

SOAH DOCKET NO. 453-03-4082.M5
TWCC File No. M5-03-1745-01

FACILITY INSURANCE COMPANY,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
VS.	§	OF
	§	
VONO,	§	
Respondent	§	
	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. DISCUSSION

Facility Insurance Company, (Petitioner) appealed the Findings and Decision of the Texas Workers' Compensation Commission (Commission) acting through ____, an Independent Review Organization (IRO), granting Respondent reimbursement for certain prescriptions for the period April 12, 2002, through June 7, 2002, (Disputed Services).

This decision grants the relief sought by Petitioner.

The hearing convened on October 2, 2003, before Administrative Law Judge (ALJ) Stephen J. Pacey. Nicky Otts, a pharmacist, represented Vono (Respondent), and Stephen Tipton represented the Petitioner. There were no contested issues of notice or jurisdiction. The record closed the same day following adjournment of the hearing.

A. Background.

____ (Patient) sustained a work-related injury on ____, when he lifted a jackhammer and sprained his back. Patient complained of pain in his lower back and his neck. Patient was seen by Stephen Earle, M.D., for an initial evaluation on January 24, 1992. Dr. Earle recommended an MRI of the cervical and lumbar spine. On March 12, 2003, Dr. Earle performed a discogram on Patient that indicated evidence for concordant pain at the L4-L5 disk level.

After Dr. Earle placed Patient's disability at 15% with maximum medical improvement (MMI) on January 28, 1994, an electrodiagnostic assessment was performed on Patient. In 1995 and 1996, Dr. Connolly and Dr. Nau diagnosed Patient with depression. On April 28, 1998, Dr. Gutzman determined that Patient was totally disabled, and Patient's treatment since that time has consisted of medications.¹

¹ The records provided did not indicate the doctors specialties or their first names.

The disputed services consist of the following four medications:

1. **Zoloft:** A member of the family of drugs called "selective serotonin re-uptake inhibitors." Serotonin is one of the chemical messengers believed to govern moods. Ordinarily, it is quickly reabsorbed after its release at the junctures between nerves. Re-uptake inhibitors such as Zoloft slow this process, thereby boosting the levels of serotonin available in the brain.²

2. **Zanaflex:** It relaxes the tense, rigid muscles caused by spasticity. It is prescribed for people with multiple sclerosis, spinal cord injuries, and other disorders that produce protracted muscles spasms. The effect of the drug peaks one to two hours after each dose and is gone within three to six hours, so it's best to schedule doses for shortly before the daily activities when relief of spasticity is most important.³

3. **Provigil:** A stimulant drug used to prevent the excessive daytime sleepiness suffered by people with narcolepsy.⁴

4. **Methadone:** A synthetic narcotic analgesic with multiple actions quantitatively similar to those at morphine, the most prominent of which involve the central nervous system and organs composed of smooth muscle. The principal actions of therapeutic value are analgesia and sedation and detoxification or temporary maintenance in narcotic addiction.⁵

B. Petitioner's Arguments and Evidence.

Petitioner asserted that according to Dr. Bisson's February 20, 2000, report, Patient's ___ injury was little more than a back sprain, and that his pain is caused by chronic depression and symptom magnification.⁶ Dr. Bisson's report also noted that he was unable to substantiate the need for long-term medication management or the need for long-term treatment as it relates directly to Patient's injury, given the fact that the written reports tended to indicate that diagnostic testing over the years had not been very remarkable. Dr. Bisson's report also indicated that the cervical and lumbar MRI were non-revealing.

2. PDR Health (PDR) <http://www.pdrhealth.com/drug_info/index.html>

3 *Id*

4 PDR

5 Rx List <<http://www.rxlist.com/cgi/generic/methdone.com>>

6 Carrier's Exhibit 1.

Petitioner argued that Mario A. Bustamante, M.D.'s, February 25, 2001, report⁷ substantiated Dr. Bisson's report. Dr. Bistamante's report indicated that both depression and exaggeration of the symptomatology worsened Patient's clinical picture. His report pointed out that it was hard to justify treatment for ten years for a Patient that had a negative MRI of the neck and back and a negative electromyography (EMG) of his upper and lower extremities.

Petitioner also introduced J. Lowell Haro, M.D.'s, November 26, 2001, report.⁸ According to Petitioner, the report indicated that the medications were not medically necessary. Dr. Haro wrote in his report that Patient should not receive additional treatment for the injury because the injury appeared minor, and the diagnostic studies did not reveal significant pathology. According to Dr. Haro's report, the electromyography revealed no evidence of radiculopathy. Dr. Haro's report suggested that Patient is obese, non-compliant, and has evidence of major psychological issues that are not a result of the injury.

Petitioner concluded that the medications are not medically necessary because its doctors' reports indicate that Patient's injury was not severe, Patient was non-compliant with previous treatment, and Patient's pain is caused by severe depression and symptom magnification.

C. Respondent's Arguments and Evidence.

Respondent argued that Patient suffers from chronic pain syndrome. Nicky Otts, a pharmacist, testified that the medications prescribed are normal for patients that are in a great deal of pain. Respondent presented Fernando T. Avila, M.D.'s, July 5, 2002, letter of necessity indicating that Dr. Avila's on-going diagnoses were lumbosacral radiculopathy, cervical radiculopathy, and marked secondary myofascial pain. Dr. Avila's letter explained the benefits that each medication could render one suffering from chronic pain syndrome. Dr. Avila's letter indicated that the therapies are essential in order to manage Patient's pain and maintain or improve quality of life in light of the on-the-job injuries and their treatments. Dr. Avila's letter also indicated that for treatment of chronic pain syndrome, the rationale for the present medical regimen is consistent with acceptable standards of medical standards.

Respondent argued that Petitioner's doctors' opinions were prior to the time the medications were prescribed and should not be considered in deciding this subsequent dispute.

4. Analysis.

The ALJ does not find Dr. Avila's letter of necessity persuasive. It is contrary to the scientific results of Patient's tests. Dr. Avila's diagnoses were that Patient had lumbar and cervical radiculopathy.⁹ All three of Petitioner's doctors reports indicated that the electromyography test

⁷ Carrier's Exhibit 2.

⁸ Carrier's Exhibit 3.

⁹ Petitioner cited SOAH Docket No. 453-03-2098.M5 as precedent. On page three of that case, Dr. Rosenstein testified using the exact same words as those contained at the top paragraph of page three of Dr. Avila's letter of

revealed neither lumbar nor cervical radiculopathy. In addition, Petitioner's doctors indicated that the MRI performed on Patient was unremarkable. Respondent presented no contrary evidence. The relationship of Dr. Avila to the Patient is also unknown. Except for his name on the prescriptions, Dr. Avila was not mentioned in any of the record documents. The record does not indicate that he is the Patient's doctor nor does it indicate that he reviewed Patient's records.

It appears from the scientific evidence produced by Petitioner that Patient experienced a lower back strain, not a repetitive stress injury as described by Dr. Avila. This injury occurred almost eleven years ago. Petitioner proved that Patient suffers from chronic depression, symptom magnification, and was non-compliant in previous treatments. To continue to prescribe heavily addictive drugs to treat Patient's injury from eleven years ago, is not medically reasonable, especially considering that the preponderance of the evidence reflects that Patient was not badly injured. The ALJ concludes that Petitioner proved that the disputed services were not medically necessary.

II. FINDINGS OF FACT

1. ____ (Patient) sustained a work-related injury on or about ____, when he lifted a jackhammer and sprained his back.
2. On January 24, 1992, Stephen Earle, M.D., evaluated Patient and recommended an MRI, which was performed.
3. On March 12, 1992, a discogram was performed on patient, and on January 28, 1994, an electrodiagnostic assessment was performed on Patient.
4. Patient reached maximum medical improvement on January 28, 1994 with 15% disability.
5. In 1995 and 1996, Patient was diagnosed with depression.
6. Petitioner has been treated since 1998 with medications.
7. Vono (Respondent) seeks reimbursement for medications prescribed for the period April 12, 2002, through June 7, 2002, (Disputed Services).
8. The electromyography revealed no evidence of cervical or lumbar radiculopathy.
9. The MRI was negative.
10. The injury occurred 11 years prior to the Disputed Services.
11. Patient suffered from chronic depression and symptom magnification.
12. Facility Insurance Company (Respondent) denied reimbursement for the Disputed Services as not medically necessary.
13. By letter dated June 11, 2003, ____, an Independent Review Organization (IRO), concluded that the Disputed Services were medically necessary for treatment of Patient's condition.
14. The IRO decision is deemed a Decision and Order of the Texas Workers' Compensation Commission (Commission).
15. Petitioner timely requested a hearing to contest the Commission's decision.
16. By letter dated July 23, 2003, the Commission issued a notice of hearing.

medical necessity. It appears odd that two different doctors in two different drug cases would use exactly the same words for their medical necessity arguments.

17. A hearing was convened by Administrative Law Judge Stephen J. Pacey on October 2, 2003, in the hearing rooms of the State Office of Administrative Hearings.
18. Nicky Otts represented Respondent, and Stephen Tipton represented Petitioner.

III. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 413.031.
2. 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. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T. CODE ANN. ch. 2003.
3. Petitioner timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 102.7 and 148.3.
4. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. ch. 2001.
5. An employee who has sustained 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 the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LAB. CODE ANN. § 408.021(a).
6. Petitioner had the burden of proof in this matter, which was the preponderance of evidence standard. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41(b).
7. Based upon the Findings of Fact, Petitioner proved by a preponderance of the evidence that the medications for the period April 12, 2002, through June 7, 2002, were not medically necessary for treatment of Patient's condition.

ORDER

THEREFORE IT IS ORDERED that Petitioner Facility Insurance Company's request for relief is **granted**, and Petitioner is not required to reimburse Respondent for the disputed services.

SIGNED November 20th, 2003.

STEPHEN J. PACEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS