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WORKERS' COMPENSATION PRACTICE CASE UPDATE

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**IN SPITE OF A UTILIZATION REVIEW DETERMINATION THAT ONGOING PRESCRIPTIVE
MEDICATIONS WAS NOT REASONABLE OR NECESSARY - WHERE A CLAIMANT DIES
AS A RESULT OF AN ACCIDENTAL OVERDOSE OF THOSE MEDICATIONS, THE
CLAIMANT'S DEPENDENT IS ENTITLED TO SURVIVOR'S BENEFITS**

By Harry J. Klucher, Esq.

STATEMENT OF FACTS

In J.D. Landscaping v. WCAB (Heffernan), the Claimant suffered a work related low back injury on July 12, 2002. His injury was described as a "herniated disc at L4-5". The Claimant began receiving workers' compensation benefits. On March 5, 2006, the Employer filed a Utilization Review (UR) Request, challenging the reasonableness and necessity of all treatment provided to the Decedent by George L. Rodriguez, M.D., on and after February 15, 2007. By UR Determination issued June 4, 2007, Richard S. Kaplan, M.D. concluded that all treatment provided by Dr. George Rodriguez including prescriptions for Sonata, Fentanyl, Oxycodone, Fentora, Docusate and Lyrica was neither reasonable or necessary. On June 14, 2007, the Claimant visited Dr. George Rodriguez who renewed his prescription for medications including Actiq Duragesic (Fentanyl patch), Fentora (Fentanyl tablet), Ambien, Colace, Lyrica and Oxycodone. These prescriptions were submitted to Summit Pharmacy who refused to fill them. The Claimant then returned to see Dr. George Rodriguez on June 16, 2007, but instead was seen by another physician in that group, (i.e., Dr. Daisy Rodriguez), who renewed his prescriptions. Subsequently, the Claimant was found dead 2 days later on June 18, 2007. The parties agreed during the litigation that the Claimant died as a result of multiple drug intoxication. He was found in bed, holding Fentanyl instructions in his right hand. The Claimant's sole dependent filed a Fatal Claim Petition. The Employer argued that it was not responsible for the Claimant's death where a Utilization Review Determination found the medications

which caused the Claimant's death to be not reasonable or necessary. The Workers' Compensation Judge (WCJ) granted the Fatal Claim Petition finding that the Decedent's death was causally related to an accidental overdose of pain medications, primarily Fentanyl based medications, which were prescribed for the Decedent's work related back injury of July 12, 2002. The WCJ further found that since Dr. Daisy Rodriguez prescribed the medications and she was not the subject of the Utilization Review Determination against her brother, Dr. George Rodriguez, that the treatment was not part of the original Utilization Review Determination and, thus, not necessarily unreasonable or unnecessary. The Employer filed an Appeal with the Workers' Compensation Appeal Board (WCAB).

REVIEW OF APPELLATE DECISIONS

On appeal to the WCAB, the Employer argued that the WCJ erred in granting the Claimant's Fatal Claim Petition because the Decedent died as a result of an accidental overdose of prescription pain medications which had been found by the Utilization Review Determination to neither be reasonable or necessary. The WCAB, however, affirmed the WCJ's decision, finding that the June 4, 2007 Utilization Review Determination applied only to treatment of Dr. George Rodriguez and not treatment of Dr. Daisy Rodriguez. The Employer filed a Petition for Review to the Commonwealth Court. The Commonwealth Court affirmed the WCJ and WCAB. However, in doing so, the Court did not feel that it was of any importance that the Utilization Review Determination found the treatment of Dr. George Rodriguez or for that case, Dr. Daisy Rodriguez, to be unreasonable or unnecessary. The Court concluded that the reasonableness and necessity of medical treatment is irrelevant in determining whether or not the Decedent's death was causally related to the Decedent's work related injury. Since, in this case, the Decedent was taking the medications as a result of his work related injury and he subsequently died because of the treatment related to his work related injury that this was a compensable event.

COMMENTS

In this case, the Employer focused its arguments on the fact that the treatment found to be unreasonable and unnecessary (provided by Dr. George Rodriguez) caused the Claimant's death. The employer argued that simply because the Claimant went in and saw the doctor's sister, (i.e., Daisy Rodriguez, M.D.), to obtain the same type of medical treatment that treatment should have also been found unreasonable and unnecessary and, therefore, where the Claimant died as a result of that treatment, it should not be compensable. However, the Commonwealth Court indicated that the Employer overlooked the obvious that whether or not the treatment was reasonable or necessary was irrelevant where the treatment was a result of the work injury and caused the Claimant's death. The Courts have consistently held that if the Claimant is undergoing medical treatment as a result of a work related injury and suffers further consequences as a result of that treatment, that it can be a compensable event.

If you would like a copy of J.D. Landscaping v. WCAB (Heffernan), No. 1866 C.D. 2010, please do not hesitate to contact us.

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