

**SOAH DOCKET NO. 453-04-2686.M5  
TWCC MDR NO. M5-04-1048-01**

___,	<b>Petitioner</b>	§	<b>BEFORE THE STATE OFFICE</b>
		§	
<b>VS.</b>		§	<b>OF</b>
		§	
<b>STATE OFFICE</b>	<b>OF RISK</b>	§	<b>ADMINISTRATIVE HEARINGS</b>
<b>MANAGEMENT,</b>	<b>Respondent</b>	§	

**DECISION AND ORDER**

Petitioner \_\_\_challenges the Findings and Decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission). The MRD denied Petitioner's request for reimbursement for certain prescription medicines based on lack of medical necessity. The Administrative Law Judge (ALJ) finds that the Petitioner failed to prove that the prescription medicines were medically necessary to relieve the effects of his compensable injury.

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

The Petitioner injured his back, neck, left shoulder, and left arm on\_\_\_, when he slipped on a wet floor. He requested reimbursement from the State Office of Risk Management (SORM) for Vicodin and Carisoprodol purchased from November 12, 2002, through October 6, 2003. SORM denied the request based on a peer review conducted by Terry Troutt, M.D. Dr. Troutt concluded on June 28, 2002, that the medications were not medically reasonable for the injury past January 1992, because the Petitioner's injury appears to have been a sprain/strain. Ex. 5 at 17-18.

Petitioner filed a request for dispute resolution with the Commission. MRD dismissed the request on December 18, 2003. Petitioner filed a request for a hearing at the State Office of Administrative Hearings (SOAH) on December 31, 2003. The Commission issued the notice of hearing on January 27, 2004. On March 22, 2004, ALJ Bill Zukauckas held a limited-scope evidentiary hearing to take evidence on the issue of whether the Petitioner incurred out-of-pocket expenses for the medications in question. Finding that the Petitioner incurred out-of-pocket expenses, ALJ Bill Zukauckas issued an order on March 24, 2004, remanding the matter to MRD for consideration of the issue of medical necessity. On August 27, 2004, MRD issued a decision based on a review by an Independent Review Organization (IRO) physician, who found that the prescriptions for Vicodin and Carisoprodol from November 12, 2002, through October 6, 2003, were not medically necessary for the treatment of the 1991 injury because magnetic resonance imaging did not indicate any significant abnormalities.

The hearing on the merits was held on May 18, 2005, at SOAH in Austin, Texas. ALJ Katherine L. Smith presided. The Petitioner appeared by telephone and was assisted by Juan Mireles of the Commission's Ombudsman's Office. SORM was represented by Deputy General Counsel Red Tripp. There were no contested issues of jurisdiction or notice. The record closed the day of the hearing.

## **II. EVIDENCE AND ANALYSIS**

### **A. Petitioner's Position**

Petitioner contends that the medications relieve the effects of his compensable injury. He testified that he continues to have pain in his lower back and neck. Although he has received a myriad of services including physical therapy, whirlpool treatment, pain management, and other medications, they only provided temporary relief. Injections did not provide relief and gave him

headaches. The last treatment he received was pain management in 1999. Petitioner stated that he is in pain all the time, that the pain results from standing or walking too long, being hot or cold, or when he gets upset. He walks with the aid of a walker, cannot work, and is totally disabled according to the Social Security Administration. He testified that his treating doctor, Dr. Hoskin, prescribes Vicodin for the pain and Carisoprodol to control muscle spasms. According to Petitioner, he has been taking Vicodin since 1991, and it provides pain relief for three to four hours, which means that he takes it three to four times a day.

Mr. Mireles argued on behalf of Petitioner that he has disc bulges at the L4-L5, that the injury was more serious than a sprain/strain, that Petitioner's diagnosis is chronic pain syndrome, and that great weight should be given to Petitioner's treating doctor.

## **B. SORM's Position**

SORM asserts that the symptoms Petitioner is experiencing are not related to the strain/sprain, which was the initial diagnosis, and that there is no evidence of an injury beyond the strain/sprain. SORM notes that a CT of the lumbar spine revealed minimal disc bulge at the L4-L5 level. Ex. 5 at 14. SORM points out that in February 1998, Janet Strickland, M.D., found that Petitioner had been given return-to-work releases by several physicians, that Petitioner had refused to participate in work hardening, and that Petitioner was determined to remain disabled. Ex. 5 at 16. SORM asserts that it is not reasonable to prescribe Vicodin, a narcotic, 13 years after the injury. Ex. 5 at 18. Although Petitioner is entitled to medical benefits for a lifetime for injuries relating to his compensable injury, SORM contends that Petitioner does not meet the qualifications because there is no medical evidence linking his current problems to the compensable strain/sprain. Ex. 5 at 17. Relying on the IRO's review and Dr. Troutt's peer review, SORM asserts that the medications did not relieve the effects naturally resulting from the compensable injury.

