

**SOAH DOCKET NO. 453-05-0212.M5
TWCC MR NO. M5-04-3429-01**

**VONO,
Petitioner**

V.

**AMERICAN HOME ASSURANCE
COMPANY,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This case is a dispute over whether American Home Assurance Company (Carrier) should reimburse VONO (Provider) for prescription medications Cyclobenzaprine (Flexaril), Ambien, Tramadol, Skelaxin, Bextra, Trazodone, and Prevacid. The medical necessity of the medications is the only issue to be resolved. The Administrative Law Judge (ALJ) concludes that Provider did not meet its burden of proving the medications were medically necessary. Therefore, Provider is not entitled to reimbursement for the cost of the medications.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction or notice. Those issues are set out only in the Findings of Fact and Conclusions of Law below.

II. STATEMENT OF THE CASE

Administrative Law Judge Suzanne Formby Marshall convened a hearing in this case on March 31, 2005, at the State Office of Administrative Hearings (SOAH), William Clements State

Office Building, Austin, Texas. Provider appeared through Nicky Otts, pharmacist. Carrier appeared through its attorney, Steve Tipton. The record closed the same day.

III. DISCUSSION

A. INTRODUCTION

Claimant is a _____. She sustained a compensable injury to her left elbow, shoulder and lower back on _____, when she fell out of a broken chair at a nurse's station. Her injury consisted of soft tissue injuries. The dispute in this case involves prescriptions for Ambien, Tramadol, Skelaxin, Bextra, Trazodone, Prevacid and Flexaril from June 9, 2003, through August 5, 2003. Carrier denied reimbursement on the basis that the medications were not medically necessary.

Provider filed a timely request for medical dispute resolution. The Independent Review Organization (IRO) agreed with Carrier that the prescription medications were not medically necessary. On August 18, 2004, the Medical Review Division (MRD) of the Texas Worker's Compensation Commission (TWCC) issued its Findings and Decision, adopting the decision of the IRO. On August 26, 2004, Provider filed a timely request for a hearing before SOAH.

B. EVIDENCE AND ARGUMENTS

1. Provider

Provider is the dispensing pharmacy of the medications in issue. Provider submitted billing and medical records into evidence as Provider's Exhibits 1 and 2. Nicky Otts testified on behalf of Provider. Mr. Otts characterized the dispute as a difference of opinion between doctors over the appropriate medications for Claimant. As such, he contends that deference should be given to the treating physician's judgment.

Additionally, Provider relied upon letters of medical necessity from Claimant's treating physician, Dr. Salvador P. Baylan. In the letters dated April 23, September 30, and November 6, 2003, Dr. Baylan reported that Claimant suffers from chronic pain syndrome, secondary to discogenic cause, occurring from her work-related injury. According to Dr. Baylan, Claimant's diagnosis is cervical disc herniation with cervical radiculopathy, chronic lumbar pain syndrome with radiculopathy, and shoulder pain. Dr. Baylan noted that he prescribed the medications in issue to address Claimant's complaints of pain, muscle spasm, gastric distress, and insomnia.

Dr. Baylan stated that he is following a conservative course of treatment consisting of medications, home-directed exercises, and physical therapy. He asserts that Claimant needs the disputed medications in order to continue working and to help her to perform activities of daily living. Provider's Ex. 1, p. 1.

2. Carrier

Carrier introduced into evidence Carrier's Exhibit 1, containing forty-nine pages of medical records. Carrier also presented the testimony of Dr. Casey Cochran, who testified that the medications were not reasonably necessary to treat Claimant's soft tissue injury.

Dr. Cochran noted that at the time of the injury, Claimant was already using muscle relaxers, Prevacid, Xanax, opiates, and anti-depressants for another medical condition. He surmised that Dr. Baylan continued Claimant on the medications she had already been taking for a previous injury without real consideration of whether those same medications were indicated for the present injury. Additionally, Dr. Cochran noted that when Claimant originally sought treatment from Dr. Baylan, she claimed that she had lost her prescriptions for medications previously prescribed by another doctor. Dr. Cochran testified that this type of behavior is consistent with a patient who has a potential drug addiction problem.

Dr. Cochran also provided testimony describing each medication as follows: Ambien is a

short-term treatment for insomnia; Ultram is appropriate to treat pain in the acute stage, but there is little medical evidence that it is superior to standard analgesics; Skelaxin and Flexaril are muscle relaxers that are also appropriate for the acute phase of treatment but not long-term use; Bextra may be appropriate for short-term relief, but ibuprofen may have been a better choice, particularly considering the cost of Bextra; there is no evidence that Trazadone is effective for chronic pain; and Prevacid is an appropriate medication in conjunction with Bextra, which can irritate the stomach, assuming the use of Bextra was appropriate originally. Dr. Cochran testified that there was no objective, medical pathology that would support the continued use of medications that were designed to treat an acute injury, generally lasting up to eight weeks, some two years after the injury. Dr. Cochran cited to relevant medical literature and studies to support his opinion.¹

C. ANALYSIS AND CONCLUSION

Having considered the evidence in this case, the ALJ finds there is insufficient evidence to support the continued use of the prescription medications for the compensable injury in this case. The evidence presented by Provider did not consist of specific, objective medical findings to justify the medications being prescribed by the treating physician.² The uncontroverted evidence from Dr. Cochran about each of the medications in issue is that they can be appropriate for short-term use, but have not been shown to be necessary on a long-term basis. There was also no evidence that Claimant continues to need a sleeping medication. Provider was unable to prove that the medications were necessary to treat what appears to be a soft tissue injury, two years post-injury. Consequently, the ALJ finds that Provider failed to meet its burden of proving that the medications were medically reasonable and necessary for this patient.

¹ Dr. Cochran said that he relied on the Official Disability Guidelines, the Archives of Internal Medicine and the textbook *Clinical Evidence* as support for his opinion.

² The ALJ notes that there was evidence that Claimant had received a maximum impairment rating of between 13-14%; however, Dr. Cochran noted that the studies were based solely upon Claimant's range of motion and did not include references to medical pathology. As such, the impairment ratings alone do not support the continued use of prescription medications.

IV. FINDINGS OF FACT

1. Claimant sustained work-related injuries to her left elbow, shoulder and back on ____, when she fell out of a broken chair at a nurse's station.
2. At the time of the compensable injuries, Claimant's employer had workers' compensation insurance coverage with American Home Assurance Company (Carrier).
3. From June 9, 2003, through August 5, 2003, Claimant's treating physician prescribed Ambien, Ultram, Skelaxin, Cyclobenzaprine (Flexaril), Bextra, and Trazadone, for Claimant's muscle spasms and chronic pain. He also prescribed Prevacid to assist with stomach irritation which was caused by other medications.
4. Claimant's complaints of muscle spasms and pain were not supported by objective medical findings.
5. VONO (Provider) was the dispensing pharmacy of the medications listed in Finding of Fact No. 3.
6. Carrier declined to reimburse Provider for the medications because it considered them to be medically unnecessary.
7. Provider filed a timely request for medical dispute resolution.
8. An Independent Review Organization (IRO) agreed with Carrier that the prescription medications at issue were not medically necessary.
9. On August 18, 2004, the Medical Review Division of the Texas Worker's Compensation Commission issued its Findings and Decision, adopting the IRO decision.
10. On August 26, 2004, Provider filed a timely request for a hearing before the State Office of Administrative Hearings.
11. Notice of the hearing was sent to all parties on September 16, 2004.
12. 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.
13. The hearing was held March 31, 2005. Provider and Carrier participated in the hearing. The

record closed the same day.

14. The medications Skelaxin, Flexaril, and Trazadone are appropriate for use in the acute phase of an injury, but are not appropriate for long-term use.
15. The medication Ambien is designed to address short-term problems with insomnia, but is not intended for long-term use.
16. The medication Ultram is not superior to standard analgesics for long-term use.
17. The medication Bextra is appropriate for short-term use, but there are other, less costly, alternative anti-inflammatory medications that provide the same type of relief. There is no evidence that Bextra is appropriate for long-term use.
18. There is no evidence that Trazadone is appropriate to treat long-term chronic pain.
19. The use of Prevacid may be appropriate in conjunction with Bextra, so long as the use of Bextra is appropriate.
20. There is no evidence that explains why Claimant's symptoms of pain and muscle spasm have continued for two years after her soft tissue injuries were incurred.
21. There is no specific, objective evidence that explains why the medications in issue are necessary to treat Claimant's condition two years after her injuries.

V. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction over this matter pursuant to the Texas Workers' Compensation Act (Act), 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 § 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TAC § 133.308(u).
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T

CODE ANN. §§ 2001.051 and 2001.052.

5. Provider had the burden of proof in this proceeding. 28 TAC § 148.21(h); TEX. LAB. CODE ANN. § 413.031.
6. In accordance with the above Findings of Fact, the disputed medications were not medically reasonable and necessary to treat Claimant's compensable injury.
7. Carrier should not reimburse Provider for the medications in dispute.

ORDER

It is **ORDERED** that VONO is not entitled to reimbursement from American Home Assurance Company for the medications Ambien, Ultram, Skelaxin, Cyclobenzaprine (Flexaril), Bextra, Trazadone, and Prevacid from June 9, 2003, through August 5, 2003.

SIGNED May 25, 2005.

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