

**DOCKET NO. 453-03-0084.M5**  
**[MDR TRACKING M5-02-1954-01]**

<b>HASSLE FREE PHARMACY SERVICE,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<i>Petitioner</i>	§	
	§	
<b>VS.</b>	§	
	§	<b>OF</b>
	§	
<b>TRANSCONTINENTAL INSURANCE</b>	§	
<b>COMPANY,</b>	§	
<i>Respondents</i>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

The issue in this case is whether Hassle Free Pharmacy Service (Hassle Free) should be reimbursed for the cost of prescriptions provided to a workers' compensation claimant (Claimant) between August 9, 2001 and October 23, 2001. The Administrative Law Judge (ALJ)<sup>1</sup> concludes that Hassle Free did not meet its burden of proving that the prescriptions were medically reasonable and necessary. Therefore, Provider's claim for reimbursement is denied.

**I. Discussion**

Claimant sustained a compensable injury on \_\_\_\_\_, when her car went off the road into a ditch. Three days after the injury, her treating physician diagnosed her as having severe lumbar muscoskeletal strain and believed that she would be able to return to work in 4-6 weeks. Since the date of injury, she has received at least 22 sessions of physical therapy, including aquatic therapy and multiple prescriptions. She has not undergone any type of surgery. Although the Carrier paid for many of Claimant's prescriptions, it declined to pay for prescriptions for Zoloft, Clonazepam, Zanaflex, Hydrocodone, and Prilosec filled between the dates of service August 9, 2001 and October 23, 2001 on the grounds that the medications were not reasonable and necessary to treat the compensable injury. Hassle Free, which bore the cost of the prescriptions, filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission). The Commission's Medical Review Division (MRD) found in favor of the Carrier. Hassle Free appealed that decision and has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE (TAC) 148.21(h).

Claimant's treating physician, Dr. David Suchowieky, M.D., a psychiatrist, prescribed the medications for treatment of Claimant's chronic pain in her cervical and lumbar spine. Hassle Free provided a "Letter of Medical Necessity" from Dr. Suchowieky, dated November 14, 2001, which states that the Claimant's MRI findings included "an extruded disc at the C6-C7 level of her spine impinging on the thecal sac" and "extruded disc at the L5-L6 level, impinging on the thecal sac."

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<sup>1</sup> This matter was reassigned to ALJ Janet Dewey for preparation of a written order. The ALJ reviewed the entire written record and listened to the audio tape of the hearing on the merits.

He reported that she continued to have pain resulting from her car accident and that the medications, including antidepressants, were appropriate in treating chronic pain and they were reasonable and medically necessary.

Hassle Free relies upon the Commission's compensability decision issued December 7, 2000, which found in addition to the lumbar spine that the Claimant suffered damage to the physical structure of her thoracic and cervical spine and that, therefore, these areas are part of the compensable \_\_\_\_\_ injury. Additionally, Hassle Free argues under 28 TAC §133.304(g) that the doctor performing the peer review used as the basis of the denial of this claim was not of the same or similar specialty as the treating physician. The Carrier also argues that even if the ALJ finds that the prescriptions were not medically necessary, it should be reimbursed because the medications were dispensed in good faith based upon a prescription issued by the treating physician.

The Carrier's witness, James Hood, M. D., a neurologist, testified that the prescriptions were not reasonably required by the nature of the compensable injury. He testified that the MRI findings cited by Dr. Suchowicky were not clinically relevant. He testified that the Claimant's soft tissue injury should have been resolved in several months.

The Claimant underwent several medical evaluations. On September 8, 1999, she was seen by Dr. Martin Steiner, a neurologist, and her then-treating physician. Dr. Steiner found signs of symptom magnification. For instance, the amount of strength she exhibited at one point during the examination would not support someone in an upright position; the Claimant, however, was capable of walking normally and could get on and off the examination table without difficulty. Additionally, her complaints of discomfort were out of proportion to the amount of pressure applied in several tests. Additionally he wrote:

[The Claimant] has subjective complaints of neck pain, thoracic pain and low back pain radiating into both legs. I am unable to find any evidence of objective abnormality on the clinical examination that would explain these multiple complaints. The findings on her MRI scan are not considered clinically significant in that they do not produce focal abnormalities on the clinical examination. Furthermore, the degree of abnormality noted in the cervical region is not considered significant. Two-millimeter and three millimeter disk abnormalities without evidence of nerve root compression are considered to be essentially normal findings in at least 30% of asymptomatic individuals undergoing MR imaging [MRI].

Carrier Ex. 2 at 3. Dr. Steiner also found that the disk herniation in her lumbar spine is of "absolutely no clinical significance." *Id*

On April 3, 2000, the Claimant was seen by Craig Ponder, M.D. P.A. He found that she had sustained no permanent impairment or loss of physical function to her cervical or lumbar spine as a consequence of the degenerative changes present in her cervical spine. He noted that her spine appeared to have normal deterioration and physiologic changes not related to the soft tissue injury that she sustained in her car accident. Further, he found that her exhibited loss of range of motion shown through testing was not compatible with the objective evidence. Carrier Ex. 3.

