

**DOCKET NO. 453-03-1056.M5**  
**[MDR TRACKING NO. M5-02-2524-01]**

**VONO,**  
**Petitioner**  
**v.**

**ZURICH AMERICAN**  
**INSURANCE COMPANY,**  
**Respondent**

§ **BEFORE THE STATE OFFICE**  
§  
§ **OF**  
§  
§  
§ **ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Petitioner, VONO, sought reimbursement from Zurich American Insurance Company (the Carrier) for \$1,170.86<sup>1</sup> for prescription medications provided to injured worker, \_\_\_\_ (Claimant). The Independent Review Organization (IRO) denied reimbursement, finding the medications were not medically necessary, because their efficacy was not adequately documented at each office visit with the prescribing physician. The decision partially agrees with the IRO, but finds Petitioner proved Soma, one of the two medications at issue, was medically necessary to treat symptoms caused by the work-related injury to the Claimant.

**I.**  
**PROCEDURAL HISTORY**

The Administrative Law Judge (ALJ) convened a hearing on the appeal on January 15, 2003. Nicky Otts, pharmacist, represented Petitioner; the Carrier was represented by attorney Steven M. Tipton. The hearing concluded, and the record closed on the same date.

The record in this case consisted of the 55-page copy of the records submitted to the IRO (Carrier Ex. 1), the IRO decision (ALJ Ex. 1), the Table of Disputed Services (ALJ Ex. 2), and a letter from the treating physician dated September 18, 2001 (VONO Ex. 1). There was no live testimony. Additionally, the Carrier submitted a supplemental closing argument one week after the hearing.

**II.**  
**DISCUSSION**

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<sup>1</sup>While the amount billed totaled \$1187.74, the parties agreed that the maximum allowable reimbursement amounts (MAR) described on the Table of Disputed Services were correct; thus, the MAR total of \$1,170.86 is the amount in controversy in this case.

## **A. Background**

The Claimant was 30 years old, when he sustained an injury to his back on \_\_\_\_\_. The injury has caused persistent back pain with muscle spasms that have proved unresponsive to multiple epidural steroid injections (administered between July and October 2000) and physical therapy. The drugs at issue in the case, Hydrocodone/APAP and Soma (Vanadom), were prescribed for pain and muscle spasms on the following dates: October 31, 2001; December 3, 2001; and January 7, 2002.<sup>2</sup> The Carrier denied payment based on the judgment of a peer review doctor, who found the drugs were not medically necessary.

The IRO decision found the treating physician's medical documentation was inadequate to support the medical necessity of the prescriptions. According to the doctor who wrote that decision, who is board certified in anesthesia and pain management, the standard of care is that at each office visit the efficacy of medications should be demonstrated in order for continued prescriptions to be reasonable and necessary.

## **B. Medical Documentation**

### **1. The Carrier's Peer Review Doctor**

On August 15, 2001, Dr. Aaron L. Combs did a peer review of the Claimant's medical records for the Carrier. In it he noted the Claimant had CT and MRI tests of the lumbar region that were positive for degenerative disc and/or spondylosis but negative for a herniated disc or neurologic impingement. Dr. Combs described the diagnosis as lumbalgia—not otherwise specified, but he also noted the Claimant had a pre-injury history of previous injury or pre-existing lumbar degenerative disc and/or spondylosis condition. Dr. Combs disagreed with the treating doctor's continued prescriptions of the pain medications for four reasons: (1) ongoing treatment greater than one and one-half years post injury is not consistent with the Spine Treatment Guidelines, which would allow up to eight weeks of conservative care for this type of injury; (2) the treatment must be evaluated for effectiveness, objectively measured, and demonstrate ongoing progress; (3) the use of narcotic analgesics is not recommended for chronic musculoskeletal pain, because they are addictive

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<sup>2</sup> The ALJ hereby notifies the parties that official notice, described hereafter, was taken of the descriptions of the two drugs in a reliable treatise. A party is entitled to contest this notice by filing a contest of same with the ALJ no later than seven days after the issuance of this opinion. TEX. GOV'T CODE ANN. §2001.090 (c).

According to *The Physician's Desk Reference* (2002), Hydrocodone is a narcotic analgesic. Soma is a muscle relaxer that works by blocking interneural activity. It is indicated as an adjunct to rest, physical therapy, and other measures for the relief of discomfort associated with acute, painful musculoskeletal conditions.

and cause considerable cognitive dysfunction; and (4) muscle relaxants are not likely to produce permanent benefit for the chronic non-malignant pain condition.<sup>3</sup> The Claimant's medical records were also reviewed by Dr. Combs on September 24, 2002. For the reasons he gave before, he found treatment with narcotic analgesics and muscle relaxants improper for the Claimant.<sup>4</sup>

Dr. Combs's first review contained an error, in that he found prescription of the medications "does not appear directed at progression for return to work." In fact, as described below, four of Dr. Morris's examination reports stated that the Claimant was working either full or restricted duty, despite his continued pain and spasms. Another of Dr. Combs's criticisms was that the prescriptions were not producing "measurable or objective improvement."

## **2. The Claimant's Treating Doctor**

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<sup>3</sup> Carrier Ex. 1, 29-31.

<sup>4</sup> Carrier Ex. 1, 1-2.

On July 23, 2001, the Claimant's treating physician, A.J. Morris, M.D., examined the Claimant and determined he had an impairment rating of 9% of the whole person and had achieved MMI as of that date. Diagnostic testing had revealed a 1 to 2 mm. posterior disc bulge at L4-L5 and L5-S1. He diagnosed the problem as lumbar radiculopathy. He also noted that at that time, the Claimant was working. He was also taking the same medications that are at issue in this case.<sup>5</sup>

Dr. Morris wrote a letter dated September 18, 2001 stating that the Claimant "is experiencing an intolerable and intractable level of increasing lumbar pain." Conservative treatment had not significantly improved his condition, and he continued to have severe pain as a direct result of the accident. According to Dr. Morris, the medications were medically necessary to allow the Claimant to function and cope with his pain while performing his limited daily activities.<sup>6</sup>

On January 7, 2002, Dr. Morris did a follow-up examination on the Claimant. On that date, the Claimant rated his pain level as 7 on a scale of 1 - 10, with some improvement from his medications. Dr. Morris found he had lumbar spasms, tenderness and pain in the lumbar region. He noted the Claimant was working "full duty," and prescribed the same medications that are contested in this case.<sup>7</sup>

The Claimant was working with restrictions on April 29, 2002, when Dr. Morris did another follow-up examination on him.. Dr. Morris found he had lumbar spasms, tenderness and pain in the lumbar region and left leg. The Claimant filled out a comfort assessment guide, which Dr. Morris reviewed. It showed his pain level was 7 on a scale of 1-10, with some improvement from his medications and from physical therapy. The Claimant described the pain as sharp, penetrating, continuous, and worst in the evening. The pain worsened with work and weather conditions, and it improved with medication and rest. Dr. Morris renewed the prescriptions for Lortab and Soma "to decrease pain, increase range of motion and function," and he planned to see the patient again in one month.<sup>8</sup> In fact, each examination report in the record indicated Dr. Morris saw the Claimant monthly.

On June 26, 2002, Dr. Morris did a follow-up examination on the Claimant, who was then working "full duty." He found he had lumbar spasms, tenderness and pain in the lumbar region. The Claimant filled out a comfort assessment guide, which Dr. Morris reviewed. It showed his pain level was 7 on a scale of 1 - 10, with some improvement from his medications. The Claimant described the pain as sharp, throbbing, continuous, and worst in the evening. The pain worsened with work, and it improved with rest. Dr. Morris renewed the prescriptions for Lortab and Soma "to decrease pain and reduce spasms."<sup>9</sup>

### **C. Analysis**

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<sup>5</sup> Carrier Ex. 1, 49-55.

