

**DOCKET NO. 453-04-8234.M5
TWCC MRD NO. M5-04-2615-01**

EZ RX PHARMACY, Petitioner	§	BEFORE THE STATE OFFICE
	§	
V.	§	
	§	OF
TPCIGA FOR RELIANCE NATIONAL INSURANCE COMPANY, Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

EZ RX Pharmacy (Provider) appealed the decision of the Texas Workers' Compensation Commission (Commission) designee, an Independent Review Organization (IRO), which denied its request for reimbursement for Celexa 20 mg., Ambien 10 mg., carisoprodol 350 mg., hydrocodone/apap 7.5/325 mg., and Coats aloe liniment (collectively, medications) from April 22, 2003, through April 24, 2003, as not medically necessary. The Administrative Law Judge (ALJ) finds that Provider did not prove by a preponderance of the evidence that the medications were medically necessary; therefore, Provider is not entitled to reimbursement from TPCIGA for Reliance National Insurance Company (Carrier) for the medications.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On August 16, 2005, ALJ Michael J. O'Malley convened the hearing on the merits at the William P. Clements Building, 300 West 15th Street, Austin, Texas. Provider appeared and was represented by Nicky Otts, pharmacist. Carrier appeared and was represented by its attorney, Steve Tipton. After the evidence was presented at the August 16, 2005 hearing, the record closed the same day. There were no contested issues regarding notice or jurisdiction; therefore, those issues are presented in the findings of fact and conclusions of law.

II. BACKGROUND, EVIDENCE, AND DISCUSSION

1. Background

On ____, Claimant ____ (Claimant) sustained a compensable lumbar spine injury. Claimant participated in conservative care following her injury, which did not provide significant relief. Claimant was eventually sent to a spine surgeon, Dennis R. Gutzman, M.D.P.A., who tried additional conservative treatment, but Claimant remained symptomatic. On November 2, 1999, Dr. Gutzman performed a lumbar laminectomy and discectomy at the L5-S1 spinal level, bilateral fusion at L5-S1, and posterior segmental instrumentation at L5-S1 with insertion of a bone growing stimulator. Claimant continued post-operative care with the Dr. Gutzman, but she continued to have lumbar pain and numbness in the left leg. Dr. Gutzman recommended removal of the hardware on June 8, 2001, but Claimant did not show up for the surgery. Dr. Gutzman continued to see Claimant in 2002 and 2003 and recommended the medications for Claimant.

2. Legal Standards

Provider has the burden of proof in this proceeding. 28 TEX. ADMIN CODE § 148.14(a). An employee who has sustained 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 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. TEX. LABOR CODE ANN. § 408.021(a).

3. Parties' Positions and Evidence

1. Provider's Position and Evidence

Provider submitted documents in evidence, but it did not call a witness to testify.¹ Provider generally argues that, at the time the medications were prescribed, Claimant was still in significant pain and had not reached maximum medical improvement. Provider further relied on a letter from Dr. Gutzman stating that Claimant continued to experience back and bilateral symptoms relating to her injury, including an increase in overall pain in her back. In his letter, he stated that the medications were part of Claimant's treatment plan to help her participate in daily activities.

2. Carrier's Position and Evidence

After submitting its documents in evidence, Carrier called Nicholas Tsourmas, M.D., to testify. He testified that there was inadequate medical documentation showing the medical necessity of the medications or the efficacy of these medications on Claimant. He stated that Dr. Gutzman should have clearly documented the effectiveness of these medications on Claimant's condition, which he did not do. Dr. Tsourmas further noted that there were no objective tests indicating the necessity of these medications to treat Claimant's condition. For example, he pointed out there was no psychological test indicating Claimant suffered from depression; therefore, there was no need to prescribe Celexa. Dr. Tsourmas also testified that Ambien is prescribed for acute insomnia, and there is no medical documentation showing Claimant suffered from insomnia. Finally, he testified that Claimant could have become dependent on some of the medications, such as carisoprodol and hydrocodone, which are highly addictive, and he also noted that many of the medications have severe side effects.

¹ Provider anticipated testimony of a witness, but the ALJ could not reach the witness the day of the hearing.

3. ALJ's Analysis

The ALJ finds Provider did not prove by a preponderance of evidence that the medications were medically necessary for Claimant. There is no medical evidence on the efficacy of the medications on Claimant. Although Dr. Gutzman stated that the medications helped Claimant cope with her pain, there is no medical evidence to support Dr. Gutzman's conclusory statement. Furthermore, the medications prescribed by Dr. Gutzman treat painful spasms (carisoprodol), depression (Celexa), sleeping disorders (Ambien), and musculoskeletal conditions (carisoprodol and Coats aloe liniment), but there is no medical evidence Claimant suffered from these conditions/disorders. In addition, medications, such as hydrocodone and carisoprodol, are highly addictive, posing a significant risk of dependency to Claimant. For these reasons, the medications were not proven to be medically necessary to treat Claimant in April 2003.

III. FINDINGS OF FACT

1. On ____, Claimant ____ (Claimant) sustained a compensable lumbar spine injury.
2. At the time of the compensable injury, Claimant's employer had workers' compensation insurance through TPCIGA for Reliance National Insurance Company (Carrier).
3. Claimant participated in conservative care following her injury, which did not provide significant relief.
4. Claimant eventually sought treatment with Dennis R. Gutzman, M.D.P.A., a spine surgeon.
5. Dr. Gutzman tried additional conservative care, but Claimant remained symptomatic.
6. On November 2, 1999, Dr. Gutzman performed a lumbar laminectomy and discectomy at the L5-S1 level, bilateral fusion at L5-S1, and posterior segmental instrumentation at L5-S1 with insertion of a bone growing stimulator.
7. Claimant continued post-operative care with the Dr. Gutzman, but she continued to have lumbar pain and numbness in the left leg.
8. Dr. Gutzman recommended removal of the hardware on June 8, 2001, but Claimant did not show up for the surgery.

9. Dr. Gutzman continued to see Claimant in 2002 and 2003 and prescribed various medications for Claimant.
10. EZ RX Pharmacy (Provider) provided Celexa 20 mg., Ambien 10 mg., carisoprodol 350 mg., hydrocodone/apap 7.5/325 mg., and Coats aloe liniment (collectively, medications) to Claimant from April 22, 2003, through April 24, 2003.
11. The efficacy of the medications on Claimant was not documented.
12. No medical documents existed showing how the medications helped Claimant with her condition.
13. The medications prescribed by Dr. Gutzman treat painful spasms, depression, sleeping disorders, and acute musculoskeletal conditions.
14. There is no medical documentation showing Claimant suffered from painful spasms, depression, a sleeping disorder, or an acute musculoskeletal condition.
15. Medications, such as hydrocodone and carisoprodol, are highly addictive, posing a significant risk of dependency to Claimant.
16. On June 14, 2004, an Independent Review Organization (IRO) denied Provider reimbursement for the medications.
17. On July 20, 2004, Provider appealed the IRO's decision.
18. The Texas Workers' Compensation Commission (Commission) sent notice of the hearing to the parties on August 11, 2004. The hearing notice informed the parties of the matter to be determined, the right to appear and be represented, the time and place of the hearing, and the statutes and rules involved.
19. The hearing was held on August 16, 2005. Provider appeared and was represented by Nicky Otts, pharmacist. Carrier appeared and was represented by its attorney, Steve Tipton.
20. The record in this proceeding closed on August 16, 2005.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. Proper and timely notice of the hearing was provided to the parties in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

3. An employee who has sustained 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 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. TEX. LAB. CODE ANN. § 408.021(a).
4. Pursuant to 28 TEX. ADMIN. CODE § 148.14(a), Provider has the burden of proving by a preponderance of the evidence that the medications were medically necessary.
5. Provider did not prove by a preponderance of the evidence that the medications were medically necessary for Claimant.
6. Based on the Findings of Fact and Conclusions of Law, Provider should not be reimbursed for the medications.

ORDER

IT IS HEREBY ORDERED that TPCIGA for Reliance National Insurance Company is not required to reimburse EZ RX Pharmacy for Celexa 20 mg., Ambien 10 mg., carisoprodol 350 mg., hydrocodone/apap 7.5/325 mg., and Coats aloe liniment provided to Claimant from April 22, 2003, through April 24, 2003.

SIGNED September 8, 2005.

**MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARING**