

DOCKET NO. 453-03-3809.M5
MDR Tracking No. M5-03-0452-01

INDUSTRIAL MEDICAL ASSOCIATES,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
VS.	§	OF
	§	
ZURICH AMERICA INSURANCE COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Industrial Medical Associates (Industrial) appealed a Texas Workers Compensation Commission (Commission) order and independent review organization (IRO) determination that nine office visits for an injured worker (Claimant) from October 1, 2001, through June 26, 2002 were medically unnecessary.¹ Zurich America Insurance Company (Zurich) had denied Industrial’s claim for the office visits. Industrial argued that the medications prescribed during the office visits were medically necessary and the office visits themselves met the applicable CPT code requirements for payment. Zurich’s primary argument was that the level of office visit charged was not shown to be appropriate. This decision concludes that one office visit, billed at CPT code ____, should be paid, but the other visits, billed at CPT code ____, should be denied.

I. PROCEDURAL HISTORY

A hearing convened on January 14, 2004, before the undersigned Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH), Austin, Texas. Industrial appeared and was represented by A. J. Morris, M.D. Zurich appeared and was represented by its counsel, Steven M. Tipton. The hearing closed on January 14, 2004.

As there were no issues concerning notice or jurisdiction, those matters are set forth in the fact findings and legal conclusions without further discussion here.

II. DISCUSSION

1. Background

The Claimant, a ____ year old male, sustained an at-work injury to his lumbar spine region on ____, when he slipped and fell while working at a _____. He has undergone conservative treatment for pain and has had epidural steroid injections. He has had prescriptions for multiple drugs, including Lortab, Lorcet, Soma, Celebrex, Vioxx, and Vanadom.

¹ The IRO decision said the disputed dates of service were from October 31, 2001, through June 26, 2002 (Ex. 1 at 6), but both parties addressed office visits beginning on October 1, 2001. Industrial requested medical dispute resolution for office visits beginning on October 1, 2001. Ex. 1 at 17.

The office visits occurred on October 1, 2001, October 31, 2001, December 3, 2001, January 7, 2002, February 4, 2002, March 4, 2002, April 1, 2002, May 29, 2002, and June 26, 2002. All were billed at CPT code ____, except for the office visit on October 31, 2001, which was billed at CPT code ____.² The drugs prescribed during the disputed office visits were Lortab, a trademark for a preparation of hydrocodone bitartrate,³ and Soma, a trademark for preparations of carisoprodol.⁴

Employees have a right to necessary health treatment under TEX. LABOR CODE ANN. §§ 408.021 and 401.011. Section 408.021(a) provides, “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.” Section 401.011(19) of the Labor Code provides that health care includes “all reasonable and necessary medical . . . services.”

As Appellant, Industrial has the burden of proof.⁵

1. Analysis

In order to determine whether Zurich should pay for the office visits, it is necessary to first determine whether the Lortab and Soma prescriptions (drugs) were reasonable. This is because a primary reason, if not the paramount reason, for each office visit was continuing the prescription for the drugs. At the end of each office visit at issue, Dr. Morris’ plan was for the Claimant to continue taking the drugs to relieve his pain.⁶ If the drugs had been inappropriate, the office visits would also have been unreasonable because the drug prescriptions were a paramount purpose for the visits.

1. Whether the Lortab and Soma Prescriptions (drugs) were Reasonable

This decision finds that the preponderant evidence is the drugs were appropriate. This conclusion is contrary to decisions in SOAH Docket 453-03-1056.M5, where a SOAH administrative law judge concluded that the Lortab prescribed on October 31, 2001, December 3, 2001, and January 7, 2002, was medically unnecessary⁷ and in Docket No. ____, where a SOAH judge concluded that both Lortab and Soma prescribed on October 1, 2001, were medically unnecessary.

² Ex. 1 at 17.

³ Dorland’s Illustrated Medical Dictionary (28th ed. 1994) at 960. Hydrocodone is a semisynthetic narcotic derivative of codeine with sedative and analgesic effects. *Id.* at 783.

