

**COMMONWEALTH OF KENTUCKY
DEPARTMENT OF WORKERS' CLAIMS
CASE NO: 2002-97968
BEFORE: HON. ROLAND CASE**

EMMETT MCKAY

PLAINTIFF

VS:

MEDICAL FEE OPINION

BUILDING CRAFTS INC.

DEFENDANT

**Mr. Emmett McKay
124 East Chandler Street
Lebanon, KY 40033**

**Hon. Stephanie D. Ross
250 Grandview Drive
Suite 550
Ft. Mitchell, KY 41017-5667**

**Dr. Ricky Collins
315 East Broadway
Suite 250
Louisville, KY 40202**

INTRODUCTION

The plaintiff, Emmett McKay, filed this claim against the defendant-employer, Building Crafts, Inc., alleging he sustained injuries to his back during the course and scope of employment with the defendant-employer on January 9, 2002 after which he missed seventeen weeks of work with the defendant employer. A settlement agreement was approved in the plaintiff's claim March 4, 2003 for \$4,000 paid to the plaintiff in a lump sum amount and the plaintiff did not waive his right to past or future medical

expenses. The plaintiff underwent back surgery and is currently treating with Dr. Ricky Collis for pain management purposes. The defendant filed a medical fee dispute contesting the reasonableness and necessity of prescription compounding cream. The defendant filed a subsequent medical fee dispute contesting the reasonableness and necessity of the medications Diclofenac and Lidocaine. The Administrative Law Judge has reviewed all of the evidence of record and the matter is now ripe for decision.

CONTESTED ISSUES

1. Reasonableness & Necessity of Prescription Compounding Cream?
2. Reasonableness & Necessity of Diclofenac & Lidocaine?

SUMMARY OF MEDICAL EVIDENCE

Dr. Michael Skaredoff / Kathleen Sullivan, LPN / Utilization Review Nurse: The defendant, with the medical fee dispute filed the December 19, 2016 utilization review of Dr. Skaredoff / Kathleen Sullivan, LPN. Dr. Skaredoff reviewed the plaintiff's medical records noting a diagnosis of lumbar degenerative disc disease with myofascial muscle pain, facet arthrosis and trigger points. Dr. Skaredoff opined the contested Flur/Gaba/Baclo/Lido Compound Cream was a proprietary product with no evidence based data to support its continued use. Dr. Skaredoff noted guidelines recommended that if any compound product contains at least one drug that is not recommended then the entire compound is not recommended. Therefore, Dr. Skaredoff denied the request for

Flur/Gaba/Baclo/Lido Compound Cream opining it was not medically necessary.

Dr. Ricky S. Collis: The office note of February 3, 2017 was filed with the subsequent medical fee dispute herein indicating a diagnosis of lumbar degenerative disc disease with myofascial muscle pain.

Dr. Jerome Grove: The March 10, 2017 utilization review was filed with the subsequent medical fee dispute. After a review of the plaintiff's medical records and a peer to peer conversation with Dr. Collis, Dr. Grove opined the medication of Diclofenac was not medically necessary. Dr. Grove noted the plaintiff was using the Diclofenac medication instead of the compound cream and was tolerating the medication well with no signs of abuse. Dr. Grove noted the primary complaints of February 3, 2017 were noted as spine pain for which he indicated topical NSAIDS are not intended to be used. Therefore, he found the medication to not be medically necessary. Dr. Grove found the medication of Lidocaine to not be medically necessary noting lidocaine used topically was not supported for use except for localized peripheral neuropathic pain and as a Lidoderm patch. Therefore, the request for the medication of Lidocaine was deemed not medically necessary.

Dr. Daniel Wolens: The defendant filed the May 25, 2017 medical report wherein Dr. Wolens opined the contested compound cream containing Cyclobenzaprine, Gabapentin, Flurbiprofen and Bupivacaine were not indicated. Dr. Wolens noted no scientific support within the literature that would identify the drugs contained in the compound cream as being effective when applied topically. He noted Diclofenac was approved for treatment of arthritic pain in superficial joints and not approved for the treatment of low back pain. Flurbiprofen, he noted, may be appropriate in the same situations as Diclofenac; however,

neither Flurbiprofen nor the remaining drugs were supported by scientific literature for the treatment of low back pain. Dr. Wolens indicated the compound cream has not reduced the plaintiff's need for analgesics as the plaintiff's use of opioid analgesics had already declined substantially and further noted the cream does not reduce the bill burden as topical creams represent one of the most expensive pain medications that could be supplied. He noted the cost efficacy ratio was virtually infinite given the fact that there is no established efficacy. He noted the medications of Talwin or Tylenol No. 4 were available as generic prescriptions and were far less costly than a topical compound cream prescription.

ARGUMENT OF THE PARTIES

The defendant employer notes Dr. Collis opined the prescription compound cream would "reduce the bill burden," however, the defendant employer points out a single prescription of the compound cream costs \$2,259.35 which was several times more than all of the prescriptions the plaintiff received in 2014 and 2015. The plaintiff filled the prescription for the compound cream on August 3, 2016, September 8, 2016 and November 23, 2016 totaling \$6,778.05. The defendant notes the cream, at the rate prescribed by Dr. Collis, would carry an annual cost of \$16, 267.32 whereas prescription costs for the plaintiff in 2014 were \$521.98 and in 2015 were \$233.18.

ANALYSIS & CONCLUSION

The Administrative Law Judge has reviewed the medical evidence of record. The evidence from Dr. Skaredoff and Kathleen Sullivan, a utilization review nurse, noted a review of the medical records indicated the contested compound cream was a proprietary product with no evidence-based data to support its continued use. Therefore, they indicated the compound cream was not medically necessary. Dr. Grove, after a conversation with Dr. Collis, opined the medication of Diclofenac was not medically necessary. Dr. Grove also found the medication of Lidocaine not to be medically necessary. Dr. Wolens opined the contested compound cream was not indicated and that there was no scientific support within the literature that would identify the drugs contained in the compound cream as being effective when applied topically. After a review of all the medical evidence of record, the ALJ is persuaded that the compound cream as well the medications of Lidocaine and Diclofenac are not reasonable or medically necessary for the treatment of the plaintiff's injury. Therefore, the compound cream and the medications of Diclofenac and Lidocaine are found non-compensable.

ORDER

1. The medical fee dispute regarding the Flur/Gaga/ Baclo/Lido Compound Cream is hereby resolved in favor of the defendant.
2. The contested compounding cream is found to be not reasonable or necessary and

therefore not compensable.

3. The medical fee dispute regarding the medications of Diclofenac and Lidocaine is hereby resolved in favor of the defendant.
4. The contested medications of Diclofenac and Lidocaine are found to be not reasonable or necessary and therefore not compensable.
5. Concerning motions for attorney fees the parties shall take notice of the following:
 - a. Pursuant to 803 KAR 25:010 Section 6 (7) and (8), a motion for allowance of an attorney fee shall be filed within thirty (30) days following the finality of the award, settlement or agreed resolution. All such motions are now required to be filed electronically. Any such motion must include an itemization of services together with either the actual times or a reasonably accurate estimate of the time expended on each of the itemized services listed. Once a claim has been closed in the litigation management system, documents can no longer be filed into it by the parties. A claim cannot be reopened under KRS 342.125 for consideration of a Motion for Approval of an Attorney Fee and there is no other process by which an untimely motion can be filed or considered.

SO ORDERED, this 20th day of September, 2017 with copies to all parties by regular U.S. mail and/or via the electronic Litigation Management System.



HON. R. ROLAND CASE
ADMINISTRATIVE LAW JUDGE