

**SOAH DOCKET NO. 453-03-4252.M5**  
**TWCC MDR NO. M5-03-1935-01**

___,	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>VS.</b>	§	<b>OF</b>
	§	
<b>INSURANCE COMPANY OF THE</b>	§	
<b>STATE OF PENNSYLVANIA,</b>	§	
<b>Respondent.</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

\_\_\_ (Claimant) appealed the decision of an Independent Review Organization (IRO) upholding the denial of reimbursement for certain procedures performed and prescription drugs purchased from November 1, 2002, through January 24, 2003. In this decision, the Administrative Law Judge (ALJ) finds that Claimant should be partially reimbursed for two medical procedures and one prescription drug she purchased. Therefore, Insurance Company of the State of Pennsylvania (Carrier) is ordered to reimburse Claimant \$737.00.

The hearing convened and the record closed on November 18, 2003. ALJ, Steven M. Rivas presided. Claimant appeared and represented herself. Carrier appeared and was represented by Steve Tipton, attorney.

**I. DISCUSSION**

1. Background Facts

On \_\_\_, Claimant sustained a compensable back injury. Initially, Claimant came under the care of David Lionberger, M.D., who attempted to treat Claimant's back pain with conservative treatment, to no avail. Subsequently, Claimant was referred to Jed Shay, M.D., who implanted a spinal cord stimulator in 1997, and an intrathecal opiate trial (opiate pump) in 1999. The opiate pump is a device that is designed to deliver medication to the area of Claimant's pain complaints.

Between November 1, 2002, and January 24, 2003, Dr. Shay refilled Claimant's opiate pump with Fentanyl and prescribed Hydrocodone for Claimant. Claimant sought \$1,245.17 in reimbursement from the Carrier for the opiate pump refills and the prescribed medication. Carrier denied both as not medically necessary. Claimant filed a request for Medical Dispute Resolution with the Medical Review Division of the Texas Workers' Compensation 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(a) provides that 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 statute further states an 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.”

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.”

## 1. Evidence and Arguments

Claimant offered a table of disputed services, a list of medications purchased from Eckerd’s Pharmacy, some of her treatment records, and three letters from Dr. Shay. Claimant also testified that the medication helps relieve some of her lingering back pain and that she would not be able to get out of bed if she stopped taking her medication.

Carrier did not call any witnesses but presented a report from E. Floyd Robinson, which concluded that Claimant had already received “more than adequate” treatment for her injury. The report was dated April 17, 2002. Carrier also argued the record is unclear regarding the medical necessity for the prescribed medication, and that the documents do not sufficiently reflect the disputed medication was prescribed and actually purchased.

## 2. Analysis and conclusion

The ALJ finds that Claimant should be reimbursed \$737.00 for the two opiate refill procedures on November 1, 2002, and January 24, 2003, and the one purchase of Fentanyl on January 23, 2003, because Dr. Shay noted in three separate reports that Claimant experienced back pain relief through the use of the opiate pump. Under § 408.021(a), Claimant is entitled to all healthcare that relieves the effects of her compensable injury. Because the evidence that the opiate pump relieves Claimant’s back pain, she should receive proper reimbursement.

However, Claimant should not be reimbursed for any of the Hydrocodone prescriptions or the additional Fentanyl prescriptions listed on the table of disputed services. The table indicated Claimant sought reimbursement for nine separate procedures and medications. At first glance, three Fentanyl prescriptions should be denied because they were apparently prescribed outside the disputed dates of service those dates being May 8, 2002, August 1, 2002, and October 31, 2002.

Additionally, the three Hydrocodone prescriptions on December 3, 2002, and December 6, 2002, and February 26, 2003, should be denied because there is insufficient documentation in the record regarding the medical necessity for this drug. The only evidence of Dr. Shay’s treatment recommendations was contained in his three reports. At no point does Dr. Shay mention the use of Hydrocodone as a medically necessary medication to treat Claimant’s injury. The only reference to medication other than Fentanyl is contained in Dr. Shay’s letter dated September 11, 2002, where he wrote that Claimant’s treatment would include “an array of medication including nonsteroidals, mild opiates, muscle relaxants, and other adjuncts.”

Since Claimant presented sufficient evidence for two opiate pump refills and one Fentanyl purchase, she should be reimbursed \$737.00 of the original \$1,245.17 billed.

## II. FINDINGS OF FACTS

1. On \_\_\_\_, Claimant sustained a compensable injury.
2. Claimant was treated by Jed Shay, M.D., who implanted an intrathecal opiate trial (opiate pump) in 1999.
3. On November 1, 2002, and January 24, 2003, Dr. Shay refilled Claimant's opiate pump with Fentanyl. On January 23, 2003, Claimant purchased the Fentanyl used by Dr. Shay to refill her opiate pump.
4. On May 8, August 1, and October 31, 2002, Claimant purchased Fentanyl, which was prior to the disputed dates of service.
5. On December 3, and December 6, 2002, and February 26, 2003, Claimant purchased Hydrocodone.
6. Claimant sought \$1,245.17 reimbursement from Insurance Company of the State of Pennsylvania (Carrier) for the opiate pump refills and medication she purchased, which Carrier denied as medically necessary.
7. Provider requested medical dispute resolution through the Texas Workers' Compensation Commission's (the Commission) Medical Review Division. The dispute was referred to an Independent Review Organization (IRO), which upheld the denial of reimbursement.
8. Provider timely appealed the IRO decision to the State Office of Administrative Hearings (SOAH).
9. Notice of the hearing in this case was mailed to the parties on October 6, 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.
10. The hearing convened on November 18, 2003, with Administrative Law Judge Steven M. Rivas presiding. Claimant appeared and represented herself. Carrier was represented by Steve Tipton, attorney. The record closed the same day.
11. The opiate pump relieved Claimant's back pain.
12. The cost of the opiate pump refill procedures and Fentanyl was medically necessary.
13. Dr. Shay did not sufficiently document that Hydrocodone was medically necessary to treat Claimant's injury, nor did he note Claimant's progress on this drug.

### III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. § 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 ANN. § 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 ANN. § 408.021(a), an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury that cures or relieves the effects naturally resulting from the compensable injury
7. The opiate refill procedures that Dr. Shay performed on November 1, 2002, and January 24, 2003, were medically necessary to treat Claimant's compensable injury.
8. The purchase of Fentanyl on January 23, 2003, was medically necessary to treat Claimant's compensable injury.
9. Based on the Findings of Fact and Conclusions of Law, Claimant should be reimbursed \$737.00.

### ORDER

**IT IS ORDERED THAT** Carrier reimburse Claimant \$737.00 for the opiate refill procedures performed on November 1, 2002, and January 24, 2003, and the Fentanyl she purchased on January 23, 2003.

**SIGNED January 21, 2004.**

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