### **C. Analysis**

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 employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment. TEX. LABOR CODE ANN. § 408.021.

It is fairly clear that the medications in questions have not enhanced Petitioner's ability to return to and retain work, nor have they promoted his recovery or cured any effect resulting from the injury. The issue is, therefore, whether the medications relieve the effects naturally resulting from the injury. Although Petitioner's treating doctor prescribed the medications and is due a certain amount of deference as the treating doctor, there is no justification in the record for why he continues to prescribe the medications 13 years after the injury and why they are medically necessary to treat the compensable injury.

Furthermore, the ALJ is disturbed that the Petitioner has been continuously prescribed these medications with little or no review as to their efficacy. Nowhere is there evidence of an evaluation of Petitioner's condition demonstrating the continuing need for these medicines. Nor has Dr. Hoskin stated that these medications are the only viable options for Petitioner's treatment, despite the harmful side effects. *See* Ex. 5 at 18.

Because there is no medical evidence in the record establishing that the medications are relieving the effects naturally resulting from the compensable injury, Petitioner failed to prove that the Vicodin and Carisoprodol that he purchased from November 12, 2002, through October 6, 2003, were medically necessary.

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

1. The Petitioner injured his back, neck, left shoulder, and left arm on\_\_\_\_, when he slipped on a wet floor.
2. Petitioner's treating doctor prescribed Vicodin and Carisoprodol for the treatment of Petitioner's injury.
3. Petitioner paid for the medications during November 12, 2002, through October 6, 2003.
4. Petitioner submitted requests for reimbursement to the State Office of Risk Management (SORM).
5. SORM denied the requests based on a peer review conducted by Terry Troutt, M.D., who concluded that the medications were not medically reasonable for the injury past January 1992.
6. Petitioner filed a request for medical dispute resolution with the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission).
7. MRD dismissed the request on December 18, 2003.
8. Petitioner filed a request for a hearing at the State Office of Administrative Hearings (SOAH) on December 31, 2003.
9. The Commission issued the notice of the hearing on January 27, 2004, which stated the date, time, and location of the hearing and cited to the statutes and rules involved, and which provided a short, plain statement of the factual matters asserted.
10. On March 22, 2004, Administrative Law Judge (ALJ) Bill Zukauckas held a limited-scope evidentiary hearing to take evidence on the issue of whether the Petitioner incurred out-of-pocket expenses for the medications.
11. Finding that Petitioner incurred out-of-pocket expenses, ALJ Bill Zukauckas issued an order on March 24, 2004, remanding the matter to MRD for consideration of the issue of medical necessity.
12. On August 27, 2004, MRD issued a decision based on a review by an Independent Review Organization physician, who found that the prescriptions for Vicodin and

Carisoprodol from November 12, 2002, through October 6, 2003, were not medically necessary for the treatment of the 1991 injury because magnetic resonance imaging did not indicate any significant abnormalities.

13. The hearing on the merits was held at SOAH on May 18, 2005.
14. Petitioner has been taking Vicodin since 1991 for low back and neck pain.
15. Petitioner is not working, despite his taking Vicodin and Carisoprodol.
16. The use of Vicodin and Carisoprodol has not enhanced Petitioner's ability to return to and retain work, nor have they promoted his recovery.
17. There is insufficient justification in the medical record establishing the medical necessity of Vicodin and Carisoprodol 13 years after Petitioner's compensable strain/sprain occurred.

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

1. The Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LABOR CODE ANN. § 413.031.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. § 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 and 28 TAC 148.4(b).
4. Petitioner did not meet his burden of proving by a preponderance of the evidence, pursuant to 28 TAC § 148.21(h) and (i), that the use of Vicodin and Carisoprodol was medically necessary between November 12, 2002, and October 6, 2003, and was reasonably required by the nature of the injury within the meaning of TEX. LABOR CODE ANN § 408.021.

**ORDER**

**IT IS THEREFORE, ORDERED** that Petitioner's request to be reimbursed for the purchase of Vicodin and Carisoprodol between November 12, 2002, and October 6, 2003, is denied.

**ISSUED June 29, 2005.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**KATHERINE L. SMITH**  
**ADMINISTRATIVE LAW JUDGE**