

____, § BEFORE THE STATE OFFICE
Petitioner §
§
VS. § OF
§
GREAT AMERICAN INSURANCE §
COMPANY OF NEW YORK, § ADMINISTRATIVE HEARINGS
Respondent. §

DECISION AND ORDER

____ (Claimant) appealed the decision of an Independent Review Organization (IRO), upholding the denial of reimbursement for medication prescribed to Claimant from August 11, 2001, through November 13, 2001. In this decision, the Administrative Law Judge (ALJ) finds that Claimant failed to meet his burden of showing that the prescribed medication was reasonable and medically necessary for Claimant's compensable injury. Therefore, Great American Insurance Company of New York (Carrier) is not ordered to reimburse Claimant for the prescribed medications.

The hearing convened and closed on July 14, 2003, before Steven M. Rivas, ALJ. Claimant appeared and was assisted by Luz Loza, Ombudsman. Carrier was represented by Steve Tipton, attorney.

I. DISCUSSION

1. Background Facts

Claimant sustained a compensable back injury on ____, when he was involved in an automobile collision. Since that time, Claimant has undergone extensive treatment for his compensable injury, which was diagnosed as a cervical and lumbar strain. On February 1, 1994, Claimant came under the care of Everton A. Edmonson, M.D., who later prescribed Robaxin to treat Claimant's back pain. Dr. Edmonson also later prescribed Ambien to treat Claimant's insomnia.

Carrier offered a copy of the Robaxin and Ambien inserts from the Physicians' Desk Reference (PDR). The PDR indicates Robaxin is a muscle relaxant designed to be used for relief of discomfort associated with acute, painful musculoskeletal conditions.¹ According to the PDR, Ambien is a drug designed for short-term treatment of insomnia.² Both drugs are considered hypnotics, which means they induce sleep.³

¹ Physicians' Desk Reference, 56th ed., 2002, at page 2939, offered by Carrier.

² *See Id.* at page 3192.

³ Dorland's Illustrated Medical Dictionary, 28th ed., 1994, at page 803.

Between August 11, 2001, and November 13, 2001, Dr. Edmonson prescribed Claimant Robaxin and Ambien, which Claimant purchased with his own funds. Claimant sought reimbursement from the Carrier in the amount \$488.00, for the medication, which Carrier denied as not medically necessary. Claimant filed a request for Medical Dispute Resolution with the Medical Review Division of the Texas Workers' Compensation Commission (the Commission). The dispute was sent to an IRO, which upheld the denial of reimbursement, and Claimant filed a request for hearing before the State Office of Administrative Hearings.

2. Applicable Law

The Texas Labor Code contains the Texas Workers' Compensation Act (the "Act") and provides the relevant statutory requirements regarding compensable treatment for workers' compensation claims. In particular, TEX. LAB. CODE ANN. § 408.021 provides in pertinent part: (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 TEX. LAB. CODE ANN. § 401.011(19) health care "includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services."

3. Evidence and Analysis

Dr. Edmonson testified he first began treating Claimant in 1994. In 1998, Dr. Edmonson began prescribing Robaxin to Claimant, but has occasionally taken Claimant off that medication to determine what effect, if any, other combinations of medications have on Claimant. Robaxin is a muscle relaxant designed to treat muscle spasms, but Dr. Edmonson testified Claimant has responded well to the medication even though he does not suffer from muscle spasms. Subsequently, Dr. Edmonson prescribed Ambien to treat Claimant's complaints of insomnia.

In Dr. Edmonson's opinion, Claimant has responded well to taking both Robaxin and Ambien. His opinion is based on Claimant's testimony that he performs well during the day while on this medication. Additionally, Dr. Edmonson contends Claimant does not exhibit any addictive behavior, like requesting more than the prescribed dosage. Furthermore, Dr. Edmonson believes Claimant gets tired during the day when he does not take the medication.

According to Dr. Edmonson, some patients may become addicted to the prescribed medication, but there is no better treatment plan for Claimant at this time. For example, Dr. Edmonson asserted, it would not be feasible to enroll Claimant in a physical therapy or another pain management program now because doing so would require an investment that would lead to loss of income and the inability to meet payroll. Claimant is currently self-employed and employs other people to work under him. Dr. Edmonson testified if Claimant were required to attend therapy sessions, he would not be able to devote enough time to his job, which would result in a loss of income for Claimant, as well as Claimant's employees. Furthermore, Dr. Edmonson stated even if Claimant were to undergo a lengthy rehabilitation process now, there is no guarantee his condition would improve at all. In Dr. Edmonson's opinion, there is no other way to treat Claimant right now than to continue prescribing Robaxin and Ambien.

On cross-examination, Dr. Edmonson admitted the prescribed medication was designed for short-term use, and knew of no studies that recommended long-term use of Robaxin or Ambien. On multiple occasions Dr. Edmonson expressed his position that so long as Claimant demonstrated some kind of relief from his pain by taking the medication, he was not overly concerned about Claimant developing an addiction to the medication. Dr. Edmonson testified he has treated Claimant for over nine years, and believes Claimant's current medication treatment affords Claimant remarkable pain relief, and allows him the opportunity to function and remain employed.

