

TRANSCONTINENTAL INSURANCE  
COMPANY,  
Petitioner

V.

—, Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This case is a dispute over reimbursement for prescription medications. The Administrative Law Judge (ALJ) finds the Petitioner, Transcontinental Insurance Company (T.I.C.), should not be required to reimburse \_\_\_ for the cost of those medications.

**I. DISCUSSION**

\_\_\_, the Claimant and the Respondent in this matter, suffered a lumbar injury on \_\_\_. After conservative treatment, he underwent a laminectomy/fusion on \_\_\_.

Before his surgery, but after his injury, the Respondent purchased the following medications that had been prescribed for him: Norco, Hydrocodone, Oxycontin, Temazepaincal, and Carispododel. He sought reimbursement from T.I.C., which T.I.C. denied on the grounds that the medications were not medically necessary. The disputed dates of purchase were from February 20, 2002, through July 3, 2002.

After reimbursement was denied, the Respondent filed a Request for Medical Dispute Resolution. The Independent Review Organization (IRO) and subsequently the Medical Review Division of the Texas Workers' Compensation Commission found in favor of the Respondent, whereupon T.I.C. requested a hearing before the State Office of Administrative Hearings (SOAH).

Notice of the hearing was sent to the parties August 21, 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, as required by TEX. GOV'T CODE ANN. §2001.052.

After two continuances, the hearing was convened February 26, 2004, at SOAH's hearing rooms in Austin, Texas. T.I.C. appeared through its attorney. The Respondent had asked in writing to participate in the hearing by telephone. The ALJ attempted to contact him three times at the telephone number he had provided, but was able to reach only the Respondent's answering machine. Therefore, the hearing proceeded without him. After the presentation of evidence by T.I.C., the

hearing was recessed to allow T.I.C. to confirm the disputed dates of service. T.I.C. filed that information June 7, 2004, and the record was then closed.

The IRO reviewer and Dr. Blauzvern, an anesthesiologist who testified at the hearing, agreed that prescription narcotics and other medications were justified for at least some months after Respondent's back surgery. The IRO decision was based on the assumption that the medications in dispute were prescribed after that surgery. They were not, however; they were prescribed before it.<sup>1</sup>

Dr. Blauzvern testified that diagnostic tests performed before the surgery, including most notably a discogram, showed no organic cause for the Respondent's continuing pain. Under that circumstance, he stated, and because of the potential for abuse, addiction, and other health risks, the use of the prescription medications was not medically necessary during the disputed dates of purchase.<sup>2</sup>

The preponderance of the evidence supports the Petitioner's position that the disputed medications purchased from February 20, 2002, through July 3, 2002, were not medically necessary.

Dr. Blauzvern so stated, and examinations by other physicians in the record<sup>3</sup> support his view of the Respondent's condition. The IRO decision, on the other hand, was based on the mistaken assumption that the medications were post-surgery, and therefore lacked credibility. The ALJ finds that the medications were not medically necessary, and declines to order reimbursement.

## II. FINDINGS OF FACT

1. \_\_\_\_, the Claimant and the Respondent in this matter, suffered a lumbar injury on \_\_\_\_.
2. After conservative treatment, Respondent underwent a laminectomy/fusion on August 16, 2002.
3. Before his surgery, but after his injury, the Respondent purchased the following medications that had been prescribed for him: Norco, Hydrocodone, Oxycontin, Temazepaincal, and Carispododel.
4. The Respondent sought reimbursement from Transcontinental Insurance Company (T.I.C.), which T.I.C. denied on the grounds that the medications were not medically necessary.
5. The disputed dates of purchase were from February 20, 2002, through July 3, 2002.
6. After reimbursement was denied, the Respondent filed a Request for Medical Dispute Resolution.

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<sup>1</sup>Although similar medications were provided after the surgery, they were not the subject of the Request for Medical Dispute Resolution.

<sup>2</sup>Dr. Blauzvern contended the surgery itself was unnecessary.

<sup>3</sup>See reports by Dr. Kalisky (Ex. 1 at 200-06), Dr. Vidal (*Id.* at 341-420), Dr. Melillo (*Id.* at 371-72), and Dr. Hood (*Id.* at 378-82).

7. The Independent Review Organization (IRO) and subsequently the Medical Review Division of the Texas Workers' Compensation Commission found in favor of the Respondent, whereupon T.I.C. requested a hearing before the State Office of Administrative Hearings (SOAH).
8. Notice of the hearing was sent to the parties August 21, 2003.
9. 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.
10. After two continuances, the hearing was convened February 26, 2004, at SOAH's hearing rooms in Austin, Texas. T.I.C. appeared through its attorney. The Respondent had asked to participate by telephone. The ALJ attempted to contact him three times at the telephone number he had provided, but was able to reach only his answering machine.
11. After the presentation of evidence by T.I.C., the hearing was recessed to allow T.I.C. to confirm the disputed dates of service. T.I.C. filed that information June 7, 2004, and the record was then closed.
12. The IRO decision was based on the assumption that the medications in dispute were prescribed after the Respondent's surgery.
13. The medications in dispute were provided before Respondent's surgery.
14. The diagnostic tests performed before the surgery, including most notably a discogram, showed no organic cause for the Respondent's continuing pain.
15. The medications at issue had the potential for abuse, addiction, and other health risks.

### **III. CONCLUSIONS OF LAW**

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
3. Under 28 TAC §148.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. §413.031.

4. The use of the prescription medications was not medically necessary during the disputed dates of purchase.
5. The Petitioner should not be required to reimburse the Respondent for the prescription medications purchased from February 20, 2002, through July 3, 2002.

**ORDER**

It is, therefore, ordered that the Petitioner, Transcontinental Insurance Company, shall not be required to reimburse the Respondent, \_\_\_\_, for the prescription medications in dispute purchased from February 20, 2002, through July 2, 2002.

**SIGNED July 19, 2004.**

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**HENRY D. CARD  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**