

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS
LAKELAND DISTRICT

EMPLOYEE:

Penny Martin
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Lakeland, FL 33805

ATTORNEY FOR EMPLOYEE:

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Lakeland, FL 33802

EMPLOYER:

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700 S. Main Street
Auburndale, FL 33823

**ATTORNEY FOR
EMPLOYER/CARRIER:**

Derrick E. Cox, Esquire
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CARRIER:

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Call Box 30539
Tampa, FL 33630

OJCC #: 88-002555 MHH

D/Accident: 11/17/88

Judge: Mark H. Hofstad

FINAL COMPENSATION ORDER

On December 15, 2009, a final hearing was held in the above referenced matter before Mark H. Hofstad, Judge of Compensation Claims in Lakeland, Polk County, Florida. The Claimant was represented by Bradley G. Smith, Esquire. The Employer/Carrier was represented by Derrick E. Cox, Esquire. The petition for benefits at issue was filed on February 24, 2009.

The Claimant petitioned for the following benefits:

1. Authorization of lumbar epidural injections as prescribed by the Claimant's authorized treating pain management physician.
2. Attorney fees and costs at the expense of the Employer/Carrier.

The Employer/Carrier asserted the following defenses:

1. All medically necessary and causally related medical treatment has been provided.
2. No attorney fees or costs are due.

The following exhibits were tendered at final hearing:

Court Exhibits:

1. Pretrial Stipulation and Order Approving Pretrial Stipulation entered October 30, 2009.
2. Claimant's Trial Memorandum (withdrawn at trial).
3. Employer/Carrier's Trial Memorandum.

Claimant's Exhibits:

1. Deposition of Dr. Alan Honculada taken December 11, 2008 and attached exhibits.

Employer/Carrier's Exhibits:

1. Employer/Carrier's expert medical advisor composite exhibit.
2. Deposition of Dr. Rodolfo David Eichberg, taken November 7, 2008 and attached exhibits.
3. Deposition of Dr. Jorge L. Chaumont taken May 17, 2007 and attached exhibits.

The Claimant was the only witness to testify at trial.

Findings of Fact and Conclusions of Law

The Claimant has been receiving medical care and treatment relative to her industrial accident since November 17, 1988. The Claimant has been accepted as permanently and totally disabled. The sole issue presented at final hearing was whether lumbar epidural steroid injections are reasonable and medically necessary.

The Claimant has been prescribed numerous medications over the years, including narcotics. The Claimant has also received previous trigger point injections as well as epidural steroid injections.

The Claimant filed a petition for benefits on December 11, 2006 requesting authorization of lumbar epidural steroid injections as prescribed by her authorized treating physician, Dr. Alan Honculada. At the request of the Employer/Carrier, Dr. Jorge Chaumont performed an independent medical examination. In his report and in his deposition, Dr. Chaumont concluded that lumbar epidural steroid injections were not reasonable or medically necessary. Based on the conflict between the opinions of the Claimant's authorized treating physician and the

Employer/Carrier's independent medical examiner, Dr. Rodolfo David Eichberg was appointed as an expert medical advisor. Dr. Eichberg examined the Claimant as well as the medical records of Dr. Honculada and the independent medical examination report prepared by Dr. Chaumont. Dr. Eichberg prepared a report dated September 27, 2007 wherein he offered the opinion that further epidural steroid injections would not be reasonable or necessary. Dr. Eichberg confirmed his opinion that further epidural steroid injections would not be reasonable or medically necessary in his deposition of November 7, 2008. Thereafter, counsel for the Claimant dismissed the December 11, 2006 petition for benefits requesting lumbar epidural steroid injections.

On February 24, 2009, counsel for the Claimant filed a petition for benefits requesting lumbar epidural injections as prescribed by the Claimant's authorized treating pain management physician. The specific prescription upon which the Claimant based her petition for epidural injections was not submitted into evidence at the final hearing. However, the court has reviewed the pleadings and records filed in this case. The petition for benefits filed February 24, 2009 reflects that a copy of the prescription was attached to the petition. The court file includes a prescription for epidural steroid injections which was also filed on February 24, 2009. The prescription is difficult to decipher however it appears to have been generated on January 26, 2009 and requests lumbar epidural x3. There are additional writings on the document but the court can not decipher the handwriting or what it represents. The court accepts that in January of 2009, Dr. Alan Honculada wrote a prescription for lumbar epidural steroid injections.

Outside of the prescription, no further evidence regarding the medical necessity of the lumbar epidural steroid injections has been offered. The court recognizes that the opinions of an expert medical advisor are nearly conclusive in effect. In order to reject the opinions of an expert medical advisor, the court must be presented with evidence of sufficient substance to produce in the court's mind a firm conviction as to the falsity or inaccuracy of the expert medical advisor's opinion. A mere prescription does not rise to that level. The court finds that, as no medical reports, testimony or other evidence have been offered to substantiate and convincingly support the prescription of the authorized treating physician, the opinions of the expert medical advisor must be accepted and enforced.

The fact that the prescription was renewed after the expert medical advisor rendered his opinions does not affect the court's above findings. No new evidence has been introduced which

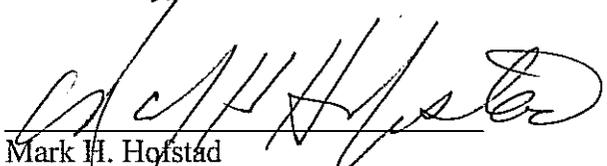
would indicate that the Claimant has sustained a change in condition which might reasonably justify a reevaluation of the need for the petitioned for injections.

Based on the evidence presented at final hearing, the Claimant has not overcome the presumption of correctness of the expert medical advisor's opinion.

Wherefore, it is **ORDERED and AJUDGED** that:

1. The petition for epidural steroid injections is denied.
2. The petition for attorney fees and costs is denied.

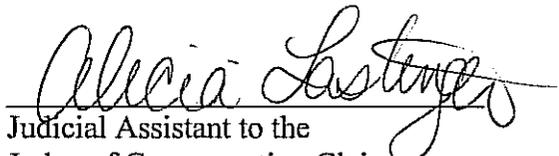
DONE AND ORDERED in Chambers in Lakeland, Polk County, Florida.



Mark H. Hofstad
Judge of Compensation Claims

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing order was entered on this 21st day of December 2009, by the Judge of Compensation Claims, and that a copy thereof was sent to the parties identified above.



Alicia Lutzinger
Judicial Assistant to the
Judge of Compensation Claims