It is clear that Dr. Edmonson believes he is properly treating Claimant by continually prescribing the above-mentioned medication. However, Carrier argued, that is not the standard that determines whether or not the prescribed medication is medically necessary.

In support its position, Carrier offered a medical journal article from Dr. Daniel F. Kripke, that was based on a study of the effects of long-term use of hypnotic drugs like Robaxin and Ambien. The study concluded that a patient's attempt to improve daytime function through the long-term use of hypnotics is usually unsuccessful.⁴ The study also found that long-term use of hypnotics impairs performance, cognition and memory; increases the risk of automobile accidents; and promotes unfavorable changes in personality.⁵ Dr. Edmonson admitted he was not familiar with this study.

Carrier also submitted a report by Marvin E. Van Hal, M.D., which was dated January 29, 2000. In the report, Dr. Van Hal recommended that Claimant be prescribed non-narcotic pain relief medication like Tylenol and Ultram. Additionally, Dr. Van Hal found based on Claimant's medication intake, that Claimant may require professional help for detoxification from his chronic narcotic use. Dr. Van Hal concluded there was no medical necessity for chronic muscle relaxants or sedative hypnotics resulting from Claimant's compensable injury.

The Commission's rule 408.021 entitles injured employees to receive medical care that cures or relieves the effects of a compensable injury. Dr. Edmonson believes Claimant is entitled to reimbursement of the prescribed medication because long-term use of the medication appears to have a positive affect on Claimant. However, Dr. Edmonson's position conflicts with the literature regarding the prescribed medication, and the testimony of Dr. Van Hal. After considering all of the evidence, the ALJ finds Carrier's evidence to be more persuasive.

4. Conclusion

Dr. Edmonson admitted the use of hypnotics is generally prescribed on a short-term basis, but he prescribed this particular drug combination to Claimant because it seems to provide Claimant sufficient relief of back pain, and it seems to allow Claimant to effectively function during the day time. Therefore, despite the documented findings and recommendations in such authorities like the Physicians' Desk Reference and Sleep Medicine Reviews that do not support long-term use of hypnotics, Dr. Edmonson believes long-term use of these medications is benefitting Claimant.

Dr. Edmonson admitted he could not point out any authority or study that recommends long-term use these drugs. With no basis to substantiate Dr. Edmonson's prescription, and persuasive

⁴ Chronic Hypnotic Use: Deadly Risks, Doubtful Benefit, Sleep Medicine Reviews, Vol. 4, No. 1, Feb 2000.

⁵ *See Id.*

evidence to the contrary, Claimant is unable to meet his burden of proving the prescribed medication is medically necessary.

II. FINDINGS OF FACTS

1. On ____, Claimant sustained a compensable work-related injury.
2. As part of his treatment, Claimant came under the care of Everton Edmonson, M.D., who prescribed Robaxin and Ambien to Claimant beginning in 1998.
3. Between August 11, 2001, and November 13, 2001, Dr. Edmonson prescribed Robaxin and Ambien to Claimant, which Claimant purchased with his own funds.
4. Claimant requested reimbursement from Great American Insurance Company of New York (Carrier) in the amount of \$488.00 for the medication, which Carrier denied as not medically necessary.
5. Claimant requested medical dispute resolution through the Texas Workers' Compensation Commission's (the Commission) Medical Review Division (MRD). The dispute was referred to an Independent Review Organization (IRO), which upheld the denial of reimbursement.
6. Claimant timely appealed the IRO decision to the State Office of Administrative Hearings (SOAH).
7. Notice of the hearing in this case was mailed to the parties on May 2, 2003. 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. In the notice, the Commission's staff indicated that it would not participate in the hearing.
8. The hearing convened and closed on July 14, 2003, with Administrative Law Judge (ALJ) Steven M. Rivas presiding. Claimant appeared with the assistance of Luz Loza, Ombudsman. Carrier was represented by Steve Tipton, attorney.
9. Robaxin and Ambien are designed for short-term use. Claimant has been taking the prescribed medication for more than four years.
10. There is insufficient medical authority to support long-term use of the prescribed medication.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE § 413.031.
2. 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.
3. Claimant timely filed its notice of appeal, as specified in 28 TEX. ADMIN. CODE § 148.3.

4. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE § 2001.052 and 28 TEX. ADMIN. CODE § 148.4.
5. Claimant had the burden of proof on its appeal by a preponderance of the evidence, pursuant to TEX. LAB. CODE ANN. § 413.031 and 28 TEX. ADMIN. CODE §148.21(h).
6. Under TEX. LAB. CODE § 408.021(a)(3), 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 that enhances the ability of the employee to retain employment.
7. Claimant did not prove that the prescribed medication was medically necessary for treatment of his compensable injury.
8. Based on the above Findings of Fact and Conclusions of Law, Claimant's appeal and his request for additional reimbursement should be denied.

ORDER

IT IS ORDERED THAT the reimbursement requested by Claimant be denied for the prescribed medication.

Signed this 3rd day of September, 2003.

**STEVEN M. RIVAS
STATE OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW JUDGE**