

**SOAH DOCKET NO. 453-03-4479.M5
TWCC MR NO. M5-03-1749-01**

EZ Rx PHARMACY	§	BEFORE THE STATE OFFICE
	§	
VS.	§	OF
	§	
ACE USA	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

EZ Rx Pharmacy (Petitioner) sought reimbursement of \$452.18 from ACE USA (the Carrier) for prescription medication provided to an injured worker (the Claimant). Based on a review by an independent review organization (IRO), the Medical Review Division (MRD) of the Texas Workers' Compensation Commission found that the disputed prescriptions were not medically necessary and denied reimbursement. Petitioner challenged the MRD decision in a hearing. The Administrative Law Judge (ALJ) concludes that the Carrier should reimburse Petitioner \$452.18 plus accrued interest for the prescriptions.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

On February 9, 2004, ALJ Georgie B. Cunningham convened a hearing on this matter at the State Office of Administrative Hearings, 300 West 15th Street, Austin, Texas. Nicky Otts appeared telephonically for Petitioner, and F. Javier Gonzales appeared for the Carrier. The parties did not contest notice or jurisdiction, which are addressed in the findings of fact and conclusions of law. The hearing was closed on February 9, 2004, following the receipt of evidence.

II. DISCUSSION

At the hearing, the parties relied on documentary evidence. The evidence showed that on ____, the Claimant incurred the injury diagnosed initially as lumbar strain. At the time, the Carrier provided workers' compensation insurance to her employer and recognized the injury as a covered claim. The Claimant had physical therapy, epidural steroid injections, and various medication prescribed. David M. Hirsch, D.O., subsequently prescribed Mobic, and Petitioner filled the Claimant's prescriptions on May 9, June 6, and July 8, 2002. Petitioner then billed the Carrier \$452.18 for the prescriptions, and the Carrier denied payment.

Petitioner contended that the Claimant had pain from a posterior central disc protrusion at L5-S1 with a right-sided L5-S1 radiculopathy resulting from her work-related injury in _____. Dr.

Hirsch prescribed the Mobic to help her manage and relieve the pain and inflammation resulting from that injury. Based on Dr. Hirsch's written statement, Petitioner argued that the Mobic helped the Claimant remain employed. Although the Claimant was deemed to have reached maximum medical improvement (MMI) with seven percent impairment on August 24, 2001, Petitioner asserted this designation did not preclude her having any additional treatment to help her remain employed.

The Carrier argued that the prescription medications for the Claimant were medically unnecessary. According to the Carrier, the Claimant sustained two work-related injuries to her back during the two years prior to _____. The first injury was a lifting injury, and the second injury involved the Claimant's slipping and recovering her balance without falling. Moreover, the Carrier asserted that the Claimant was deemed to have reached MMI with a two percent impairment on November 3, 1999. The Carrier argued that the IRO decision should be given presumptive weight.

III. ANALYSIS

The ALJ finds that the IRO decision was flawed. In its rationale for the denial, the IRO found that the Claimant's _____ lumbar strain had improved enough for her to receive a two percent MMI rating on November 3, 1999. The IRO Director of Medical Assessment concluded that the injury did not require Mobic (meloxicam) for treatment one and a half years later. Apparently the physician reviewer failed to see or ignored the Claimant's actual impairment rating of seven percent.¹ Instead, the reviewer relied on the impairment rating of another claimant.² These are documents the Carrier submitted to the IRO. Apparently the Carrier inadvertently submitted the impairment ratings of two separate claimants.

The Carrier further argued the Claimant had incurred two work-related injuries, but submitted insufficient evidence to establish this assertion. It is not clear from the IRO decision that the reviewer considered a second injury; however, it was a flawed review and should be given no weight.

Although the evidence was limited, Petitioner established that the Claimant had a seven percent MMI; the prescriptions were to treat the inflammation and relieve the pain from the Claimant's _____, injury; and the medication helped her remain employed. Thus, the Petitioner prevailed in its appeal.

¹ Ex. 6, p. 91.

² Ex. 6, p. 98.

IV. FINDINGS OF FACT

1. On ____, an injured worker (the Claimant) incurred a work-related injury diagnosed initially as lumbar strain.
2. When the Claimant was injured, ACE USA (the Carrier) provided workers' compensation insurance to her employer.
3. The Carrier recognized the Claimant's injury as a covered claim.
4. The Claimant had physical therapy, epidural steroid injections, and various medication prescribed.
5. Petitioner filled the Claimant's three prescriptions for 7.5 mg. Mobic on May 9, June 6, and July 8, 2002, for a total cost of \$452.18.
6. The Carrier concluded that the Claimant's prescription medications were medically unnecessary and denied reimbursement.
7. Petitioner requested dispute resolution services from the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (the Commission).
8. On July 9, 2003, an independent review organization (IRO) agreed with the Carrier that the prescriptions were not medically necessary.
9. On July 15, 2003, MRD affirmed the IRO review.
10. On July 28, 2003, Petitioner filed a request for a hearing to challenge the decision.
11. On August 22, 2003, the Commission issued a hearing notice which contained a statement of the time, place, and nature of the hearing; and a statement of the legal authority and jurisdiction under which the hearing was to be held.
12. On November 3, 1999, the Claimant reached maximum medical improvement (MMI) with a seven percent impairment.
13. The Claimant continued seeing David M. Hirsch, D.O., for pain.
14. The Claimant had pain from a posterior central disc protrusion at L5-S1 with a right-sided L5-S1 radiculopathy resulting from her work-related injury on ____.
15. Dr. Hirsch prescribed Mobic for the Claimant to help manage and relieve the pain and inflammation resulting from her ____ work-related injury.
16. The Mobic helped the Claimant remain employed.

V. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. § 413.031.
2. The State Office of Administrative Hearings 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.
3. Petitioner timely filed its request for a hearing, as required by 28 TEX. ADMIN. CODE § 148.3.
4. Notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052.
5. The prescriptions for Mobic were medically necessary for the treatment of the Claimant's work-related injury to help her retain employment, as specified in TEX. LAB. Code Ann. § 408.021.
6. Based on Conclusion of Law No. 5, Petitioner is entitled to reimbursement in the amount of \$452.18 for the prescriptions at issue.

ORDER

It is therefore ordered that ACE USA reimburse EZ Rx Pharmacies \$452.18 plus accrued interest for the three prescriptions at issue.

SIGNED March 18, 2004.

**GEORGIE B. CUNNINGHAM
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**