<sup>6</sup> VONO Ex. 1

<sup>7</sup>Carrier Ex. 1 at 20.

<sup>8</sup> Carrier Ex. 1, 36-38.

<sup>9</sup> Carrier Ex. 1, 7-10

The decision in this case is informed by two applicable legal tenets. First, an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury, as and when needed. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment.<sup>10</sup> Second, workers' compensation legislation is liberally construed to carry out its purpose of compensating injured workers and their dependents.<sup>11</sup>

Further, while the issue here is the medical necessity of the medications, the Petitioner accepted and filled prescriptions issued by the Claimant's treating physician. The Petitioner could neither make a medical necessity determination nor contact the Carrier for payment authorization before filling the prescriptions. Additionally, the Petitioner was without knowledge or the means of acquiring knowledge that the Carrier would contest medical necessity and fail to pay for medications prescribed by the treating physician. The ALJ infers that a prescription issued by a treating physician is some evidence of medical necessity that may be relied on by a pharmacy.

The evidence in this case is sparse. Instead of records from the monthly examinations apparently given by Dr. Morris, there are records of examinations and pain assessments done periodically. However, the records show that the Claimant consistently suffered intractable, severe pain. Objective tests have revealed that the Claimant either had another injury prior to this one that harmed his back, or that he had degenerative disease in his spine prior to this injury. There is a posterior disc bulge at L4-L5 and L5-S1. Those test results are some objective evidence supporting the likelihood that the Claimant suffered real pain. Furthermore, at each examination Dr. Morris observed the Claimant having muscle spasms in the lumbar region.

Despite his injury and pain, the record reveals that the Claimant returned to work. He consistently reported that the medications and rest helped reduce his pain.

The ALJ finds the Carrier proved that the prescriptions for the narcotic Hydrocodone/APAP were not medically necessary for the Claimant. The IRO opinion found the records did not justify the use of the drug, and both of Dr. Combs's peer reviews explained that the continued prescription of narcotic analgesics for chronic musculoskeletal pain is improper, because they are addictive and cause considerable cognitive dysfunction. Nothing in Dr. Morris's records controverts that.

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<sup>10</sup>TEX. LAB. CODE ANN. §408.021. "Health care" includes "all reasonable and necessary medical . . . services." TEX. LAB. CODE ANN. §401.011(19).

<sup>11</sup> Patient Advocates of Texas v. Texas Workers Compensation Commission, 80 S.W.3d 66 (Tex. App. - Austin 2002, pet. Ref'd.); Albertson's, Inc. v. Sinclair, 984 S.W.2d 958, 960 (Tex. 1999).

On the other hand, the Provider produced sufficient evidence to support the medical necessity of the prescriptions for Soma. As mentioned already, Soma is a muscle relaxer that works by blocking interneural activity. It is indicated as an adjunct to rest, physical therapy, and other measures for the relief of discomfort associated with acute, painful musculoskeletal conditions. The record supports a finding that the Claimant suffers from an acute, painful musculoskeletal condition. There is objective evidence from his treating physician that at each examination it is clear that he suffers from muscle spasms. Further, Dr. Morris stated that Soma helped decrease the pain and increase the Claimant's range of motion and function. The Claimant indicated on comfort assessment guides several times that, just as stated in *The Physician's Desk Reference*, he obtained some relief from his pain from rest and the medication.

Dr. Combs articulated specific reasons why a narcotic analgesic should not be used to treat the Claimant's chronic pain, but he did not articulate anything specific pertinent to the use of the muscle relaxer Soma. Also, he never examined the patient—the only evidence is that the Claimant suffers from chronic, severe pain and spasms in the lumbar region, and that the medication relieves his symptoms somewhat. While Dr. Combs appeared to believe a medication must give permanent relief from pain, there is nothing in the law that requires treatment to give permanent relief, and, from this record, it appears that such may never be the case for the Claimant. Nonetheless, he is entitled to relief from his severe pain and spasms, which has, in fact, enabled him to return to work.

Therefore, the Petitioner is entitled to payment of \$884.06, the MAR total for the Soma prescriptions it filled for the Claimant on October 31, 2001 and January 7, 2002.

### **III. FINDINGS OF FACT**

1. \_\_\_\_\_ the Claimant, was 30 years old when he sustained an injury to his back on \_\_\_\_\_.
  - a. The injury has caused persistent back pain with muscle spasms that have proved unresponsive to multiple epidural steroid injections and physical therapy.
  - b. Diagnostic testing revealed a 1-to-2 mm. posterior disc bulge at L4-L5 and L5-S1, and lumbar degenerative disc or spondylosis. The diagnosis is lumbar radiculopathy.
  - c. Dr. A. J. Morris prescribed Hydrocodone/APAP, which is a narcotic analgesic, for the Claimant on October 31, 2001, December 3, 2001, and January 7, 2002 for pain.
  - d. Dr. Morris prescribed Soma (Vanadom), for pain and muscle spasms on October 31, 2001, and January 7, 2002.
  - e. On July 23, 2001, the Claimant had achieved MMI, and he was given a 9% impairment rating of the whole person.
2. The Carrier denied payment for the medications referenced in Finding 1 based on the judgment of a peer review doctor, who did not examine the Claimant. Instead, by reviewing medical records he determined the drugs were not medically necessary.
3. The medication referenced in Finding 1c is not medically necessary for the Claimant, because it is addictive and causes considerable cognitive dysfunction.

4. Dr. Morris documented the bases for his prescriptions of Soma in his ongoing treatment of the Claimant's chronic symptoms for two separate examinations in 2001 (July 23 and September 18), and for three separate examinations in 2002 (January 7, April 29, and June 26).
  - a. He prescribed it to treat the Claimant's intolerable and intractable level of increasing lumbar pain and muscle spasms. Soma is a muscle relaxer that works by blocking interneural activity. It is indicated as an adjunct to rest, physical therapy, and other measures for the relief of discomfort associated with acute, painful musculoskeletal conditions.
  - b. Soma was medically necessary to allow the Claimant to function and cope with his pain while performing his limited daily activities.
  - c. Generally, the Claimant's pain was 7 in severity on a scale of 1-10, and he achieved some relief from taking the medication and rest. It reduced his muscle spasms and increased his range of motion and function.
  - d. While taking the medication, the Claimant has been able to work.
5. The Petitioner, VONO, accepted and filled prescriptions issued by the Claimant's treating physician, who believed the medications were medically necessary to treat the Claimant.
6. Based on Findings 1, 4, and 5, the Petitioner is entitled to payment of \$884.06, for the Soma prescriptions it filled for the Claimant on October 31, 2001 and January 7, 2002.

#### **IV. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issues presented pursuant to the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. §413.031.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a Decision and Order, pursuant to §413.031 of the Act and TEX. GOV'T CODE ch. 2003.
3. An employee who sustains a compensable injury is entitled to health care that relieves the effects naturally resulting from the injury and enhances the ability to return to or retain employment. TEX. LAB. CODE ANN. (Act) §408.021.
4. Workers' compensation legislation is liberally construed to carry out its purpose of compensating injured workers and their dependents. Patient Advocates of Texas v. Texas

Workers Compensation Commission, 80 S.W.3d 66 (Tex. App. - Austin 2002, pet. ref'd.); Albertson's, Inc. v. Sinclair, 984 S.W.2d 958, 960 (Tex. 1999).

5. Because the medication referenced in Finding 4 was medically necessary and permitted by § 408.021 of the Act, the relief referenced in Finding 6 is proper.

**ORDER**

IT IS THEREFORE, ORDERED that Zurich American Insurance Company reimburse VONO for \$884.06. This decision will become final as noted in footnote 2.

**ISSUED this 4th day of March 2003.**

**BARBARA C. MARQUARDT  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**