

STATE OFFICE OF ADMINISTRATIVE HEARINGS
300 West 15th Street, Suite 502
Austin, Texas 78701

DOCKET NO. 453-03-1910.M5
[MDR TRACKING NO. M5-02-2319-01]

_____	§	BEFORE THE STATE OFFICE
	§	
V.	§	
	§	OF
ARGONAUT SOUTHWEST INSURANCE	§	
COMPANY		ADMINISTRATIVE HEARINGS

DECISION AND ORDER

_____ (Petitioner) seeks reimbursement in the amount of \$606.05 from Argonaut Southwest Insurance Company (Carrier) for two prescription medications. The Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) adopted the decision of the Independent Review Organization (IRO) and denied reimbursement. Petitioner has appealed MRD's decision. After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that Petitioner has shown by a preponderance of the evidence that the two prescription medications are medically necessary treatment for her work-related, compensable injury. Therefore, the ALJ grants the request for reimbursement.

I. Background Facts

In November 2001, Carrier discontinued payment for Petitioner's Effexor and Klonopin prescriptions after paying for them for many years. These were prescribed for chronic pain that resulted from a compensable, work-related injury in_____.

Petitioner's regular work duty was to break down doors. She had to drill out glued joints and then hit the joints with a heavy hammer to break the frame apart. These doors weighed as much as 60-70 pounds. She did this same tasks repeatedly throughout her workday. Repetitive activities included pushing the drill trigger while holding the drill, and swinging a heavy hammer with her right hand to hit the joints and break the frame apart.

Petitioner initially went to a doctor for an injured left thumb. She returned to work and within three days of her original injury, experienced severe burning pain in her right arm while trying to perform her job. At that point, she was unable to continue her regular work duties. TWCC Ex. 3, p. 47. In testimony, Petitioner described her pain as a burning pain that goes up from her wrist to the top of her head and across her shoulders.

Her injury was first diagnosed as carpal tunnel syndrome. It was later determined that Petitioner did not have carpal tunnel syndrome, and physicians have disagreed on Petitioner's actual condition, with diagnoses ranging from de Quervain's tenosynovitis to Reflex Sympathetic Dystrophy. Dr. Dee G. McCrary, Jr., M.D., her treating physician characterized her injury as a neuropathic pain from repetitive trauma.

In her attempt to obtain relief, Petitioner was hospitalized on several occasions to control pain and for diagnostic procedures. Treatments that have been tried include the use of a TENS unit, casts/splints, stellate ganglion blocks, and epidural steroid injections. None of these alleviated her pain or indicated that surgery would be helpful.

In 1994, Petitioner's psychiatrist, Dr. Sanford Kaiser, prescribed the medications Effexor and Klonopin as part of her treatment for depression and anxiety. These medications also provided Petitioner some relief from the chronic neuropathic pain associated with her compensable injury. No other treatment had alleviated her pain. Because of this, Dr. McCrary continued to prescribe the medications to her.

These medications have been prescribed continuously since 1994 and paid for by the Carrier. Petitioner has not had any significant periods of time during which she has not had the medications. In a letter written to the Carrier, Petitioner said Dr. Kaiser told her "it was the only thing that could be done and that I would have to take it for the rest of my life which I have proven to be true. I have tried [*sic*] to do without it and there is no way." TWCC Ex. 3, p. 35-36.

Dr. McCrary testified that he continued to prescribe these medications because they provided significant pain relief. He also testified that, in his opinion, she could not be "weaned off" the medication as the peer review doctor recommended. Petitioner continues to get relief from it, has not had any problems taking it, and has not developed a tolerance requiring increased dosages to get relief.

Up until 2001, the Carrier reimbursed the cost of the medications for Petitioner. However, in June 2001, the Carrier had a peer review performed by Dr. James Hood. In his peer review report, Dr. Hood notes the extent of Petitioner's treatment and provides his opinion that the medication is helpful to Petitioner. He indicated, however, that "there is no documentation of any work related injury." He concluded that she had "age related degenerative arthritis/disease of life" that is not an effect of a compensable injury. TWCC Ex. 3, p. 92. Additionally, he found she had severe depression anxiety.

