State of New York - Workers' Compensation Board

MEMORANDUM OF BOARD PANEL DECISION

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Opinion By: Fredrick M. Ausili
Clarissa Rodriguez
Mark D. Higgins

The carrier requests review of the Workers' Compensation Law Judge (WCLJ) decisions filed on January 7, 2016 and June 13, 2016. The claimant filed rebuttals.

ISSUE

The issue presented for administrative review is whether the claimant's current medication program is appropriate.

FACTS

This claim was previously established for a back injury stemming from a work related accident on September 30, 2002. The claimant's average weekly wage was set at $865.28. The claimant was subsequently classified with a permanent total disability and the claimant receives awards at the rate of $400.00 per week.

The claimant has received prescribed medications in this matter provided by various providers since the inception of the case. Dr. Salcedo is the claimant's most recent pain management provider since his initial evaluation in 2011.

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Claimant -
Social Security No. -
WCB Case No. -
Date of Accident -
District Office -

Employer -
Carrier -
Carrier ID No. -
Carrier Case No. -

Attica Correctional Facility
State Insurance Fund
W204002

Date of Filing of this Decision- 10/17/2016

ATENCION:
Puede llamar a la oficina de la Junta de Compensacion Obrera, en su area correspondiente, cuyo numero de telefono aparece al principio de la pagina y pida informacion acerca de su reclamacion(caso).
The carrier had the claimant examined by its consultant, Dr. Grammar, on May 22, 2015. The doctor noted that the claimant was taking Soma 250 mg, Lunesta 3 mg, Exalgo 16 mg, Fentora 800 mg, and Klonopin in an unknown dosage. The doctor found the claimant to have a high dose of opioid medications and that the claimant had not demonstrated a functional improvement from this usage. Dr. Grammar found a marked deviation from the Medical Treatment Guidelines in part due to the fact the prescribed amount exceeded the Morphine Equivalence of 100 mg per day. The doctor prescribed a mandatory weaning process to be enacted. In particular, the doctor recommends the weaning of Fentora and Exalgo and the discontinuance of Soma. The doctor provided for a two month extinction of the drugs.

Subsequently, Dr. Salcedo sought the authorization for Evzio to temporarily reverse the side effects of the opioid medications.

Dr. Salcedo was deposed on the matter on November 4, 2015, and indicated that the claimant had been a patient since May 2011. The doctor testified that the claimant had post-laminectomy syndrome with residual radicular symptoms and lumbar spondylosis. The doctor also indicated that the claimant had chronic opiate use and pain tolerance and dependency. According to the doctor, he was in the process of weaning the claimant down. The doctor described a generic plan to reduce the claimant's intake. The doctor indicated that the claimant failed to demonstrate any functional gains. The doctor also described that the plan for the claimant is to circulate and try new opiates to determine the claimant's best functionality.

At a hearing on January 4, 2016, the WCLJ amended the claim to include Bruxism and dry mouth and found sufficient evidence that a weaning program was medically necessary. The WCLJ directed Dr. Salcedo to institute a weaning program or refer the claimant to an appropriate rehabilitation program. The first appeal ensued.

At a hearing on March 4, 2016, the status of the weaning program was reviewed. The claimant indicated that Dr. Salcedo indicated a reduction in Exalgo was made. The WCLJ directed the claimant to participate in a weaning program under the supervision of a treating doctor.

Dr. Grammar submitted an addendum on March 25, 2016, which reiterated his opinion that the claimant's current medical regimen deviated from the MTG and stated that a rapid weaning can occur in six to eight weeks with a more prolonged program of six to eight months.

In a narrative report of April 4, 2016, Dr. Salcedo recommended a shifting of medications from Exalgo to Belbuca and the weaning off of Fentora after the transfer. The doctor indicated that he plans to wean the claimant from the opioid medication as the current regimen does not

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Claimant -  
Social Security No. -  
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Date of Accident -  09/30/2002  
District Office -  Buffalo  
Employer -  Attica Correctional Facility  
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Carrier ID No. -  W204002  
Carrier Case No. -  Date of Filing of this Decision -  10/17/2016

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provide any functional gains.

The carrier had the claimant evaluated through a records review by another consultant, Dr. Perry on May 13, 2016. The doctor indicated that the claimant should be weaned from the opioids at a rate of 10% to 15% per month over a six to nine month period.

At a hearing on June 8, 2016, the WCLJ noted an opinion that Dr. Salcedo wanted to rotate the medications and that this addresses the concerns of tolerance and the escalation of symptoms due to tolerance for different opioids. The WCLJ directed Dr. Salcedo to continue with a weaning program as being tapered by the claimant. The second appeal ensued.

LEGAL ANALYSIS

In the application for review, the carrier requests a modification of the decision to reflect the claimant be placed on a weaning program in compliance with Dr. Grammar's recommendation and that the request for authorization of Belbuca be denied.

In rebuttal, the claimant asserts that the appeals are interlocutory and that the WCLJ properly determined the weaning program be set in accordance with the claimant's treating physician.

In evaluating the medical evidence presented, the Board is not bound to accept the testimony or reports of any one expert, either in whole or in part, but is free to choose those it credits and reject those it does not credit (see Matter of Morrell v Onondaga County, 238 AD2d 805 [1997], lv denied 90 NY2d 808 [1997]; Matter of Wood v Leaseway Transp. Corp., 195 AD2d 622 [1993]). Thus, questions of credibility, reasonableness, and relative weight to be accorded to conflicting evidence are questions of fact that come within the exclusive province of the Board (see Matter of Berkley v Irving Trust Co., 15 AD3d 750 [2005]).

The recently enacted New York Non-Acute Pain Medical Treatment Guidelines, in paragraph F.2.b.i, specifically cautions that these Guidelines do not require the cessation of opioids for patients who have been on long-term opioid therapy; but rather recommends transition to the newly enacted standards of care identified in the Guidelines and avoidance of the abrupt discontinuation of opioids in patients who have been receiving such medication as long-term therapy prior to the initiation of the Guidelines. In this respect, the Guidelines are in accord with Board Subject Number 046-457, which clarified the provisions related to the prescription narcotic medication of the 2010 Medical Treatment Guidelines (MTG) as they applied to claimants on long-term opioid therapy, and stated as follows, "Claimants who have been receiving long term narcotics and/or other pain medications prior to December 1, 2010, should ***Continued on next page***

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continue to have their prescriptions paid for by carriers and filled by pharmacies."

Paragraph F.2.c provides for ongoing long term opioid management and indicates that "Once a decision is made to institute and/or continue . . . chronic opioid therapy, the physician is responsible for routinely monitoring the safety and effectiveness . . . of ongoing treatment."

The Board's Medical Treatment Guidelines were amended, effective December 15, 2014, to include non-acute pain medical treatment. Treating providers must treat all existing and new work-related injuries or occupational diseases involving non-acute pain in accordance with the Medical Treatment Guidelines (12 NYCRR 324.2[a]).

The Board's Non-Acute Pain Medical Treatment Guidelines (NAP) provide that:

"Patients who are on long-term opioids should not have their medications discontinued simply because they have not met the trial criteria or the criteria for safe long-term opioid management detailed in this guideline. It should be noted that the New York Non-Acute Pain Medical Treatment Guidelines does not require the cessation of opioids for this subset of patients who have been on long-term opioid therapy. The goal is to transition to the standards of care identified below and avoid abrupt discontinuation of opioids in patients who have been receiving long-term therapy prior to the initiation of the New York Non-Acute Pain Medical Treatment Guidelines."

Here, the claimant has continued on long-term opioids without demonstrated effectiveness of the medications, specifically improved function and pain. There is insufficient indication from Dr. Salcedo that the claimant is being transitioned to the standards set forth in the Non-Acute Pain Guidelines, which include:

"a comprehensive multidisciplinary approach to pain management that is individualized, functionally oriented (not pain oriented), and goal-specific has been found to be the most effective treatment approach. Independent self-management is the long-term goal of all forms of functional restoration" (Non Acute Pain Medical Treatment Guidelines, § C.1.e).

"All therapies are focused on the goals of functional restoration rather than merely the elimination of pain and assessment of treatment efficacy is accomplished by reporting functional improvement." (Non Acute Pain

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Medical Treatment Guidelines, § C.1.g).

Section F.3.b.iii states that "Absent functional improvement, physicians shall initiate efforts to wean and/or discontinue opioids." Section F.3.e.iv of the Non-Acute Pain Guidelines indicates that medically weaning from opioids can be done safely without significant health risks by slowly tapering the opioid dose, a decrease of 10% per week is recommended, and by ensuring that a referral to a physician specializing in addiction medicine or to a pain specialist and/or an inpatient/outpatient medically assisted detoxification program is made for complicated withdrawal symptoms.

In this case, based on the testimony and evidence in the file, the Board Panel is not convinced that the claimant's doctor is acting in accordance with the Board's MTG. The Board Panel finds that the claimant's current medication regimen and injections should be monitored properly and that a supervised attempt should be made to wean the claimant from his current medications.

Based on the above, the Board finds that the claimant should be weaned from his narcotic medications, and the Board directs the claimant to enroll in an addiction treatment program. The New York State Office of Alcoholism and Substance Abuse Services (OASAS) lists certified inpatient and outpatient treatment facilities that is searchable by zip code at https://www.oasas.ny.gov/providerDirectory/index.cfm?search_type=2. The carrier and/or claimant may utilize the OASAS site to identify treatment program options.

The Board Panel further finds that the carrier must cover the cost of the claimant's addiction treatment program. The carrier must also cover the cost of the claimant's current prescriptions for thirty days following the filing date of this decision. Finally, the Board Panel finds that after the thirty day period, the carrier is liable for the payment of the claimant's narcotic prescription medications only if the prescriptions are written by an addiction treatment program doctor.

Therefore, the Board Panel finds, upon review of the record and based upon the preponderance of the evidence that the claimant should not be continued on his current course of pain medication. Further use of opioids must be consistent with the NAP and the prescribing physician must ensure compliance through appropriate urine screening.

CONCLUSION

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ACCORDINGLY, the WCLJ decisions filed January 7, 2016 and June 13, 2016, are MODIFIED to require a weaning program and urine screening in accordance with the non-acute pain medical treatment guidelines. No further action is planned by the Board at this time.

All concur.

Fredrick M. Ausili
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