prior to the first hearing that claimant had suffered a compensable injury to her back while employed by respondent on June 21, 1999. Following a hearing I entered an opinion filed August 23, 2002 finding that claimant had met her burden of proving by a preponderance of the evidence that she was entitled to additional temporary total disability benefits beginning August 26, 2000, and continuing through a date yet to be determined. That opinion was subsequently affirmed by the Full Commission in an opinion filed May 22, 2003.

A second hearing was conducted on May 10, 2004 on a number of issues. The first issue was whether claimant had suffered another compensable injury to her low back in

April 2000. Also at issue were claimant's compensation rate, unpaid medical benefits, compensability of a left lower leg condition, and an attorney fee. In an opinion filed June 15, 2004, I found that claimant had failed to prove by a preponderance of the evidence that she suffered a compensable injury to her low back in April 2000. I also found that claimant had failed to prove by a preponderance of the evidence that her left lower leg condition was compensable. Finally, I noted that as with all other compensable injuries, the respondent would remain liable for all reasonable and necessary medical treatment provided in connection with the claimant's June 21, 1999 compensable back injury. This would include prescription expenses. The June 15, 2004 opinion was not appealed to the Full Commission.

The current claim involves payment of prescription medication which has been prescribed by Dr. Beachy. The respondent has accepted liability for payment of some medication prescribed by Dr. Beachy, including Loracet Plus, Bextra, and Protonics (or Prevacid). However, respondent has not accepted liability for payment of medications including Ambien, Emitrex, Xanax, or other antidepressants and medications prescribed by Dr. Beachy. Claimant has filed this claim requesting payment for these medications.

### ADJUDICATION

A respondent is required to provide medical services and treatment that are reasonable necessary for treatment of a compensable injury. A.C.A. §11-9-508. This would include prescription medication. What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *White Consolidated Industries v. Gallaway*, 74 Ark. App. 13, 45 S.W. 3d 396 (2001).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that the unpaid prescription medication is reasonable and

necessary and causally related to her compensable low back injury.

In connection with the hearing the respondent took the deposition of Dr. Beachy on November 18, 2004, at which time he discussed the medications which he prescribed for the claimant. First, Dr. Beachy indicated that he had prescribed Bextra, an inflammatory medication. He also stated that claimant had been prescribed Loracet Plus which is a narcotic pain medication. According to Dr. Beachy's testimony, both of these prescriptions are for treatment of the claimant's compensable back injury. In addition, Dr. Beachy also testified that he has prescribed Prevacid and/or Protonics to prevent acid irritation of the stomach and reflux caused by the use of Bextra. The respondent has accepted liability for payment of all of these medications. Dr. Beachy also testified that he was prescribing other medications, primarily antidepressants, for treatment of anxiety and depression. These medications included Tranzene, an anti-anxiety medication; Effexor XR, another antidepressant; Ambien, for sleep; and Emitrex for migraine headaches.

According to Dr. Beachy's deposition testimony, these medications are not related to claimant's compensable back injury.

Q. Now the other things - Emitrex, Tranzene, Effexor, and Ambien - were given for conditions unrelated to this [back injury]?

A. That's correct.

Dr. Beachy in his deposition testimony stated that on February 10, 2004 the claimant was having quite a bit of stress related to events in her life and as a result he prescribed an antidepressant. Furthermore, at the time of his office visit with claimant on November 5, 2004, claimant's visit was primarily related to "significant stress and depression related to her daughter's injury in Iraq."

During claimant's questioning of Dr. Beachy she asked questions involving potential side effects of the medication prescribed by him for treatment of claimant's back. Dr.

Beachy did acknowledge that some of those possible side effects included anxiety and/or depression. However, Dr. Beachy did not testify that claimant's anxiety and/or depression was caused by the medication for her back condition. Instead, Dr. Beachy testified that the medications were prescribed for an unrelated condition.

Finally, in order for claimant's anxiety and/or depression to be compensable, claimant would have to comply with A.C.A. §11-9-113. Pursuant to that statute no mental injury or illness is compensable unless it is diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most recent issue of the *Diagnostic and Statistical Manual of Mental Disorders*. Here, Dr. Beachy is a general practitioner, not a licensed psychiatrist or psychologist. Thus, even if Dr. Beachy had prescribed these medications for a mental injury or illness which he attributed to claimant's compensable injury, his opinion would not be sufficient to satisfy the requirements of compensability codified at A.C.A. §11-9-113.

In summary, Dr. Beachy testified that the Emitrex, Tranzene, Effexor XR, and Ambien were prescribed for a condition which was unrelated to claimant's compensable back injury. Although those are possible side effects of medication claimant was prescribed for her compensable back injury, Dr. Beachy did not opine that claimant's anxiety and/or depression was caused by side effects of medication as opposed to other events such as claimant's daughter's injury in Iraq. Finally, pursuant to A.C.A. §11-9-113 in order for a mental injury or illness to be compensable, there must be a diagnosis by a licensed psychiatrist or psychologist. Dr. Beachy is not a licensed psychiatrist or psychologist. Accordingly, for the foregoing reasons, I find that claimant has failed to prove by a preponderance of the evidence that respondent is liable for payment of any prescription medication prescribed for her migraine headaches, anxiety, and/or depression. Respondent is liable only for payment of medical prescriptions prescribed for treatment of her back condition; this includes Loracet Plus, Bextra, and Protonics.

ORDER

Claimant has failed to prove by a preponderance of the evidence that respondent is liable for medications prescribed by Dr. Beachy other than Loracet Plus, Bextra, and Protonics. Therefore, her claim for payment of these additional medications is hereby denied and dismissed.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE