

**SOAH DOCKET NO. 453-04-0362.M5  
TWCC MR NO. M5-03-2265-01**

_____,	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>AMERICAN HOME ASSURANCE</b>	§	
<b>COMPANY,</b>	§	<b>ADMINISTRATIVE HEARINGS</b>
<b>Respondent</b>	§	

**DECISION AND ORDER**

Claimant appealed the findings of an Independent Review Organization (IRO) denying reimbursement for medications purchased between November 6, 2002, and April 14, 2003. In this Order, the Administrative Law Judge (ALJ) concludes Claimant is not entitled to reimbursement.

**I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY**

There were no contested issues of jurisdiction or notice. Therefore, those matters will be addressed in the findings of facts and conclusions of law without further discussion here.

A hearing convened and closed on January 21, 2004, before the State Office of Administrative Hearings (SOAH) with Steven M. Rivas, ALJ, presiding. Claimant appeared and was assisted by Luz Loza, Ombudsman. Carrier appeared and was represented by James Sheffield, attorney.

**II. DISCUSSION**

1. Background Facts

Claimant sustained a compensable back injury on \_\_\_\_\_. Following her injury, Claimant underwent treatment to relieve her back pain, which consisted of physical therapy, work hardening, diagnostic testing, and medications. Claimant was prescribed various medications between November 6, 2002, and April 14, 2003, which she purchased with her own funds. Claimant sought

reimbursement from American Home Assurance Company (Carrier), which was denied as not medically necessary. Claimant requested Medical Dispute Resolution with Texas Workers' Compensation Commission (the Commission) Medical Review Division (MRD). The Commission's MRD referred this dispute to an IRO, which upheld Carrier's denial, and Claimant timely appealed the IRO decision to SOAH.

## **B. 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, the Act, as noted in § 408.021, 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. Under the same statute, the employee is 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.

### **2. Evidence and Analysis**

Between the applicable dates of service, Claimant's treating doctor, John W. Ditzler, M.D., gave Claimant multiple prescriptions for Celebrex, Neurotonin, Tramadal, Trazodone, Codeine, and Acetamin. Dr. Ditzler prescribed these medications to treat Claimant's chronic back pain. Claimant testified the medications helped her in "everyday life" by allowing her to have "half the quality of life" she had before the injury. Claimant also admitted she sustained a shoulder injury in 1992, but said she had completely healed from that injury before she sustained the injury in this case. In support of Claimant's position, she presented her medical records dating back to \_\_\_\_.

The records are consistent in that they all mention Claimant's complaints of lower back pain. The records also reflect Dr. Ditzler's attempt to treat Claimant's pain by prescribing various medications for her.

Carrier argued the medications were not medically necessary because the evidence did not establish Claimant continued to suffer from the effects of the compensable injury. Carrier asserted

that Claimant's injury occurred 10 years ago, and that she had been allowed to return to work in 1994. Furthermore, Carrier pointed out that Claimant had an MRI examination performed in 1994, which revealed a "slight bulge" in her spine at the L4-L5 region but no evidence of herniation.

In support of its position, Carrier presented a June 3, 2002, report by David H. Trotter, M.D., an orthopedic surgeon. After reviewing Claimant's medical records, Dr. Trotter concluded Claimant's injury resulted in a lumbar sprain/strain, which should have healed within six to eight weeks following the injury. Dr. Trotter also found that Claimant's ongoing treatment through prescription drugs did not appear to be relevant or medically necessary to treat Claimant's compensable injury.

In addition, Carrier presented a report by William E. Blair, Jr., M.D., dated June 16, 2003. Dr. Blair examined Claimant and reviewed her records and found there were no "structural deficiencies" that would account for Claimant's ongoing complaints of back pain. Dr. Blair concluded that Claimant suffered from mental anxiety and depression caused by conditions not related to her compensable injury; in his opinion, these factors may cause Claimant to experience symptom magnification, which may explain her ongoing pain complaints. Dr. Blair finally concluded that the record does not establish any reason why Claimant would suffer from back pain after eight years following a soft-tissue injury, which is the type of injury Claimant sustained in this case.

Finally, Carrier presented an impairment rating report dated April 17, 1995, by Charlotte H. Smith, M.D., who examined Claimant and found she had sustained a lumbar strain and had already undergone "appropriate diagnostic and therapeutic interventions" at that time. Based on her examination of Claimant and review of her records, Dr. Smith recommended that Claimant participate in a home exercise program and exercise at a community fitness center, rather than a physical therapy program or another modality like medication treatment.

### 3. Conclusion

There is insufficient evidence in the record to support Claimant's position that the medications prescribed by Dr. Ditzler on the disputed dates of service were medically necessary. All

the evidence suggested Claimant sustained a low back sprain/strain, or soft-tissue injury in \_\_\_\_, without any sign of herniation or radicular pain. The ALJ was convinced by Dr. Trotter's and Dr. Blair's testimony that Claimant's condition should have healed several weeks following the injury, and that any subjective pain complaints were not related to the compensable injury. Additionally, the ALJ found Dr. Smith's report very persuasive because it was written in 1995, relatively soon after the injury. Dr. Smith found that by 1995, Claimant did not need any further treatment; therefore, Claimant would have to provide compelling evidence of the need for further treatment eight years later. Claimant did not provide sufficient evidence on this point. The only evidence of medically necessity was Claimant testimony that the medications help her attain a degree of "quality of life" she had before the injury. However, this is not the standard under § 408.021. The ALJ is convinced that based on the evidence presented, the medications were not medically necessary to treat Claimant's compensable injury.

### **III. FINDINGS OF FACT**

1. Claimant \_\_\_\_ suffered a compensable back injury on \_\_\_\_.
2. Claimant was diagnosed with a lumbar sprain/strain, and underwent physical therapy, work hardening, diagnostic testings, and medication treatment to relieve her back pain.
3. Between November 6, 2002, and April 14, 2003, Claimant's treating doctor, John W. Ditzler, M.D., gave Claimant prescriptions for Celebrex, Neurotonin, Tramadal, Trazodone, Codeine, and Acetamin, which Claimant purchased with her own funds.
4. Claimant billed American Home Assurance Company (Carrier) for the prescriptions, and Carrier denied reimbursement as not medically necessary.
5. Claimant filed a Request for Medical Review Dispute Resolution with the Texas Workers' Compensation Commission (the Commission), seeking reimbursement for the prescriptions she purchased.
6. The dispute was referred to an Independent Review Organization (IRO), which found Claimant was not entitled to reimbursement.
7. Claimant timely appealed the IRO decision and filed a request for hearing before the State Office of Administrative Hearings (SOAH).
8. Notice of the hearing was sent November 19, 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.

9. The hearing convened and closed on January 21, 2004, with Steven M. Rivas, Administrative Law Judge (ALJ) presiding. Claimant appeared and was assisted by Luz Loza, Ombudsman. Carrier appeared and was represented by James Sheffield, attorney.
10. Claimant's compensable injury was a soft-tissue injury, a lumbar sprain/strain.
11. An MRI performed in 1994 revealed Claimant had a "slight bulge" at the L4-L5 region of her spine, but she had no sign of herniation.
12. Claimant's condition should have healed within several weeks of the injury.
13. Claimant's subjective pain complaints were not related to the \_\_\_ compensable injury.
14. Provider presented insufficient evidence that the prescribed medication was medically necessary to treat Claimant's \_\_\_ compensable injury.

#### **IV. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. ch. 401 *et seq.*
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 a request for hearing as required by 28 TEX. ADMIN. CODE § 148.3.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052, and 28 TEX. ADMIN. CODE § 148.4.
5. The Claimant, as Petitioner, has the burden of proof in this matter under 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: (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.
7. Claimant did not meet her burden of showing, by a preponderance of the evidence, that the prescribed medication was medically necessary to treat her \_\_\_ compensable injury.
8. Pursuant to the foregoing Findings of Fact and Conclusions of Law, Claimant is not entitled to reimbursement for the prescribed medication.

**ORDER**

**IT IS, THEREFORE, ORDERED** that Claimant, \_\_\_\_, is not entitled to reimbursement from the Carrier, American Home Assurance Company, for the prescribed medication Claimant purchased between November 6, 2002, and April 14, 2003.

**SIGNED March 19, 2004.**

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