⁴ *Id.* at 1544. Carisoprodol is a centrally acting skeletal muscle relaxant for the symptomatic management of acute, painful musculoskeletal disorders. *Id.* at 270.

⁵1 TEX. ADMIN. CODE (TAC) § 155.41; 28 TAC § 148(h).

⁶Ex. 1 at 42-47, 50, 53, 55.

⁷ The judge concluded that the Soma prescriptions were medically necessary on those dates.

However, neither Industrial nor Dr. Morris were parties in those dockets and Zurich did not assert collateral estoppel in this case.⁸ Moreover, unlike the cited cases, the Claimant and Dr. Morris both testified in this case.⁹

The primary reason for concluding that the drugs were reasonable is that they provided relief for the pain the Claimant experienced after his injury, after other treatments failed. The evidence from the Claimant on that issue was unequivocal and believable. Dr. Morris' records, in the form of Patient Comfort Assessment Guides (Pain Assessments)¹⁰ and other pain-level statements from the Claimant¹¹ also show the drugs caused a decrease in pain. Significantly, the Pain Assessments also show that the Claimant's pain interfered with "normal work."¹² The records show he was able to work at certain times but not others, with the last office visit record showing him as working. It is reasonable to conclude that the drugs assisted the Claimant's ability to work.

The medical experts are split on the issue. Dr. Morris, the Claimant's treating doctor, said the drugs were needed. Aaron L. Combs, M.D., Zurich's peer review doctor and an orthopedic medicine and sports management specialist, said the expected recovery time for the injury should have been no more than eight weeks and that treatment with intermediate strength or potent narcotic analgesics is not recommended for chronic musculoskeletal pain. He said the medications carry a liability for habituation, addiction, considerable cognitive dysfunction, and loss of alertness, and are not likely to produce permanent benefits.¹³

The IRO doctor did not agree with Dr. Morris' diagnosis of radiculopathy. He described the injury as "self-limited," said the MRI showed no acute lesion, and said the EMG/NCV studies were normal, with no indication of radiculopathy. He said it is within reasonable medical probability that the Claimant has recovered from any condition related to his compensable injury.¹⁴

An examination performed by Roger S. Blair, M.D., a neurologist, found nerve conduction studies to be normal, with no evidence of radiculopathy, myopathy, or peripheral neuropathy. He concluded that the Claimant's problem was tight hamstrings and tight piriformis muscles that could be relieved by hamstring and muscle stretches and prone pushups. Dr. Blair's report was written on April 7, 2000, within two to three months of the injury.¹⁵

⁸ Collateral estoppel is ordinarily an affirmative defense that requires assertion. TEX. R. P. 94.

⁹ It is necessary to stress that this case does not re-decide whether Zurich should pay for the drugs. SOAH judges have already made that decision in the cited dockets.

¹⁰ Ex. 1 at 49, 52, and 57 (front and back of each page).

¹¹ Ex. 1 at 51, 54, and 56.

¹² Ex. 1 at 49 and 57 (back of each sheet).

¹³ Ex. 2 at 3, 5, and 7.

¹⁴ Ex. 1 at 7.

¹⁵ Ex. 1 at 61.

A July 13, 2000, anesthetic chronic pain evaluation performed by Daniel Boatright, D.O., the medical director of a chronic pain management clinic, noted Dr. Blair's conclusions, but nonetheless diagnosed the Claimant's condition as "persistent lumbar radiculitis post ___ work injury."¹⁶

A March 27, 2000, magnetic resonance imaging of the Claimant's lumbar spine concluded the Claimant had disc desiccation, or drying up, of his L5-S1 disc, but with no spinal canal or foraminal narrowing. Both Dr. Morris and Dr. Boatright¹⁷ concluded that the disc desiccation was significant.

A decision on the medical necessity of the drugs was not easy. The IRO doctor and Dr. Combs both expressed strong opinions that the drugs or office visits¹⁸ were medically unnecessary. They thought the Claimant suffered a minor injury only. Unlike the IRO doctor and Dr. Combs, Dr. Morris and Dr. Boatright both examined the Claimant and concluded that he suffered from lumbar radiculopathy. Dr. Morris believed strongly that the drugs and office visits were appropriate. Dr. Blair concluded that EMG and nerve conduction studies were "perfectly normal," with no evidence of radiculopathy, but also thought hamstring and piriformis stretches and prone pushups were the solution to the Claimant's problems. This turned out to be clearly erroneous.

Overall, Dr. Combs and the IRO doctor's opinion might have been persuasive if they had suggested a viable alternative to simply letting the Claimant suffer¹⁹. A long-term regimen of powerful drugs is obviously not an optimal solution.²⁰ However, because the record did not show a reasonable alternative, and in view of the facts that this the young Claimant did not have pain before January 17, 2000, his pain was obviously relieved by the drugs, and the medications appeared to aid his ability to work, the ALJ concludes that the Lortab and Soma prescriptions were reasonable.

2. Whether CPT Code ___ was Appropriate Coding for Eight Office Visits

The ALJ concludes that Dr. Morris failed to prove that the CPT code ___ charges for eight office visits should be paid. CPT code ___ is described as follows:

Office or other outpatient visit for the evaluation and management of an established patient, which requires at least two of these three components: a detailed history; a detailed examination; and medical decision making of moderate complexity.

¹⁶ Ex. 1 at 68.

¹⁷ Ex. 1 at 66

¹⁸ The IRO doctor addressed the office visits rather than the underlying drug treatment.

¹⁹ Dr. Combs recommended a home exercise program of stretching and strengthening of the Claimant's lumbar spine. Ex. 1 at 41.

²⁰ There was an intimation that the Claimant was falsifying his symptoms.

Usually, the presenting problem(s) are of moderate to high severity. Physicians typically spend 25 minutes face-to-face with the patient and/or family.²¹

Dr. Morris' testimony was persuasive that his decisionmaking was at least moderately complex. His assertion was convincing that any decision involving the use of strong narcotic drugs based on over thirty questions (contained in the Pain Assessment) is moderately complex. American Medical Association (AMA) Evaluation and Management (E/M) Guidelines (AMA Guidelines)²² say a moderately complex decision includes consideration of multiple management options, amount and complexity of medical records, and risk of complications associated with the patient's condition. Dr. Morris' decision appears to have meet that definition. The Claimant testified that he and Dr. Morris discussed his answers to the numerous Pain Assessment questions and said they talked about possible different remedies for his pain. Dr. Morris was required to consider the risk inherent in prescribing strong narcotic drugs.

Dr. Morris did not testify concerning the extent of the examination performed and did not argue that the examination was detailed (a CPT code ___ requirement). AMA Guidelines define a "detailed" examination as "an extended examination of the affected body area(s) and other symptomatic or related organ system(s)."²³ There was little or no evidence to satisfy this requirement. The ALJ concludes Industrial did not prove that Dr. Morris performed a detailed examination.

The most difficult question concerns whether Dr. Morris took a detailed history. Dr. Morris strongly asserted that a history based on thirty-plus questions is detailed. The AMA Guideline defines a "detailed" history as follows:

Detailed: chief complaint; extended history of present illness; problem pertinent system review extended to include a review of a limited number of additional systems; pertinent past, family, and/or social history directly related to the patient's problems. (Emphasis in original.)²⁴

As can be seen, an extended history of the present illness is required.²⁵ The AMA defines "history of present illness" to mean

A chronological description of the development of the patient's present illness from the first sign and/or symptom to the present. This includes a description of location,

²¹ Ex. 3.

²² Id..

²³ Id.

²⁴ *Id.*

²⁵ It is clear that past family and social history is necessary only to the extent pertinent.

quality, severity, timing, context, modifying factors and associated signs and symptoms significantly related to the presenting problem(s).²⁶

There was no evidence that Dr. Morris took a detailed history of this type on the Claimant's present illness during the office visits. The Claimant said Dr. Morris talked to him at an office visit before treatments began, but the talk took less than a minute.

Dr. Morris' strong assertion that he took a detailed history was based on the thirty-plus question Pain Assessment. The Pain Assessment certainly appeared to be a "problem pertinent system review," but, again, was not an "extended history of present illness." There was also a lack of evidence that the Claimant's problem pertinent system review included "a review of a limited number of additional systems," as required by the definition of "detailed."

Based on the foregoing considerations, the ALJ concludes that Industrial did not carry its burden of showing the CPT code ___ charges were justified.^{27 28}

3. Whether CPT Code _ was Appropriate Coding for the 10/ 31/ 2001, Office Visit

The final issue to be determined is whether the CPT code ___ charge on October 31, 2001, was justified. The ALJ concludes that it was. CPT code ___ is defined as:

Office or other outpatient visit for the evaluation and management of an established patient which requires at least two of these three key components: an expanded problem focused history; an expanded problem focused examination; medical decision making of low complexity.

Usually, the presenting problem(s) are of low to moderate severity. Physicians typically spend 15 minutes face-to-face with the patient and/or family.

As indicated above, Dr. Morris' decisionmaking met the complexity level requirement.

²⁶ Ex. 3.

²⁷ Dr. Morris argued if payment at the CPT code 99214 level is found to be inappropriate, he should nonetheless receive payment at the lesser CPT code 99213 level. The ALJ does not believe he is authorized to order that payment for two reasons. The first is that SOAH's jurisdiction is derived from a request for hearing after a provider or insurance carrier has received an adverse decision following a request for medical dispute resolution on specific issues. TEX. LABOR CODE ANN. § 413.031. The appealed decision that gave SOAH jurisdiction addressed the particular CPT codes identified above. There has been no request for medical dispute resolution and no decision on a CPT code 99213 charge, except for October 31, 2001. Second, the ALJ believes there would be a due process problem in ordering payment at the CPT code 99213 level for the eight dates of service charged at the CPT code 99214 level because there has been no notice and opportunity for hearing on a CPT code 99213 charge for those dates.

²⁸ Another CPT code 99214 issue is whether Dr. Morris spent at least 25 face-to-face minutes with the Claimant during the office visits. Zurich questioned whether 25 minutes was needed for the care being given and said it did not believe it took that long. The Claimant testified the visits took at least 25 minutes and Dr. Morris said in closing argument that it took that long. In view of the above-stated determination concerning other CPT code 99214 requirements, the ALJ does not believe it is necessary to determine this question.

The AMA defines “an expanded problem focused history” as follows:

Expanded problem focused: chief complaint; brief history of present illness; problem pertinent system review.

The Claimant’s chief complaints were identified in the office patient records and Pain Assessments. The CPT code definition requires only a brief history of the present illness (the same as the even-lesser CPT code 99212 level). The Claimant said he talked to Dr. Morris before the examination began. The Pain Assessment gave a history of the Claimant’s illness (pain) since his last office visit. The Pain Assessment certainly seemed to qualify as a problem pertinent system review. The ALJ finds the brief history requirement was met.

The ALJ believes that the Claimant’s testimony establishes that he and Dr. Morris met face-to-face for at least fifteen minutes during the office visits.

Overall, the ALJ concludes the October 31, 2001, CPT code ___ billing was appropriate and the bill should be paid at the applicable MAR level, or \$48, according to Dr. Morris’ billing.²⁹

III. Findings of Fact

1. A ___ year old worker (the Claimant) sustained an at-work injury to his lumbar spine region on ___, when he slipped and fell to the floor while working at a _____.
2. The Claimant’s employer was insured by Zurich America Insurance Company (Zurich) at the time of his injury.
3. The Claimant was treated by A. J. Morris, M.D., and Industrial Medical Associates (Industrial) in Fort Worth, Texas.
4. The Claimant has undergone conservative treatment and has had epidural steroid injections for his pain.
5. The Claimant has had prescriptions for multiple drugs, including Lortab, Lorcet, Soma, Celebrex, Vioxx, and Vanadom.
6. Among other care, the Claimant had visits at Dr. Morris’ office on October 1, 2001, October 31, 2001, December 3, 2001, January 7, 2002, February 4, 2002, March 4, 2002, April 1, 2002, May 29, 2002, and June 26, 2002.
7. Industrial filed a claim with Zurich for the office visits billed at CPT code ___, except for the office visit on October 31, 2001, which it billed at CPT code ___.
8. Zurich denied payment of Industrial’s claim.
9. Industrial requested medical dispute resolution.

²⁹ Ex. 1 at 17.

10. An Independent Review Organization determined that Industrial's claim should be denied.
11. It is undisputed that Industrial requested a hearing not later than the twentieth day after receiving notice of the IRO decision.
12. A paramount purpose and result of the office visits was Dr. Morris' prescription of Lortab, a semisynthetic narcotic derivative of codeine with sedative and analgesic effects,
13. and Soma, a centrally acting skeletal muscle relaxant for the symptomatic management of acute, painful musculoskeletal disorders.
14. The Claimant's pain was caused by his ____, injury.
15. Dr. Morris prescribed Lortab and Soma to relieve the Claimant's pain, after other treatments failed.
16. The Claimant's pain was significantly relieved by the Lortab and Soma.
17. The Lortab and Soma enhanced the Claimant's ability to work.
18. The evidence failed to show that Dr. Morris performed a detailed examination during the October 1, 2001, December 3, 2001, January 7, 2002, February 4, 2002, March 4, 2002, April 1, 2002, May 29, 2002, and June 26, 2002, office visits.
19. The evidence failed to show that Dr. Morris took a detailed history of the Claimant's present injury, or pain condition, during the October 1, 2001, December 3, 2001, January 7, 2002, February 4, 2002, March 4, 2002, April 1, 2002, May 29, 2002, and June 26, 2002, office visits.
20. Dr. Morris performed an extensive problem pertinent system review at the October 1, 2001, December 3, 2001, January 7, 2002, February 4, 2002, March 4, 2002, April 1, 2002, May 29, 2002, and June 26, 2002, office visits, but the review was not shown to include additional systems.
21. Dr. Morris took a history of the Claimant's chief complaint and a brief history of his present illness, and conducted a problem pertinent system review at the October 31, 2001, office visit.
22. Dr. Morris engaged in decision making during the October 31, 2001, office visit that was greater than low complexity.
23. Dr. Morris spent at least fifteen minutes face-to-face with the Claimant during the October 31, 2001, office visit.
24. The maximum allowable reimbursement for CPT code ____ is \$48.

25. All parties received not less than ten days' notice of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
26. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.

V. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings (SOAH) has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE ANN. §413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. All parties received adequate and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. Industrial had the burden of proof. 1 TEX. ADMIN. CODE (TAC) § 155.41(b); 28 TEX. ADMIN. CODE §148.21(h).
4. Industrial failed to prove that it should be paid at the CPT code ___ level for the October 1, 2001, December 3, 2001, January 7, 2002, February 4, 2002, March 4, 2002, April 1, 2002, May 29, 2002, and June 26, 2002, office visits.
5. SOAH does not have jurisdiction to order payment of the October 1, 2001, December 3, 2001, January 7, 2002, February 4, 2002, March 4, 2002, April 1, 2002, May 29, 2002, and June 26, 2002, office visits at the CPT code ___ level. TEX. LAB. CODE ANN. §413.031.
6. Industrial proved that it should be paid at the CPT code ___ level for the October 31, 2001, office visit.
7. Zurich should pay \$48 plus interest to Industrial.

ORDER

IT IS THEREFORE ORDERED that Zurich America Insurance Company pay Industrial Medical Associates \$48 plus interest for an October 31, 2001, office visit for the Claimant.

IT IS ORDERED FURTHER that Industrial Medical Associates' claim against Zurich America Insurance Company concerning office visits for the Claimant on October 1, 2001, December 3, 2001, January 7, 2002, February 4, 2002, March 4, 2002, April 1, 2002, May 29, 2002, and June 26, 2002, be, and the same is hereby, denied.

SIGNED March 1, 2004.

**JAMES W. NORMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**