On July 31, 2002 Jeremiah Twomey, M.D., an internist specializing in occupational medicine, examined the Claimant. He also reviewed extensive records and MR images. He was unable to identify a clinical explanation for her ongoing symptoms. Further, through the review of

her records, he was unable to relate her current problems to her injury. While he concurred that her MRI showed structural changes in her spine, his examination of the Claimant and her subjective complaints of pain did not comport with the MRIs. As he stated: “[T]here is no clinical picture with which to relate the structural change on the MR images and therefore they diminish to relatively irrelevant status outside the context of the aging process.” Carrier Ex. 4 at 5-6.

## II. ALJ’s Analysis

The ALJ denies Hassle Free’s claim for reimbursement. Three examining physicians, and a neurologist, were unable to establish a relationship between the subjective complaints of the Claimant and the structural changes reflected in her MRIs. While the evidence demonstrates that the accident may have caused or hastened changes in the Claimant’s spine, the Provider failed to demonstrate that the objective findings in her spine are consistent with her reports of pain. Further, the sworn testimony of Dr. Hood, a neurologist, confirms the findings of the earlier examinations.

Hassle Free contends that Dr. Suchowiek’s “Letter of Medical Necessity” establishes that the drugs were properly prescribed. But the ALJ finds that Dr. Suchowiek’s letter only contains statements that are contrary to other evidence in the record. The letter does not address the inconsistency between the Claimant’s reported symptoms and the objective findings in her MRI.

Hassle Free contends that it filled a valid prescription issued by Claimant’s treating physician and that it is unfair to deny it payment for the drugs arguing that it should be reimbursed based upon its “good faith.” While there may be instances in which a pharmacy may be able to establish extenuating circumstances entitling it to reimbursement for prescriptions that are not medically necessary<sup>2</sup>, the ALJ does not find that mere “good faith” reliance upon a prescription ordered by a doctor, in the absence of medical necessity, entitles the pharmacy to reimbursement. The ultimate issue to be determined is medical necessity, not the “good faith” of the pharmacy.

Finally, the ALJ finds that Hassle Free’s argument that 28 TAC §133.304(g) requires payment for the prescriptions is without merit. Hassle Free has not shown which doctors examining the patient, if any, performed peer reviews. It is, therefore, impossible to determine based upon the record before the ALJ that a certain doctor performing a peer review was not of the appropriate specialty. Further, it is clearly not necessary that a medical doctor be a psychiatrist, as opposed to a neurologist, in order to evaluate the Claimant’s complaints of pain in her back, her MRIs, and her medical history.

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<sup>2</sup> See *I.C.S.P. v. Texas Workers’ Compensation Commission and Medical Center Pharmacy*, 453-01-2239.M5; Docket No. 453-01-2239.M5, where the Administrative Law Judge found under *Ford v. Culbertson*, 308 S.W.2d 855 (1958) that the Carrier waived its statutory right to deny payment for prescriptions based upon its oral representations to the pharmacy.

### **III. Findings of Fact**

1. The Claimant sustained a compensable back injury on\_\_\_\_\_.
2. Transcontinental Insurance Company (Carrier) declined to pay for prescriptions for Zoloft, Clonazepam, Zanaflex, Hydrocodone, and Prilosec filled between the dates of service August 9, 2001 and October 23, 2001.
3. Hassle Free Pharmacy Services (Hassle Free) filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (Commission).
4. The Commission's Medical Review Division , through an independent review organization (IRO), found in favor of the Carrier.
5. Hassle Free filed a timely appeal of the IRO decision.
6. Notice of the hearing was sent September 16, 2002. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
7. The hearing was held December 17, 2002, with Administrative Law Judge (ALJ) Cassandra Church presiding and representatives for Hassle Free and the Carrier participating. The record closed January 2, 2003.
8. This matter was reassigned to ALJ Janet Dewey for preparation of a written order. The ALJ reviewed the entire written record and listened to the audio tape of the hearing on the merits.
9. Claimant's MRI findings included an extruded disc at the C6-C7 level of her spine impinging on the thecal sac and extruded disc at the L5-L6 level, impinging on the thecal sac.
10. The structural changes reflected in the MRIs of the Claimant's spine are inconsistent with her subjective complaints of pain and therefore were not clinically significant.
11. The evidence did not demonstrate that use of Zoloft, Clonazepam, Zanaflex, Hydrocodone, and Prilosec between August 9, 2001 and October 23, 2001 were reasonable or necessary to treat the Claimant's compensable injury.

### **IV. Conclusions of Law**

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and

order, pursuant to TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T CODE ANN. Ch. 2003 (Vernon 2000).

2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052.
3. Hassle Free has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).
4. Hassle Free did not meet its burden of proving that Zoloft, Clonazepam, Zanaflex, Hydrocodone, and Priloxic were medically reasonable or necessary for the treatment of Claimant's compensable injury.
5. Hassle Free did not prove that the Carrier failed to follow the requirements set forth in 28 TAC §133.304(g).
6. Hassle Free's request for reimbursement should be denied.

### **ORDER**

**IT IS, THEREFORE, ORDERED** that Hassle Free Pharmacy Service's request for reimbursement from Transcontinental Insurance Company for prescriptions filled between August 9, 2001 and October 23, 2001, is DENIED, and Hassle Free Pharmacy Service shall have and recover nothing from the Transcontinental for the claims brought in this proceeding.

**Signed March 3<sup>rd</sup>, 2003**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**JANET R. DEWEY  
ADMINISTRATIVE LAW JUDGE**