

In the ORS 656.327 Medical Treatment Dispute of  
**Sheila M. Barlow, Claimant**

Contested Case No: 13-003H & 13-007H

**CORRECTED PROPOSED & FINAL ORDER**

July 25, 2013

SHEILA M. BARLOW, Petitioner  
LIBERTY NORTHWEST INSURANCE CORPORATION, Respondent  
Before Aliza Bethlahmy, Administrative Law Judge

---

This Corrected Proposed and Final Order is reissued in its entirety to correct scrivener's errors.

The above-entitled matters were set for hearing before the undersigned Administrative Law Judge in Portland, Oregon on April 1, 2013. Pursuant to the parties' request, WCB No. 13-00007H was consolidated with WCB No. 13-00003H and the matters were submitted on the record with written briefs. A briefing schedule was established. The record closed June 4, 2013 with the receipt of claimant's reply brief. Exhibits 1 through 77 were received into evidence.

**ISSUES**

This is a medical services case involving medical treatment. Claimant has appealed the part of the December 18, 2012 Amended Administrative Order that found that the prescription medications Alprazolam .05 milligram and Vicodin, HP10-660 milligram were not appropriate treatment for claimant and, if provided, that Liberty Northwest was not liable to pay for the prescription medications.

Claimant requests an award of attorney fees and costs should Liberty Northwest be found liable for the two prescription medications.

**FINDINGS OF FACT**

Both of the parties have accepted the Director's Findings of Fact. I will reiterate a few of the findings.

Claimant sustained a compensable injury on October 23, 1998, when she tripped over a pallet and some 2x4s and landed in a sitting position. She experienced low back and right knee pain. The claim was originally accepted for a disabling right knee contusion.

On January 27, 1999, Dr. Harris performed a right knee diagnostic arthroplasty and popliteal space exploration. Post-operatively, claimant developed a deep vein thrombosis with pulmonary embolism and underwent six months of anticoagulation therapy.

The insurer issued a May 4, 2000 Modified Notice of Acceptance in which they accepted a right knee contusion, deep vein thrombosis, and pulmonary embolism of the right leg, sciatic nerve contusion, and right sciatica. (Ex. 28).

Claimant was seen by Dr. Cobasko for her right-sided sciatica. He authored a September 29, 2000 letter in which he explained that claimant's symptoms and signs fit a sciatic nerve injury. Dr. Cobasko had claimant undergo an MRI to address the possibility of a lumbar radiculopathy. It was excluded as a diagnosis. The MRI report was normal. Claimant did not have a surgical lesion on her lumbar spine. (Ex. 40).

A November 14, 2001 Notice of Closure issued. Claimant was medically stationary as of April 20, 2001. Her aggravation rights ended November 14, 2006.

Claimant treated with Dr. Tidball from March 1999 through 2001. Following a several year lapse in treatment, Dr. Tidball wrote an April 15, 2003 letter stating that claimant's severe chronic pain was unrelieved by prescription medication, but that her pain was lessened by the use of medical marijuana. (Ex. 28, pg. 16).

Claimant moved to Hawaii. She was first seen by Dr. Chester on November 3, 2004. On November 3, 2004, claimant noted that she had numbness and tingling from her right low back to the right lower leg and that the three lateral toes were numb. She explained that her constant pain was helped by intermittent Vicodin and medical marijuana she took. Dr. Chester renewed claimant's Vicodin prescription for occasional use and prescribed Nortriptyline. Claimant did not meet Hawaii's standard criteria for medical marijuana licensing because she had not been established with a prescribing physician for a year and had not failed trials of the more standard chronic pain management treatments. Dr. Chester became claimant's attending physician.

When Dr. Chester saw claimant on April 4, 2008, she reported low back pain. At her July 30, 2008 appointment, Dr. Chester was concerned about a possible underlying arthritis and lumbar radicular syndrome. (Ex. 49, pg. 41).

A July 25, 2009 lumbar MRI showed minimal L4-5 and L5-S1 degenerative disc disease and facet arthropathy.

On October 19, 2009, Dr. Chester performed an EMG/NCS and noted that the studies were consistent with a chronic right S1 radiculopathy. S1 radiculopathy is not part of her accepted claim.

Pursuant to Liberty Northwest's May 10, 2012 request, an administrative review of medical services, including the appropriateness of medical treatment, was undertaken. A December 5, 2012 Administrative Order found that Alprazolam and Vicodin were not appropriate treatment for claimant and, if provided, Liberty Northwest Insurance Company was not liable. Thereafter, a December 18, 2012 Amended Administrative Order issued. The Amended Order was issued to correct the incorrect address which the December 5, 2012 Administrative Order had used for claimant. The Amended Administrative Order was identical in all other respects to the December 5, 2012 Administrative Order. The Alprazolam and Vicodin were found to not be appropriate treatment for claimant and, if provided, Liberty Northwest Insurance Company was not liable to pay for the two medications.

