

DOCKET NO. 453-03-1323.M5
[MDR TRACKING NO. M5-02-2533-01]

<p>_____, Petitioner</p> <p>VS.</p> <p>FEDERATED MUTUAL INSURANCE CO., Respondent</p>	§ § § § § § §	<p style="text-align:center">BEFORE THE STATE OFFICE</p> <p style="text-align:center">OF</p> <p style="text-align:center">ADMINISTRATIVE HEARINGS</p>
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DECISION AND ORDER

I. INTRODUCTION

_____, Petitioner and Claimant, seeks reimbursement of \$46.25 from Federated Mutual Insurance Company (Federated or Carrier) for hypertension medication prescribed by her treating physician for five dates between June 6, 2001 and February 5, 2002. This decision finds that Petitioner proved the medications were reasonable and medically necessary to treat the effects naturally occurring from the compensable injury. The Carrier, therefore, must reimburse Petitioner the cost of these medications.

II. PROCEDURAL HISTORY

Administrative Law Judge (ALJ) Nancy N. Lynch convened and closed a hearing on February 13, 2003. _____ appeared and was assisted by Ombudsman Anthony Walker. Federated appeared and was represented by Attorney Beverly L. Vaughn.

Notice was not disputed and will be addressed in the findings of fact and conclusion of law set out below. At the beginning of the hearing, Mr. Walker raised the question whether Carrier was actually challenging this medication as “not related” to _____’s injury. Mr. Walker pointed out that if the basis of the challenge was whether this was a compensable injury, SOAH did not have jurisdiction to hear the case. The Carrier responded that as part of proving the medication was *currently* reasonable and medically necessary, Claimant had to prove her current condition was a result of her compensable injury. As discussed below, the ALJ concluded SOAH has jurisdiction to decide this case.

III. BACKGROUND

A. Legal Standards

Section 408.021(a)(1-3) of the Texas Labor Code (Act) provides:

(a) 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 compensable injury;
- (2) promotes recovery; or
- (3) enhances the ability of the employee to return to or retain employment.

Under §401.011(19) of the Act, "health care" includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.

_____ has the burden of proof because she appealed the Independent Review Organization's decision. 28 TEX. ADMIN. CODE (TAC) § 148.21(h).

B. Factual background

Claimant was injured at work when she was physically assaulted by a co-worker on _____. In addition to physical injury, the attack caused significant emotional and psychological injury including agoraphobia and panic attacks that continue today. Her current treating physician characterized these symptoms generally as post-traumatic stress (PTS) disorder. Since the injury, she has received workers' compensation health care benefits to relieve the effects of the injury.

A retrospective peer review was performed on medical records provided by the Carrier. The report, dated May 11, 2001, was cited as the basis of Carrier's refusal to pay for this and other medications and treatment. The only subject of this appeal is the medication used to treat Claimant's hypertension: triamterene/HCTZ. The six prescription refills in issue were obtained between June 6, 2001, and February 5, 2002. Each refill cost \$9.25 for a total claim of \$46.25.

IV. DISCUSSION

A. Petitioner's medical history

On _____, about ten days after the attack and following treatment at an emergency room, Claimant went to Dr. Gehring at Scott and White for continuing medical care. His records contain the following assessment from her first visit.

1. thigh contusion and low back pain/sacroiliac strain;

2. very symptomatic depression, demonstrated during the exam by tears, a depressed mood, and a flat affect;
3. patient experienced quite a lot of psychologic distress from the attack, unable to eat or sleep, frequent gastric distress, irritability and depression; frequent posterior headaches and loss of approximately five pounds;
4. vital signs stable, afebrile, normotensive, and no acute distress.
5. Weight 163; age 42; and blood pressure 140/80.

Dr. Gehring referred her to Dr. Castiglioni, a psychiatrist at Scott and White, because of her symptoms of depression that Dr. Gehring concluded to be directly related to her claim.

In November 1993, approximately seven months after the attack, Dr. Castiglioni noticed Claimant's swollen ankles during a therapy session. He took her blood pressure, found it to be extremely high, and directed her to go to an emergency room for immediate treatment. She has been on a low level dose of blood pressure medication since then.

Later, the Carrier sent her to Baylor College of Medicine. Dr. Spector became her psychiatrist. Dr. Powell became her treating physician. When Dr. Powell moved, Dr. Steven Operstény became her treating physician. This was in the fall of 1997. When Claimant first went to Dr. Operstény, she was receiving treatment for high blood pressure.

B. Petitioner \ Claimant's testimony

_____ testified she had been stalked and threatened by the co-worker who attacked her for several years before the actual assault. After the assault, _____ did not return to work, experienced panic attacks, and agoraphobia. She was diagnosed with post-traumatic stress disorder (PTS). Petitioner still cannot leave the house alone, continues to have panic attacks, and retreats to a closet, described as the only place she feels safe. She could not maintain her composure during her testimony and broke down at least twice.

C. Dr. Steven Opersteny's testimony

Initially, Dr. Opersteny was treating _____ for her lower back pain with physical therapy and medications. However, _____ had been seeing two different doctors and was then consolidating her care under Dr. Opersteny. He did not know which previous doctor started her on the high blood pressure medication.

When he examined her on September 23, 1997, her blood pressure was a little elevated at 130/80 although she was already taking blood pressure medication. Dr. Opersteny prescribed blood pressure medication based on her previous medical history and her blood pressure reading on that date. The drug she had been using is a component of triamterene/HCTZ, the drug he prescribed and the drug in dispute here. He characterized it as a mild drug, one of the first line agents used by many doctors to control blood pressure.

In September 1997, he believed her high blood pressure was related to her PTS disorder and he continues to hold that opinion. Petitioner did not have a blood pressure history prior to the injury, but developed one within a few months after the assault. Dr. Opersteny's opinion was that _____'s elevated blood pressure was due to the assault and the subsequent chronic anxiety or PTS brought on by the assault. Dr. Opersteny testified that just as acute stress can result in a blood pressure spike that abates after the stress subsides, chronic stress can result in chronic high blood pressure that does not abate as long as the stress continues. He derived this opinion in part from his experience with Vietnam war veterans who still had chronic stress or PTS as long as 10 or 20 years after the war.

Dr. Opersteny refused to speculate about how long she might need the medication but for now, it appears she will need it indefinitely. In his professional opinion, the medication is both medically necessary and related to the anxiety disorder that directly resulted from the attack by her co-worker. He disagreed with Dr. Culver's peer review opinion that the hypertension was not related to the anxiety disorder.

On cross-examination, Dr. Opersteny testified that his opinion would be the same if he learned _____ had normal blood pressure for four months after her injury. He explained that she could have had a delayed response to the continuing stress. Furthermore, Dr. Opersteny testified that no one could completely rule out all other risk factors for high blood pressure. It was his opinion, however, that her high blood pressure was related to the anxiety disorder brought on by the assault and that the medication he prescribed for her was reasonable and necessary medical treatment related to her injury.

D. The Carrier's evidence and argument

The Carrier paid for high blood pressure medication and other medications for several years. It first challenged the triamterene/HCTZ and other drugs used by _____ when it filed a notice of refusal/disputed claim dated March 6, 2002. The reason given was: "Compensable injury is limited to the initial diagnosis of low back injury and does not extend to any psychological

disorder or hypertension.” Then, on March 20, 2002, the Carrier amended the March 6, 2002 form as follows:

The carrier accepts psychological treatment & hypertension and will review and consider treatment on hypertension and psychological pursuant to the Tex. Labor Code addressing treatment on reasonable and necessary basis as related to claimant’s original injury of ____.

Following this apparent acknowledgment that the psychological treatment and hypertension were related to the injury, the Carrier sent another letter dated April 22, 2002, in which it stated it was denying the hypertension (and psychological) medications based on the May 11, 2001, peer review by Dr. Culver. Further, the letter said:

Although we have paid for these medications in the past, we do not feel that the continued problems with hypertension and anxiety/depression are related to your ____ injury.

The peer review doctor, however, had very little information to review for his report. He reviewed the April 20, 1993, evaluation by Dr. Gehring that took place a couple of weeks after the attack but before the cumulative stress had elevated Claimant’s blood pressure. In his peer review report, Dr. Culver wrote: “No other medical records were available except medications TWCC-66C dated April 03 and April 06, 2001, a brief follow-up report from Steve Opersteny, M.D. dated February 15, 2001 and his letter of justification dated April 04, 2001.” His report stated further: “The records I have for review are minimal....[T]he following medication evaluation is based only on the reports by the employer and the initial evaluation by Dr. Gehring.”

At the hearing, the Carrier also suggested that other intervening risk factors could be responsible for _____hypertension at the time these prescriptions were refilled rather than the chronic stress created by the work-related injury. The Carrier argued that _____ had to prove her current hypertension was caused by the injury in _____ to prove the medication to treat the hypertension is reasonable and medical treatment.

V. ANALYSIS

The ALJ concludes Claimant proved the medication she received that is at issue in this case was reasonable and necessary medical treatment naturally resulting from her compensable injury. The ALJ found Dr. Opersteny’s testimony to be highly credible and persuasive. He said that Claimant developed high blood pressure a few months after the attack as a result of experiencing months of agoraphobia, panic attacks, and PTS disorder associated with the attack and injury. She continues to have agoraphobia, panic attacks, and PTS disorder today as well as continued high blood pressure all of which are related to the ____ attack.

Dr. Culver, the peer review doctor, did not have sufficient information to offer a fully-informed opinion about Claimant’s condition. For example, there was no indication he had any

information related to Claimant's chronic stress, agoraphobia, and PTS disorder. Because his opinion was based on such limited information, the ALJ did not find the peer review to be persuasive.

As indicated above, the peer reviewer cited _____ *normal* blood pressure reading at the time of Dr. Gehring's evaluation shortly after the attack to justify denying her blood pressure medication now. The independent review organization, on the other hand, cited the fact that "the patient *had hypertension at the time of her accident* nine years ago" as its rationale for determining the use of medications to treat her hypertension was not warranted. This erroneous statement undermines the credibility of the independent reviewer's report.

The Carrier also suggested that other risk factors could have resulted in _____ elevated blood pressure and suggested she had to disprove each of these factors. The ALJ disagrees. _____ has had elevated blood pressure since shortly after the attack and is still clearly suffering with chronic anxiety and PTS. She is not required to disprove every possible alternative scenario that could have resulted in her developing a similar medical condition. Her burden is simply to prove that the at-work attack and injury resulted in her condition and she did so _____ further proved that this medication was reasonable and necessary medical treatment to relieve effects naturally resulting from the _____ attack.

VI. FINDINGS OF FACT

1. _____, claimant and petitioner, suffered a compensable injury when she was physically assaulted by a co-worker at work on _____.
2. At the time of Claimant's injury, her employer held workers' compensation insurance coverage through Federated Mutual Insurance Company (Carrier).
3. After her initial treatment in the emergency room, Dr. Gehring examined Claimant on _____, about ten days after the injury. He observed she had:
 1. a thigh contusion and low back pain/sacroiliac strain,
 2. very symptomatic depression, demonstrated during the exam by tears, a depressed mood, and a flat affect,
 3. quite a lot of psychologic distress from the attack, unable to eat or sleep, frequent gastric distress, irritability and depression, frequent posterior headaches, and loss of approximately five pounds,
 4. vital signs were stable, afebrile, normotensive, in no acute distress.
 5. Weight 163; age 42; and blood pressure 140/80.
4. Dr. Gehring referred Claimant to Dr. Castiglioni, a psychiatrist at Scott and White, because of her continuing depression that he believed to be directly related to the attack and injury at work.

5. _____ developed agoraphobia, panic attacks and post traumatic stress (PTS) disorder as a result of the attack by her co-worker and continues to experience these effects from the attack to date.
6. A few months after she began treatment with him, Dr. Castiglioni noticed _____ swollen ankles during a session, took her blood pressure and, finding it very high, immediately sent her to the emergency room for treatment.
7. _____ chronic agoraphobia, panic attacks, and PTS resulted in chronic high blood pressure that continues during the time the medications in issue were prescribed.
8. She has been treated with a low dose anti-hypertensive medication continuously since developing high blood pressure.
9. Her current treating doctor, Dr. Steven Operstony, prescribed triamptereine\HCTZ, a mild first line agent used to treat high blood pressure.
10. Triamptereine\HCTZ effectively treated _____ chronic high blood pressure.
11. Carrier refused reimbursement for the triamptereine\HCTZ prescriptions filled on the following dates for a total cost of \$46.25: 6/6/01, 11/2/01, 12/4/01, 1/7/02, and 2/5/02.
12. In response to the Carrier's denial of reimbursement, Claimant requested review of the denial.
13. The Independent Review Organization (IRO) that reviewed _____ claim found she was not entitled to reimbursement.
14. Upon receiving the IRO's decision, _____ timely requested a hearing before the State Office of Administrative Hearings (SOAH).
15. The SOAH hearing was held on February 13, 2003.
16. Notice of the hearing was sent to the parties on December 10, 2002. The notice informed the parties of the date, time, and location of the hearing, a statement of the matters to be considered, the legal authority under which the hearing would be held, and the statutory provisions applicable to the matters to be considered.
17. The medications prescribed by Dr. Operstony on the dates in question were reasonable and medically necessary and related to her compensable injury.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. ch. 401 et seq.
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. As Petitioner, the Claimant had the burden of proof in this matter. 28 TEX. ADMIN. CODE (TAC) §148.21(h).
5. Based on the above findings and pursuant to § 408.021(a) of the Act and 28 TAC § 134.1001, _____ demonstrated that the prescriptions in question were reasonable and medically necessary to treat Claimant's compensable injury.
6. _____ request for reimbursement should be granted.

ORDER

IT IS ORDERED that the claim of _____ for reimbursement from Federated Mutual Insurance Company in the amount of \$46.25 should be, and the same is hereby granted. Federated is ordered to pay this claim plus accrued interest.

Signed April 13, 2003.

**NANCY N. LYNCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**