Dr. Hood prepared another report in October 2001 after reviewing additional information. Dr. McCrary, Petitioner's treating doctor, in a letter dated September 24, 2001, described the pain that developed in Petitioner's right wrist as worse than the initial pain, "thought to be due to cervical disease from chronic use injury." TWCC Ex. 3, p. 47. Dr. Hood disagreed. He did not believe the cervical disease could have naturally resulted from the injury in question. Without such a connection, he found the prescriptions not medically necessary to treat a compensable injury.

Based on Dr. Hood's peer review, Carrier declined to reimburse further for the medications. After Carrier denied reimbursement for prescriptions provided between November 7, 2001, and April 12, 2002, Petitioner requested medical dispute resolution by the Commission's MRD, which referred the matter to an IRO.

The IRO found that the Effexor and Klonopin were used as a treatment protocol for Petitioner's neuropathic pain and that the temperate use of this medication appeared to control her pain symptoms. However, the IRO also found that her injury was best explained by the de Guervain's tenosynovitis diagnosis and concluded, therefore, that the medications were not medically necessary to treat the compensable injury alone. The IRO recommended she be weaned off the medications over a period of six-to-eight weeks.

Based on the Revised Report, MRD issued an order declining to order reimbursement for the prescription medications provided between November 7, 2001, and April 12, 2002. Petitioner then appealed.

On July 30, 2003, ALJ Nancy N. Lynch convened a hearing on these issues. Petitioner appeared by telephone and was assisted by her daughter, _____, who had power of attorney for her to participate in this case. Petitioner also was assisted by ombudsman Juan Mireles. Carrier appeared and was represented by Lloyd Hoffman, attorney. The hearing concluded and the record closed the same day.

II. Analysis

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 cures or relieves effects naturally resulting from the injury. TEX. LABOR CODE ANN. § 408.021. "Health care" includes "all reasonable and necessary medical . . . services." TEX. LABOR CODE § 401.011(19).

Petitioner proved by a preponderance of the evidence that the two prescription drugs provided to Petitioner between November 7, 2001, and April 12, 2002, relieved chronic pain that developed as a result of her work-related injury and, therefore, they were reasonably required and medically necessary. The opinion of her treating doctor, Dr. McCrary, was most persuasive.

Dr. McCrary had treated Petitioner for many years, he was familiar with her general health--including whether she had other physical conditions that were causing this pain--and it was his opinion that this pain related back to her work-related compensable injury of _____. In his opinion, Petitioner's job, which required her to swing a heavy hammer to knock apart doors that weighed as much as 70 pounds all day long was the likely source of her neuropathic pain.

The peer reviewer's opinion, on the other hand, appeared to be speculation based on her age and the fact that several years have passed since the injury. He never examined Petitioner. Dr. Hood and the IRO both agreed that these medications were of some benefit to Petitioner. They justify the denial of benefits by the lack of "objective" evidence linking Petitioner's chronic pain to her injury. Suggestions were made that intervening causes like aging and depression were the source of her pain.

Petitioner is entitled to all health care that relieves the effects naturally resulting from her compensable injury when that health care is needed. The Carrier is not relieved from its obligation

to provide that health care simply because Petitioner has aged during the interval. Neither is the fact that Petitioner went through a period of depression when some family member died enough to erase the fact of her work-related injury.

Pain, and its causes, are not always susceptible to objective tests and measurements. Petitioner has had continual pain ever since her she was injured at work. After she had expended considerable effort undergoing testing and trying other treatments, Petitioner found that these medications successfully control her pain. Her treating doctor, who knows her better than anyone involved in this case, is convinced that the direct and continual history of chronic pain she has experienced since the compensable injury demonstrate that her pain was caused by, and continues to be caused by, her compensable injury. Furthermore, the nature of her work was consistent with this type of injury.

The ALJ is convinced that it is more likely than not that her chronic pain was caused by, and continued to be caused by, Petitioner's compensable injury. Therefore, the Petitioner has met her burden of proof and the ALJ finds the medications are medically necessary treatment for Petitioner's original work-related injury to her wrist ten years ago. The ALJ finds Petitioner is entitled to reimbursement for the medications. In support of this, the ALJ makes the following findings of fact and conclusions of law.

III. Findings of Fact

1. On _____, _____ (Petitioner) suffered a compensable, work-related injury to her left thumb. Within three days, while working with the injured thumb, she experienced a severe burning pain in her right arm, into her shoulder, and up to the top of her head.
2. Petitioner's job was to dismantle doors weighing as much as 70 pounds: she drilled out glue joints and then hit the joints with a heavy hammer to break the frame apart. She repeated this task all day.
3. Argonaut Southwest Insurance Company (Carrier) is the provider of workers' compensation insurance for Petitioner's employer during ____.
4. Petitioner's injury was difficult to diagnose and treat and she underwent numerous diagnostic tests and treatments (including repeated hospitalizations) without obtaining relief from the severe pain.
5. Petitioner's unsuccessful treatments included the use of a TENS unit, casts/splints, stellate ganglion blocks, and epidural steroid injections.
6. In 1994, as part of treatment for depression and anxiety, a psychiatrist treating Petitioner prescribed Efflexor and Klonopin, and she discovered these medications controlled her pain.
7. Because of the pain relief experienced by Petitioner from those medications, her treating doctor, Dr. Dee McCrary, continued to prescribe them for the chronic pain related to her compensable injury.

8. The medications Effexor and Klonopin have been prescribed to Petitioner continuously since _____ and her doctor has not taken her off the drugs during that time.
9. Petitioner has tried to go without the medications and found she could not do so.
10. Until 2001, Carrier reimbursed the cost of the medications for Petitioner.
11. In June 2001, Carrier had a peer review performed by Dr. James Hood. In his peer review report, Dr. Hood concluded that Effexor and Klonopin had not been shown to be medically necessary treatment for Petitioner's work-related injury in _____.
12. Based on Dr. Hood's peer review, Carrier advised Petitioner that it would no longer reimburse her for the medications.
13. Between November 7, 2001, and April 12, 2002, Petitioner obtained additional prescriptions for Effexor and Klonopin, and paid \$606.05 for the medications.
14. Carrier declined to reimburse Petitioner for the medications Petitioner paid for between November 7, 2001, and April 12, 2002.
15. On April 23, 2002, Petitioner requested medical dispute resolution by the Texas Workers' Compensation Commission's Medical Review Division (MRD), which referred the matter to an Independent Review Organization (IRO).
16. On July 30, 2003, SOAH Administrative Law Judge Nancy N. Lynch convened a hearing in this case. Petitioner appeared by telephone and was assisted by her daughter, _____, who has power of attorney for her in this case. Petitioner also was assisted by ombudsman Juan Mireles. Carrier appeared and was represented by Lloyd Hoffman, attorney. The hearing concluded and the record closed the same day.
17. The nature of Petitioner's work, the history of her unremitting pain, and the relief she has experienced taking these prescription medications demonstrate that the medications in issue are medically necessary as treatment for Petitioner's original work-related compensable injury of _____.

IV. Conclusions of Law

1. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.
2. The request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE § 148.3.
3. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Petitioner has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).
5. Petitioner established, by a preponderance of the evidence, that the prescription medications, Effexor and Klonopin, are medically necessary for the treatment of her work-related injury.
6. Petitioner's request for reimbursement should be approved.

ORDER

IT IS, THEREFORE, ORDERED that Argonaut Southwest Insurance Company reimburse Petitioner \$606.05 plus interest for the prescription medications Effexor and Klonopin prescribed to Petitioner between November 7, 2001, and April 12, 2001.

Signed, September 26, 2003.

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