

J. T. v. Fletcher Allen Health Care

(May 9, 2008)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

J. T.

Opinion No. 17-08WC

v.

By: Jane Gomez-Dimotsis
Hearing Officer

Fletcher Allen Health Care

For: Patricia Moulton Powden
Commissioner

State File No. S-51099

OPINION AND ORDER

APPEARANCES:

William B. Skiff, Esq. for the Claimant
Wesley Lawrence, Esq. for the Defendant

ISSUE:

At the hearing, Defendant agreed that two of the medications originally challenged as unnecessary and unreasonable for Claimant's condition were found to be reasonable and compensable. The only remaining issue for decision is whether Claimant's use of medication, Protonix, is reasonable and necessary for her work related condition and therefore, compensable.

EXHIBITS:

Joint Medical Exhibit

CLAIM:

Medical payments related to Claimant's obtaining Protonix (or other proton pump inhibitors ordered by her physician) and the cost of the medication as well as any interest due. Attorney's fees and Costs are also requested.

FINDINGS OF FACT:

1. At the hearing, Defendant for the first time acknowledged that the Claimant's use of Darvocet and Lyrica were causally related to the work injury and compensable.
2. Prior to the hearing, the Defendant had denied payment for all three drugs; Darvocet, Lyrica and Protonix. This denial of compensability continued until the day of the hearing when the Defendant acknowledged the compensability of Darvocet and Lyrica and their relationship to the work injury. Defendant continued to contest the compensability of the proton pump inhibitor medication, Protonix.
3. Claimant is a 60 year old woman who worked at Fletcher Allen for 16 years as a receptionist and as a representative for patient financial services. In May of 2001, Claimant began to experience problems with both of her elbows. She was diagnosed with bi-lateral epicondylitis.
4. She had surgery on April 9, 2002 which was not successful on her right elbow and therefore, chose not have the surgery on her left elbow.
5. As a result of her injuries, and the failure of surgery to correct them, the Claimant had spasms and pain in both elbows. After surgery she did return to work on a part-time basis. In August of 2003, however, the Claimant was taken out of work by Dr. Michael Benoit due to the pain in her arms. The Claimant then had a fairly long and complicated course of medical treatment and physical therapy.
6. Claimant was placed at medical end result for her injuries in September of 2003. Despite being at "medical end" the Claimant still experienced pain.
7. Dr. Peter Gunter, the Claimant's primary care provider, continued to care for her after surgery and physical therapy. The Claimant testified that she currently takes three medications for her work related injury; Lyrica, Darvocet and Protonix.
8. The Claimant credibly testified that Lyrica relieves a lot of the pain in her elbows and improves function. She testified she only uses Darvocet for pain on an "as needed" basis for when she "over does it."
9. Claimant has a long history of problems with her stomach. She has taken Proton Pump Inhibitors off and on for many years. Prior to her work injury, the Claimant had suffered from GERD and acid reflux disease for many years, usually when she was under stress. In the year prior to her injury, her mother had died and the Claimant took a drug named Prevacid for acid reflux disease. She did not have to take the medication every day. In fact, in the past, she would go long periods without needing this medication. The Claimant stopped taking the medication months prior to her treatment for her elbows. She did, however, continue to have gastrointestinal disease or GERD.

10. The Claimant credibly testified that she had a sensitive stomach and does not tolerate medication well as it gives her burning pains in her stomach and the sensation that she is going to regurgitate.
11. When the Claimant was being treated for her elbow injuries, she was given several different types of medications for her symptoms. Everything bothered her stomach and she did not feel she could tolerate the pain medications without something to relieve her stomach distress.
12. The Claimant was initially prescribed Prevacid which did work for a while but then ceased to help after a medication she had been taking was changed. The doctor switched her medication to Protonix for her stomach distress and increased the dosage after she was prescribed Lyrica and Darvocet.
13. The Claimant credibly testified that Protonix works well for her and has been of great help to her for about the last three years. She takes it on a daily basis. The Claimant testified she could not tolerate her pain medications, Darvocet and Lyrica, without taking Protonix.
14. Claimant's physician, Dr. Peter Gunther, has a private practice in internal medicine. He went to Williams College as an undergraduate and Cornell University Medical School. He then interned at the hospital affiliated with the University of Vermont, now called Fletcher Allen Health Care, and is now part of the adjunct UVM faculty.
15. Dr. Gunther has treated the Claimant for approximately twenty years. He was the doctor who prescribed Protonix to help her with gastritis or acid reflux disease which he stated were initially caused by high doses of anti-inflammatories which are known to irritate the stomach lining. Dr. Gunther admitted that the Claimant had a long standing history of gastrointestinal problems. The Claimant had been taking the medication Protonix for some time and paying for it herself. It was not until August of 2005 that Dr. Gunther related the prescription of Protonix to Claimant's workers' compensation claim even though she had been taking it for the prior few years.
16. Dr. Gunther testified that the Claimant's present use of Darvocet and Lyrica cause a problem for her by irritating her stomach. He prescribed Protonix to address this problem. Dr. Gunther clearly stated that Protonix is causally related to the use of the Claimant's pain medications for her work injuries. However, he does also state that the Claimant has a history of stomach disorders for which she has needed Protonix or a similar medication in the past. She had an ulcer and gastrointestinal diseases including GERD.
17. Dr. Gunther testified that 1% of people will have an inflammation of the stomach from taking Lyrica. He testified that since the Claimant's stomach was known to be sensitive that he tries to do all he can to relieve her of these problems. Dr. Gunther's clinical opinion is that without taking Protonix, the Claimant would have stomach distress while taking Lyrica and Darvocet. In other words, he found Protonix was a necessary and reasonable medication for the Claimant and related to her work injury.

18. Dr. Verne Backus, an Independent Medical Examiner and expert, testified that he had performed a permanency rating for the Claimant. He did not believe that Darvocet would cause stomach acid due to its being absorbed below the stomach into the intestines. He did acknowledge that stomach pain and nausea can be experienced by taking Darvocet.
19. Dr. Backus testified that he did not believe that Lyrica would cause an increased production of stomach acid. Proton pump inhibitors such as Protonix address the production of acid in the stomach.
20. Dr. Richard Levy, a Board certified neurologist, also testified regarding the use of Darvocet, Lyrica and Protonix. Dr. Levy has been in practice for 26 years. He testified that he never prescribes proton pump inhibitors to counter the effects of Darvocet or Lyrica. He did say, however, that it would be prudent to relieve patients of their stomach symptoms and that Darvocet can make some people nauseous.
21. However, Dr. Levy testified that nausea is an activation of the brain and stomach upset accompanies nausea. He acknowledged that stomach upset is in part due to the increase of stomach acid and that Protonix relieves symptoms from increased stomach acid.
22. Both Dr. Levy and Dr. Backus testified that they do not believe Lyrica and Darvocet cause the need for Protonix to be prescribed.

CONCLUSIONS OF LAW:

1. Under Vermont's Workers' Compensation Act, the injured worker has the burden of proving entitlement to the benefits claimed. See *Goodman v Fairbanks, Morse & Company*, 123 Vt. 161 (1962) generally. This burden of proof extends to demands for medical treatment. See *Raymond v. Grand Union Stores of Vermont*, Opinion No. 13-99 WC (March 24, 1999).
2. In determining whether a medical treatment is necessary and reasonable, the Department has found the most decisive factor to be what is shown to reasonably relieve symptoms or restore functioning capacity through expert testimony. See *McGraw v Numanco, Inc.* Opinion No. 48-02WC (November 29, 2002).
3. When weighing credibility of expert witness opinions, the Department has a five part test including the following factors: (1) the relationship between the injured worker and the medical expert; (2) the thoroughness of the expert's evaluation or review; (3) the objective support of the expert's opinion, (4) the expert's qualifications and (5) whether the expert was aware of the pertinent facts when rendering his or her opinion. *Miller v Cornwall Orchards*, Op. No. 20-97 WC (1997).

4. Dr. Peter Gunther, who has excellent credentials, has had a close treating physician relationship with the Claimant for almost 20 years. He has the most knowledge about the Claimant and her medical history from a treating physician perspective. He did a thorough evaluation of her condition and tried other medications before deciding on Protonix. He knows that it has helped his patient tolerate the other medications she takes for her work related pain. Dr. Gunther was also aware of all of the pertinent facts when he gave his opinion.
5. Neither Dr. Levy nor Dr. Backus had a prior relationship with the Claimant. They did have experience working with the medications in question but not with this particular Claimant. They are both qualified doctors and have testified as experts previously in many workers' compensation cases. Both doctors did acknowledge that nausea is a side effect of Darvocet. Dr. Levy did state that nausea can increase stomach acid. We know from expert testimony that the medication Protonix helps patients from experiencing distress from excess stomach acid. Thus, there is some causal link between at least one of the drugs prescribed for the Claimant's work injury and Protonix.
6. In this case, the trier of fact finds the treating physician as the most credible. Dr. Gunther testified to a degree of medical certainty that the medication Protonix or another proton pump inhibitor was reasonable and necessary for the Claimant's work related injuries in that it enabled her to take her pain medication to increase her function and relieve pain. Dr. Gunther is the only doctor who knows the patient well and is aware of how delicate her stomach is and how she reacts to medication. Even if her stomach problems preceded her work injury, she still cannot tolerate the medications for her work injury without Protonix or a proton pump inhibitor according to Dr. Gunther.
7. Although neither Dr. Backus nor Dr. Levy agreed that Lyrica and Darvocet were likely to be the cause of the Claimant's stomach distress, expert testimony was provided that it was possible for at least one of these drugs to produce stomach acid.
8. The Department finds that the Claimant has met her burden of proof and awards her medical benefits to pay for all medical costs associated with the use of a proton pump inhibitor medication plus interest from the date the costs were incurred following her work related injury.
9. Attorney's fees in this case will also be awarded. Although there were originally three medications involved in the claim, the Defendant did not agree that two of them were medically necessary and therefore, compensable until the date of the hearing. Therefore, the Claimant's attorney had to be prepared to address all three medications and should be paid accordingly. Thus, full attorney's fees will be awarded plus costs.

ORDER:

The Defendant is ordered to adjust the Claim as follows;

1. Pay all medical costs for the use of Protonix or a comparable proton pump inhibitor medication ordered by Claimant's physician plus interest from the date the costs were incurred.
2. Pay attorneys fees in the amount of \$90.00 per hour for 26.9 hours and costs in the amount of \$1,463.42.

DATED at Montpelier, Vermont this 9th day of May 2008.

Patricia Moulton Powden
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.