

**SOAH DOCKET NO. 453-05-0520.M5  
TWCC MR NO. M5-04-3364-01**

— , <b>Petitioner</b>	§ § § § § § § §	<b>BEFORE THE STATE OFFICE</b>  <b>OF</b>  <b>ADMINISTRATIVE HEARINGS</b>
<b>V.</b>  <b>INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,</b> <b>Respondent</b>		

**DECISION AND ORDER**

This case is a dispute over whether Insurance Company of the State of Pennsylvania (Carrier) should reimburse \_\_\_(Claimant) for prescription medications Effexor, Duralgesic, Catapres, Trazadone, and Hydrocodone/APAP, and Neurontin from November 20, 2003 through April 15, 2004. The medical necessity of the medications is the only issue to be resolved. The Administrative Law Judge (ALJ) concludes that Claimant met her burden of proving the medications were medically necessary. Therefore, Claimant is 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.

Administrative Law Judge Bill Zukauckas convened a hearing in this case on June 29, 2005, at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, Austin, Texas. Claimant appeared by telephone with the live assistance of her husband, Joe Anderson, and Barton Levy from the Ombudsman office of the Texas Workers' Compensation Commission (TWCC). Carrier was represented by Steve Tipton, attorney. The record closed the same day.

## II. DISCUSSION

### A. Introduction

Claimant is a 53-year-old female who suffered a fall injury on \_\_\_\_, when she tripped over a pallet that was left on the floor. She fell forward and broke her fall by landing on her outstretched right upper extremity. She broke her right wrist and sustained a right shoulder injury, in the form of a rotator cuff tear.

The wrist injury was painful, but eventually healed (although still stiff). She continued to have right shoulder pain and limited range of motion due to the rotator cuff injury. Dr. Bruce Drazner, a pain management physician at Pain Treatment Center in Ft. Worth, Texas, diagnosed injury-related reflex sympathetic dystrophy (RSD) of the right upper extremity about two months after the fall. Dr. Kenneth Pearce, an anesthesiologist and pain management specialist, concurred in the diagnosis and on Dr. Drazner's recommendation performed multiple therapeutic injections over the next several years. Claimant received many stellate ganglion blocks with transient improvement for several weeks consistent with RSD, but had continued severe pain, perspiration, and decreased ability to use the right upper extremity even two years after the injury. The severity of her symptoms required a referral to Dr. Razzuk at Baylor Hospital in Dallas in January of 1997. He recommended a sympathectomy of the right upper extremity and performed the procedure without complications. The procedure reduced some of the pain for about a year and did halt the sweating in the Claimant's upper extremity; however, the denervation of her upper extremity caused weakness and atrophy of the musculature of the entire right upper extremity and hand. This caused her right hand and arm to stiffen and contract into the body, and it caused increased pain and stiffness in the shoulder with the development of adhesive capsulitis of the shoulder.

Claimant's pain has continued to be moderately severe with any attempt to move her upper extremity. Claimant represents that this pain prevents the effective use of her upper right extremity for common tasks like opening doors or fastening a button to dress herself. Her current pain

management physician testified that the medications at issue were needed to treated the pain and

secondary problems from the pain.

The dispute in this case involves a reimbursement claim for Effexor, Duralgesic, Catapres, Trazadone, and Hydrocodone/APAP, and Neurontin prescribed from November 20, 2003 through April 15, 2004. Carrier denied reimbursement on the basis that the medications were not medically necessary.

Claimant 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 12, 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. Claimant filed a timely request for a hearing before SOAH.

## B. Evidence and Arguments

### 1. Claimant

Gregory Skie, M.D., P.A., testified on behalf of Petitioner. Dr. Skie is board certified in pain management and has been treating Claimant as her primary treating physician since March of 2003. He testified that Claimant has required opioid and adjuvant medications for pain during the time he has seen her. He testified that Claimant cannot use her right hand for simple tasks associated with daily living due to the stiffness, atrophy and denervation from the sympathectomy and the CRPS type I. He testified that ongoing pain management and rehabilitation therapy are medically necessary to allow for even limited activities of daily living. He also testified that Claimant's depression and insomnia also needed to be treated so that they would not worsen.

Specifically, Dr. Skie testified that duragesic is an opioid he prescribed for continuous pain and that the Hydrocodone/APAP was a shorter acting opioid used for Claimant's breakthrough pain.

The Neurontin, although labeled by the FDA as an anti-seizure medication, is used mostly for neurophatic pain and that was its used here. He testified that he speaks for Pfizer, the manufacturer of Neurontin, on a professional basis and that Neurontin is widely accepted and used by physicians for nerve pain. Dr. Skie noted that the Trazadone was needed and prescribed for Claimant's insomnia and depression when it was prescribed. He testified that he also prescribed Effexor for Claimant's depression arising from her compensable injury and that it was necessary and helpful for her symptoms. Finally, he testified that he prescribed Catapres as an adjuvant medication for the reduction of Claimant's chronic pain.

Dr. Skie also addressed the independent medical evaluation perform by Dr. Charles R. Crane, M.D., who is also board certified in pain management). Dr. Skie completely agrees with Dr. Crane's initiate medical review dated August 16, 2003, which fully supported the medical necessity of the medications at issue. He notes that in Dr. Crane's medical record review addendum, dated September 18, 2003, he seems to completely change positions based on review of a surveillance video. Dr. Skie does not know what about the video caused Dr. Crane to change his position, but he knows his patient and knows her condition well. He believes Dr. Crane would also agree if he personally saw the Claimant. He is confident the conservative medication plan is medically necessary, cost effective, and appropriate in the ways described above, in the treatment of the RSD condition resulting from Claimant's compensable injury

## **2. Carrier**

Carrier relied on Claimant's medical records. Carrier argued that Dr. Crane's revised report, of September 18, 2003, after he reviewed the surveillance video, was highly persuasive. In other words, as a physician who had completely agreed the medications were medically necessary in an earlier report, he changed his position after looking at the surveillance video, saying:

Review of the surveillance video does not reflect a consistent pattern that is seen in the medical record. The lady was noted to be able to freely use both upper extremities with no indication of any limitation or activity that would suggest that she was experiencing pain of any degree to keep her from functional upper extremity activities.

Ex. 1, pg. 7.

Carrier also argues that the IRO decision, relying on the independent review doctor's

opinion, should be given deference in this case. Carrier further argued that some of the medications were used for “off label use”<sup>1</sup>, long term use of opioids causes sensation and desensitization, and the overall treatment plan was not based on nationally recognized guidelines.

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

Having considered the evidence in this case, the ALJ finds there is sufficient evidence to support the use of the prescription medications at issue for Claimant’s compensable injury.

Dr. Crane’s original opinion fully supported the use of the medications in dispute until he was made aware of the surveillance video on Claimant. Something about the surveillance video changed his opinion, but the ALJ did not have the benefit of testing Dr. Crane’s observations by cross examination. Consequently, the substance of his observations is unknown but does agree with Dr. Skie that Claimant does not seem to be using her right arm as more than a helper arm. The ALJ was persuaded by Dr. Skie that his personal observation and knowledge of this patient puts him in the best position to understand her condition, and therefore finds his testimony most credible with regard to Claimant’s condition. Additionally, Claimant has seen many specialists regarding her condition. All have supported this diagnosis, and her overall pharmaceutical care was established prior to her treatment by Dr. Skie. Although Carrier argues that some of Claimant’s medications were prescribed for off label use and that chronic use of opioids for this type of patient is unwarranted, the ALJ believes Dr. Skie has shown that he is using the minimum effective dose for each medication and that each of the medications were appropriate for the purposes he described, even when they were used off-label.

The ALJ finds that Claimant has met her burden of proving that the medications at issue were medically reasonable and necessary for treatment of Claimant’s \_\_\_ compensable injury.

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<sup>1</sup>“Off-label use” refers to the practice of prescribing drugs for a purpose outside the scope of the drug’s approved indications as set for on the Food and Drug Administration label.

### III. FINDINGS OF FACT

1. Claimant sustained compensable injuries to her right wrist, arm, and shoulder on \_\_\_\_, when she tripped over a pallet that was left on the floor.
2. At the time of the compensable injuries, Claimant's employer had workers' compensation insurance coverage with Insurance Company of the State of Pennsylvania (Carrier).
3. Claimant's treating physician prescribed prescriptions for Effexor, Duralgesic, Catapres, Trazadone, Hydrocodone/APAP, and Neurontin from November 20, 2003 through April 15, 2004 to treat this injury.
4. Carrier declined to reimburse Claimant for the medications because it considered them to be medically unnecessary.
5. Provider filed a timely request for medical dispute resolution.
6. An Independent Review Organization (IRO) agreed with Carrier that the prescription medications at issue were not medically necessary.
7. On August 12, 2004, the Medical Review Division of the Texas Worker's Compensation Commission issued its Findings and Decision, adopting the IRO decision.
8. Claimant filed a timely request for a hearing before the State Office of Administrative Hearings.
9. Notice of the hearing was sent to all parties.
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 June 29, 2005. Provider and Carrier participated in the hearing. The record closed the same day.
  
12. Claimant suffered reflex sympathetic dystrophy (RSD) and degeneration of the upper right extremity as a result of the work-related injury she sustained on \_\_\_\_.
13. The prescriptions for Effexor, Duralgesic, Catapres, Trazadone, and Hydrocodone/APAP, and Neurontin from November 20, 2003 through April 15, 2004, were necessary to address

the pain, depression, or sleep problems from Claimant's work injury.

#### IV. 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, at 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. Claimant 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 medically reasonable and necessary to treat Claimant's compensable injury.
7. Claimant should be reimbursed by Carrier for the medications in dispute.

#### ORDER

It is **ORDERED** that \_\_\_ is entitled to reimbursement from Insurance Company of the State of Pennsylvania for the medications Effexor, Duralgesic, Catapres, Trazadone, Hydrocodone/APAP, and Neurontin prescribed from November 20, 2003 through April 15, 2004.

**SIGNED August 25, 2005.**

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**BILL ZUKAUCKAS**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**