SOAH DOCKET NO. 453-03-3612.M5

MDR Tracking No. M5-03-1672-01

		BEFORE THE STATE OFFICE
VONO	§	
Petitioner	§	
	§	
v.	§	**OF**
	§	
CONTINENTAL CASUALTY	§	
COMPANY	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

I. INTRODUCTION

VONO (Provider) has appealed a decision of the Texas Workers' Compensation Commission (TWCC) Medical Review Division (MRD), which was based on an independent review organization (IRO) review. The IRO agreed with Continental Casualty Company (Carrier) that certain prescribed drugs (Drugs) that the Provider furnished to (Claimant) were not reasonably medically necessitated by the Claimant's compensable injury.

The total maximum allowable reimbursement (MAR) amount in controversy is $1,201.30. The only issue is whether the Drugs were medically necessitated by the compensable injury.

The Administrative Law Judge (ALJ) cannot find that the Drugs were medically necessary to treat the Claimant's Compensable Injury or pain resulting from that injury. Accordingly, the Provider's request for reimbursement is denied.

II. DISCUSSION

On ____, the Claimant sustained a work-related injury to her cervical and lumbar spine, right shoulder and ankle. As a result of her compensable injury, the Claimant had a two-level disc fusion in her neck on May 14, 1998. Following her surgery, the Claimant was given a 26-percent whole-person impairment rating by the designated doctor.

A.J. Morris, M.D., has treated the Claimant since December 15, 1998. He has prescribed Amitriptyline (also known as Elavil), Carisoprodol (also known as Vanadom), Prop Oxy/APAP (also known as Darvocet), and Neurontin to the Claimant. For the dates in dispute, March 26 through May 7, 2002, VONO filled those prescriptions and seeks reimbursement from the Carrier.

The Provider argues that the Claimant needed the Drugs to treat her radiculopathy that stemmed from her compensable injury. Radiculopathy is any pathological condition of the nerve

roots,[1] Carrier witness Samuel Bierner, M.D. (Dr. Bierner) also described radiculopathy as a weakness or loss of sensational reflexes in a distribution that correlates with a specific nerve root.

Rick Taylor, D.O., (Dr. Taylor) specializes in pain management and testified for the Provider. He has never examined the Claimant, but did review her medical records. He noted that an electromyogram (EMG) of the Claimant showed radiculopathy at the her right cervical vertebrae (C) 6 and a nerve conduction study showed radiculopathy bilaterally at her lumbar vertebrae (L) 5. Dr. Taylor testified that radiculopathy is very painful.

The Carrier questions whether the Claimant has radicular pain stemming from her injury. On August 5, 2003, Dr. Bierner examined the Claimant and her medical records. The EMG to which Dr. Taylor referred that showed radiculopathy at C6 was conducted in October 1997. Based on that and other evidence, Dr. Bierner concluded that the Claimant had an underlying degeneration in her cervical and lumbar spine. Dr. Bierner agreed that the compensable injury may have aggravated that condition. However, Dr. Bierner testified that during his exam, the Claimant showed no sign of cervical radiculopathy. That corresponded to his expectation. Dr. Bierner testified that any aggravation of the nerve roots at C6 should have resolved by the time he examined the Claimant, six years after the compensable injury.

On the other hand, the nerve conduction study that showed the Claimant had bilateral radiculopathy at L5, which might have caused lower back pain, is relatively recent. It was conducted on January 21, 2003, by Dr. Roger Blaire. Although the Claimant complained of lower back pain when Dr. Bierner examined her, he questioned whether the compensable injury caused that pain.

Dr. Bierner testified that a single study showing L5 radiculopathy more than six years after an injury is too remote in time to necessarily indicate that the compensable injury caused that radiculopathy. There is no nerve conduction study or other objective evidence showing L5 radiculopathy between the Claimant's date of surgery and January 21, 2003. There could have been many other causes in the intervening five and one-half years. Morever, Dr. Bierner testified that the type of study, dermatomal somatosensory evoked potential (DSEP), often shows false positives for radiculopathy. He also stated that his examination on August 5, 2003, showed that the Claimant's sensations were intact and she did not have any detectable weakness that was reproducible.

The Claimant's treating doctor, Dr. Morris, who diagnosed the Claimant's radiculopathy did not testify to explain how he arrived at his diagnoses. Moreover, his reports that were admitted into evidence are very conclusory, simply stating that she had radiculopathy without explaining how he reached that conclusion.

Even assuming for the sake of argument that the Claimant had radicular pain and it stemmed from the compensable injury, the Carrier argues that the Claimant does not reasonably need the Drugs to treat that pain. The Carrier contends that some are not indicated for treating such pain and the others are not appropriate for long-term.

The Provider's witness, Dr. Taylor, testified that Dr. Morris acted appropriately in prescribing the disputed Drugs to the Claimant. Dr. Taylor testified that it is completely appropriate to prescribe Darvocet, a mild opiate pain reliever, to treat radicular pain. While not pain relievers,

[1] Merriam-Webster Medical Dictionary, <http://www.nlm.nih.gov/medlineplus/mplusdictionary.html>, (2003).

Dr. Taylor stated that the other Drugs are commonly prescribed along with a pain reliever when a patient has radicular pain.

Carisoprodol is a muscle relaxant. Dr. Taylor stated that people who have had disc fusions or have disc dysfunctions commonly have muscle spasms. Even Dr. Bierner acknowledged that Carisoprodol is prescribed by some physicians for radicular pain, and he agreed that it would be appropriate to use it for a week or two to deal with acute muscle spasms associated with such pain. But Dr. Bierner testified that long-term use of Carisoprodol is not appropriate. He noted that it is commonly abused due to it sedative properties. He noted that when he examined the Claimant she was very slow talking and thinking, suggesting she was very sedated. In fact, more likely than not she has been for many years. Dr. Morris and his colleagues at Industrial Medical Associates appear to have continuously prescribed Darvocet and Carisoprodol to the Claimant since at least February 2, 1999. Dr. Bierner testified that one taking Darvocet and Carisoprodol for this long will be too sedated to return to work.

The Claimant is depressed. One of the Drugs she is taking, Elavil, is an anti-depressant. The last of the Drugs, Neurontin, is an anti-seizure medication that alters neurotransmission and in so doing seems to reduce neuropathic pain. Dr. Taylor testified that Elavil and Neurontin have an analgesic effect on radicular pain. But Dr. Bierner testified that the Claimant is likely depressed because she has been away from work for so long, largely due to her over-sedation. He also noted that there is extensive medical evidence showing that returning to work generally reduces depression and pain by increasing physical activity, reincorporating one into the community, reducing financial pressure, *etc.*

There is little evidence from the Claimant's prescribing doctor, Dr. Morris, to explain exactly why the Claimant nearly five years after her Compensable Injury and four years after her surgery still needed the Drugs to relieve her pain, if any, stemming from that injury. In his report of February 21, 2002, just before the dates in dispute, Dr. Morris simply stated that the Claimant was in pain, diagnosed her as having cervical and lumbar radiculopathy, and prescribed the Drugs. His earlier reports also contained few details. The evidence also includes an obviously generic letter from Dr. Morris that explains how the Drugs work on pain but fails to discuss anything specific about the Claimant or her condition except to state her name, date of injury, and identifying data. In the letter, Dr. Morris states that the Claimant's injuries and diagnoses are "unresolvable" and any interruption of her "essential" current therapy would be "criminally negligent," "inhumane," and may cause her death by suicide.

How in the world could Dr. Morris reach such specific and troubling conclusions without a probing consideration of the Claimant's circumstances, which there is no evidence he made? The ALJ concludes that Dr. Morris could not. Instead, his hyperbolic, unsupported rhetoric only undermines Dr. Morris credibility to the point that the ALJ attaches little weight to it.

The Claimant was examined by a psychologist in October 1999, who found her depressed and anxious. Dr. Bierner confirmed that she still was when he examined her in August 2003. The evidence, however, does not show that those conditions more likely than not stem either directly or indirectly from her compensable injury. Instead, the evidence suggests that it is more likely than not that any pain from the Claimant's compensable injury has resolved and that the Drugs are likely

leaving her overly sedated and inactive, which may well be worsening her non-compensable anxiety and depression.

Based on the above, the ALJ cannot conclude that the Claimant even had pain stemming from her compensable injury on the dates that the Provider furnished the Drugs to her or that she needed the Drugs to relieve any pain she had no matter its cause. The Provider's request for reimbursement is denied.

III. FINDINGS OF FACT

1. ___ (Claimant) sustained a work-related injury on ___, while her employer was ___ and its workers' compensation insurer was Continental Casualty Company (Carrier).

2. The Claimant's compensable injury was to her cervical and lumbar spine, right shoulder, and ankle.

3. The Claimant had an underlying degeneration in her cervical and lumbar spine, which the compensable injury likely aggravated.

4. As a result of her compensable injury, the Claimant had a two-level disc fusion in her neck on May 14, 1998.

5. The Claimant's Treating Doctor is A.J. Morris, M.D., who has treated the Claimant since December 15, 1998.

6. The Treating Doctor has prescribed "mitriptyline (also known as Elavil), Carisoprodol (also known as Vanadom), Prop Oxy/APAP (also known as Darvocet), and Neurontin (collectively Adrugs") to the Claimant.

7. The Treating Doctor prescribed the Drugs to the Claimant to treat radiculopathy at the her right cervical vertebrae (C) 6 and bilaterally at her lumbar vertebrae (L) 5.

8. Radiculopathy is any pathological condition of a nerve root demonstrated by a weakness or loss of sensational reflexes in a distribution that correlates with that specific nerve root.

9. On August 5, 2003, the Claimant had no sign of cervical radiculopathy, her sensations were intact and she did not have detectable weakness that was reproducible.

10. On January 21, 2003, a dermatomal somatosensory evoked potential (DSEP) nerve conduction study showed the Claimant had bilateral radiculopathy at L5, which possibly caused her lower back pain.

11. There is no objective evidence that the Claimant had bilateral radiculopathy at L5 prior to January 21, 2003.

12. The January 21, 2003, DSEP study first showing L5 radiculopathy does not show that the compensable injury more probably than not caused the Claimant's lower back pain because:

- more than five and one-half years had passed since the Compensable Injury; and
- DSEP studies often showed false positives for radiculopathy.

13. On August 5, 2003, the Claimant had back pain but her sensations as to L5 were intact and she did not have any detectable weakness that was reproducible.

14. The Provider furnished the following drugs with maximum allowable reimbursements (MARs) to the Claimant on the dates shown below:

DRUG	**FAMILIAR BRAND NAME**	**MAR**	**DATES**
Amitriptyline 25 mg #60	Elavil	$31.07	3/26/02
Carisoprodol 350 mg #120	Vanadom	$415.20	3/26/02
Prop Oxy/APAP 100/650 mg #120	Darvocet	$89.83	3/26/02
Neurontin 300 mg # 90	Neurontin	$130.09	3/26/02
Carisoprodol 350 mg #90	Vanadom	$312.40	4/23/02
Prop Oxy/APAP 100/650 mg #90	Darvocet	$68.37	4/23/02
Amitriptyline 25 mg #15	Elavil	$10.77	4/23/02
Neurontin 300 mg # 90	Neurontin	$130.09	4/23/02
Amitriptyline 25 mg #60	Elavil	$13.48	5/7/02

15. Darvocet is a mild opiate pain reliever.

16. Neurontin is an anti-seizure medication that alters neurotransmission and in so doing may reduce neuropathic pain.

17. The Claimant has not worked since June 1998.

18. Returning to work generally reduces depression and pain by increasing physical activity, reincorporating one into the community, reducing financial pressure, *etc.*

19. Carisoprodol is a muscle relaxant.

20. Long-term use of Carisoprodol is generally not appropriate because it is commonly abused due to it sedative properties.

21. On August 5, 2003, the Claimant was very slow talking and thinking, suggesting she was very overly sedated.

22. Dr. Morris and his colleagues at Industrial Medical Associates have continuously prescribed Darvocet and Carisoprodol to the Claimant since at least February 2, 1999.

23. One taking Darvocet and Carisoprodol over five and one-half years will be too sedated to ever return to work unless he or she stops taking those drugs.

24. Elavil, which Claimant takes, is an anti-depressant, which has an analgesic effect on pain.

25. The Claimant is depressed.

26. The Claimant is depressed at least in part because she has been away from work for so long largely due to her over-sedation.

27. The Provider timely sought reimbursement of the MARs, totaling $1,201.30, from the Carrier for the Drugs.

28. The Carrier timely submitted explanations of benefits (EOBs) to the Provider denying it reimbursement for the Drugs.

29. The Provider timely filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (TWCC), which referred it to an independent review organization (IRO).

30. The IRO reviewed the medical dispute and found that the Drugs were not reasonably medically necessitated by the Claimant's compensable injury.

31. After the IRO decision was issued, the Provider asked for a contested-case hearing by a State Office of Administrative Hearings Administrative Law Judge (ALJ) concerning the medical dispute.

32. Notice of a November 10, 2003, hearing in this case was faxed to the Provider and the Carrier on September 12, 2003.

33. On November 10, 2003, ALJ William G. Newchurch held a hearing on this case at the William P. Clements, Jr. Building, 300 W. 15th Street, 4th Floor, Austin, Texas. The hearing concluded and the record was closed that same day.

34. The Carrier appeared at the hearing through its attorney, Jane Lipscomb Stone.

35. The Provider telephonically appeared at the hearing through its designated representative Nicky Otts.

IV. CONCLUSIONS OF LAW

1. 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 TEX. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) (West 2003) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2003).

2. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.

3. Based on the above Findings of Fact and Gov't Code § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) § 155.41(b) (2003), and 28 TAC §§ 133.308(v) and 148.21(h) (2002), the Provider has the burden of proof in this case.

4. 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 cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. Labor Code § 408.021 (a).

5. Based on the above Findings of Fact, the Claimant did not have pain stemming from her Compensable Injury on or near the dates that the Provider furnished the Drugs to her.

6. Based on the above Findings of Fact, the Claimant did not need the Drugs to relieve pain stemming from her Compensable Injury.

7. Based on the above Findings of Fact and Conclusions of Law, the Provider's request for reimbursement should be denied.

ORDER

IT IS ORDERED THAT:

The Provider's request to be reimbursed $1,201.30 for the Drugs it furnished to the Claimant is denied.

SIGNED December 8, 2003.

WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS