

**SOAH DOCKET NO. 453-04-5080.M5  
TWCC MR NO. M5-1114-01**

**VONO,  
Petitioner**

**BEFORE THE STATE OFFICE**

**V.  
STATE OFFICE OF RISK  
MANAGEMENT,  
Respondent**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

This case involves a dispute over whether the State Office of Risk Management (Carrier) should reimburse VONO (Petitioner) for prescription medications provided to Claimant from December 27, 2004, through April 16, 2003. The medical necessity of the medications is the only issue to be resolved. The Administrative Law Judge (ALJ) concludes that Petitioner did not meet its burden of proving the medications were medically necessary. Therefore, Carrier should not reimburse Petitioner for the cost of the medications.

## **I. JURISDICTION, NOTICE, AND VENUE**

There were no contested issues of jurisdiction, notice or venue. Those issues are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

## **II. STATEMENT OF THE CASE**

Administrative Law Judge Catherine Egan convened a hearing in this case on August 9, 2004, at the State Office of Administrative Hearings (SOAH), William Clements State

Office Building, Austin, Texas.<sup>1</sup> Petitioner appeared through Nicky Otts, pharmacist. Carrier appeared through its counsel, Stephen Vollbrecht. The record closed the same day.

### III. DISCUSSION

#### 1. Introduction

Claimant sustained a work-related injury on \_\_\_\_, when she slipped on a wet floor while working at the \_\_\_. Claimant grabbed a cart to keep from falling to the floor, causing a lumbar strain. Claimant began treatment with Dr. Fernando T. Avila for chronic pain.<sup>2</sup> Dr. Avila prescribed Oxycontin, Bioflexor, Hydrocodone/apap, Amitriptyline, Zoloft, Bextra, Tizanidine (Zanaflex), Ambien, and Gabitril from December 27, 2002, through April 16, 2003.<sup>3</sup> Carrier denied reimbursement of the medications on the basis that they were not medically necessary to treat Claimant's compensable injury, a lumbar strain.<sup>4</sup>

Petitioner filed a timely Request for Medical Dispute Resolution and the matter was referred to an Independent Review Organization (IRO). The IRO reviewing doctor agreed with Carrier that the prescriptions were not medically necessary. On March 10, 2004, the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC) issued its Findings and

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<sup>1</sup> After the hearing, the case was transferred to ALJ Suzanne Formby Marshall to prepare this decision and order. Judge Marshall has reviewed all evidence admitted in this case and has listened to the tape-recorded hearing in order to prepare this decision and order.

<sup>2</sup> Dr. Avila's letter of medical necessity indicates that he is a Diplomate, American with the Pain Management Centers of South Texas in San Antonio, Texas. The documentary evidence does not indicate when Dr. Avila began treating Claimant or whether he diagnosed Claimant.

<sup>3</sup> Oxycontin is an opiate pain medication; Bioflexor is a topical analgesic anti-inflammatory; Hydrocodone is an opiate pain medication; Bextra is a non-steroidal anti-inflammatory; Zanaflex is a skeletal muscle relaxant; and Ambien is a sedative that aids in sleep.

<sup>4</sup> Petitioner contends that an employee of the Carrier represented that the claim was denied on the basis of a peer review; however, a review of the EOBs (Explanation of Benefits) indicates that the claim was denied due to lack of medical necessity without a peer review. Petitioner's Ex. 1, pp. 10-13, 16, 18, 20, 22, 24-25, 28, 33, 37, 40, and 42.

Decision, which ruled that Petitioner was not entitled to reimbursement for the medications. On March 26, 2004, Petitioner filed a timely request for a hearing before SOAH.

## 2. Evidence and Arguments

### 1. Petitioner

Petitioner is the dispensing pharmacy of the medications in issue. As evidence, Petitioner submitted records which were provided to the IRO, letters of medical necessity from Dr. Avila, and notes from phone conversations with Carrier's employees. These exhibits were admitted into evidence as Petitioner's Exhibits 1, 2, and 3. Petitioner did not present any witness testimony.

Petitioner claims that Carrier did not comply with the rules of the Texas Worker's Compensation Commission because it did not provide a copy of a peer review to support its denial of reimbursement for the medications. According to Petitioner, an employee and representative of Carrier told Petitioner that a peer review was performed. Petitioner Exhibit 3, pp. 1-2. Because a peer review was not provided to Petitioner, it contends that it should be reimbursed for the medications in issue.

Further, Petitioner contends that, in a situation in which a Claimant is being treated for a variety of conditions, some of which are compensable conditions and some of which are not, a pharmacy is unable to readily determine whether the medications are medically necessary for a compensable condition. According to Petitioner, the medications at issue are for pain relief and the pharmacy acted in good faith in filling the prescriptions. Therefore, it should not be placed in the position of receiving no compensation due to Carrier's second-guessing the treating physician.

During the hearing, Mr. Otts stated that Petitioner would not pursue its claim for reimbursement for the prescriptions of Amitriptyline (filled on December 27, February 19 and April 16), Zoloft (filled on December 27, January 22, and February 19), and Gabitril (filled on February 19 and April 16). These medications are related to the treatment of depression, which was found not to be part of the compensable injury by the Commission.

## 2. **Carrier**

Carrier introduced one exhibit into evidence, consisting of the Commission's decision adopting the IRO findings, the IRO decision, and two decisions from the Commission relating to the extent of Claimant's compensable injury. Carrier's Exhibit 1. Carrier also did not present any witness testimony.

Carrier contends that the medications in issue were not medically necessary because they were not required to treat the effects of Claimant's compensable injury, a lumbar strain, approximately three to four years post-injury.

The IRO physician agreed that the medications were not medically reasonable and necessary because Claimant's medical records did not support an organic cause for her complaints of pain, which have escalated since the injury, despite extensive treatment. The IRO physician agreed that the initial use of Bextra was appropriate for the lumbar strain but noted that the injury should have resolved by December 27, 2002. Consequently, in his opinion, the continued use of this medication was not medically necessary.

Subsequent to the IRO decision, a contested case hearing was conducted by the Commission regarding the extent of Claimant's injury. The Commission's hearing officer found that Claimant's compensable injury did not include an abnormality in her lower back or lumbar spine, including a

disc bulge with radiculopathy at the L3-4 spinal level, or mental depression. That finding was affirmed by the Commission's Appeals Panel in June of 2004.

### **C. Analysis and Conclusion**

Having considered the evidence in this case, the ALJ finds that the remaining medications at issue are not reasonable and medically necessary to relieve Claimant's symptoms of pain resulting from her injury. The ALJ finds the decision of the IRO to be instructive. The reviewing physician examined the medical records and studies and concluded that there was no organic cause for Claimant's continued complaints of pain. In particular, the IRO physician noted that Claimant's psychological evaluation showed that she had atypical depression with poor coping skills and an exaggerated sense of entitlement. Respondent's Ex. 4, p. 004. Petitioner did not offer any of Claimant's medical records to controvert the IRO physician's findings.

Further, the letter of medical necessity from Dr. Avila merely supported the necessity of the medications as they related to diagnoses that are not considered to be part of Claimant's compensable injury. There is no medical evidence in the record that supports a conclusion that Claimant has chronic pain from her lumbar strain requiring the use of these medications some three to four years post-injury. The ALJ recognizes the difficult positions that third-parties, such as pharmacies, face in filling prescriptions for worker's compensation patients. Nonetheless, reimbursement is not appropriate for medications that are not medically necessary for compensable worker's compensation injuries. As such, the Administrative Law Judge finds that the Petitioner failed to meet its burden of proof.

### **IV. FINDINGS OF FACT**

1. Claimant reported a work-related injury to her lumbar spine when she slipped on a wet floor on \_\_\_\_\_.
2. Claimant's compensable work-related injury is that of a lumbar strain.

3. Claimant's treating physician prescribed Oxycontin, Bioflexor, Hydrocodone/apap, Amitriptyline, Zoloft, Bextra, Tizanidine (Zanaflex), Ambien and Gabitril to relieve Claimant's symptoms of pain from December 1999 through April 2003.
4. Carrier declined to reimburse Provider for the medications in dispute because it considered the medications not to have been medically necessary.
5. Provider filed a timely Request for Medical Dispute Resolution.
6. The IRO agreed with Carrier, finding that the medications were not medically necessary.
7. On March 10, 2004, the MRD issued its Findings and Decision, which ruled that Provider was not entitled to reimbursement for the disputed services.
8. On March 26, 2004, Provider filed a timely request for a hearing before SOAH.
9. Notice of the hearing was sent to all parties on May 3, 2004.
10. 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.
11. The hearing was held August 9, 2004. Provider and Carrier participated in the hearing, which was adjourned the same day.
12. There is no reliable medical evidence that Claimant's pain results from an organic cause.
13. There is no reliable medical evidence that Claimant's pain results from the compensable injury.
14. Provider filled prescriptions that were prescribed by Claimant's treating physician.
15. The Commission has determined that Claimant's compensable injury does not include depression or an abnormality in her lower back or lumbar spine.
16. The prescriptions referenced in Finding of Fact No. 14 were not medically necessary to treat Claimant's compensable injury.

## **V. 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(k) 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 TEX. ADMIN. CODE § 148.21(h), Provider has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. § 413.031.
4. Medications which relieve the effects of a compensable injury are reimbursable expenses if they are medically necessary. TEX. LAB. CODE ANN. § 408.021(a).
5. Based on the above Findings of Fact and Conclusions of Law, the disputed prescriptions were not medically reasonable and necessary under TEX. LAB. CODE ANN. § 408.021(a).
6. Carrier should not reimburse Petitioner for the medications in dispute.

## **ORDER**

The State Office of Risk Management is not required to reimburse VONO for the medications provided to Claimant from December 27, 2002, through April 16, 2003.

**SIGNED October 8, 2004.**

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**SUZANNE FORMBY MARSHALL  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**