## CONCLUSIONS OF LAW AND OPINION

This is a medical services case involving medical treatment. The question concerns the Alprazolam (Xanax) and Vicodin prescriptions and whether they are appropriate treatment for claimant.

Claimant has appealed the portion of the December 18, 2012 Amended Administrative Order that found that Alprazolam and Vicodin were not appropriate treatment for claimant and that Liberty Northwest Insurance Company was not liable to pay for the prescription medications. Claimant requests attorney fees and costs should Liberty be found liable for the above prescription medications.

I will first address the Alprazolam (Xanax) prescription.

OAR 436-010-0230(6) provides that prescription medications are required medical services under the provisions of ORS 656.245(1)(a) and 1(b) as well as 656.245(2)(c).

Claimant has an accepted disabling claim dating from 1998 for a disabling right knee contusion, deep vein thrombosis, and pulmonary embolism of the right leg as well as a sciatic nerve contusion and right sciatica. Dr. Chester has prescribed the Alprazolam (Xanax) for claimant's anxiety. Anxiety is not a part of claimant's accepted claim. Since the Alprazolam is prescribed for a non-compensable condition, it is not appropriate medical treatment and Liberty Northwest Insurance Company is not liable for that medication.

I will next address the Vicodin. There are 96 pages of chart notes from Dr. Chester. Over the first few years of his treatment of claimant, he identified the accepted conditions. On August 3, 2006, he added a new diagnosis of post-traumatic stress disorder-type symptoms to her complaints. (Ex. 49, pg. 24). That diagnosis is not a component of her accepted claim. Neither is claimant's radiculopathy.

Claimant is prescribed Vicodin for her pain complaints. Dr. Chester initially prescribed a dose of 500 milligrams. In October 2009, the dosage was increased to 660 milligrams. Claimant underwent urine toxic screens for the medication and, on numerous occasions, the screens were negative for the opiate. There was concern of abuse potential and, in addition, while claimant had received 120 tablet of Vicodin on July 20, 2011, her August 8, 2011 urine toxicology screen was negative for opiates. That was true despite the fact that the urine toxic screen should have been positive for 8 days following the last ingestion of the opiate.

Dr. McNabb performed a medical chart review and authored a July 19, 2012 opinion. He had two concerns. One, based on the urine drug screens, was that there could be some diversion of the drugs. His second concern was the abuse potential for someone taking short-acting narcotics for the length of time which claimant had been prescribed the drugs.

Dr. Brenneke authored a February 26, 2012 report in which he explained that claimant's accepted sciatica claim was a lower extremity complaint, and that her then-current complaints appeared to be unrelated spinal problems rather than the accepted claim. Claimant also had non-

compensable wrist complaints as well as unrelated degenerative arthritis of the knee. He opined that claimant's pain medication usage was likely related to non-accepted conditions. (Ex. 59, pgs. 9-10). The record was not clear enough to verify the possibility that the medication use was related to the accepted conditions.

Having reviewed all of the evidence, I am persuaded that the Vicodin is not appropriate treatment for claimant's accepted conditions. Claimant had not taken any Vicodin in the three months prior to her initial appointment with Dr. Chester. She was working. Over the years, her back complaints have increased. In October 2009, Dr. Chester identified claimant as having chronic right S1 radiculopathy. (Ex. 55, pg. 1). However, claimant's radiculopathy is not part of her accepted claim. She does not have a compensable back claim. The record is not clear that the Vicodin is prescribed for her accepted conditions. Rather, I am persuaded that it is prescribed for her non-compensable conditions.

ORS 656.327(1)(a) provides for administrative review of treatment that is inappropriate or ineffectual. ORS 656.327(2) provides that if a party is dissatisfied with a Director's order, the dissatisfied party may request review under ORS 656.704. The administrative review may be modified if it is not supported by substantial evidence in the record or if it reflects an error of law.

I have found no error of law and I conclude that the Amended Administrative Order is supported by substantial evidence. For those reasons, there is no basis to reverse the December 18, 2012 Amended Administrative Order.

## **ORDER**

### **IT IS HEREBY ORDERED AND THIS DOES ORDER THAT:**

1. The December 18, 2012 Amended Administrative Order is approved; and
2. Claimant's request for relief is denied.