

**SOAH DOCKET NO. 453-05-0524.M5  
TWCC MR NO. M5-04-3047-01**

<b>VONO,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>AMERICAN HOME ASSURANCE</b>	§	
<b>COMPANY,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

This case is a dispute over whether American Home Assurance Company (Carrier) should reimburse VONO (Provider) for prescription medications Carisoprodol (SOMA) and Temazepam (Restoril). 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 May 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 maintenance worker. He sustained a compensable injury to his shoulder and back on \_\_\_\_, when he was moving some items out of the rain. The dispute in this case involves prescriptions for Carisoprodol and Temazepam from May 15, 2003 through December 17, 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.<sup>1</sup> 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 31, 2004, Petitioner filed a timely request for a hearing before SOAH.

#### B. Evidence and Arguments

##### 1. Petitioner

Petitioner is the dispensing pharmacy of the medications in issue. Petitioner submitted billing and medical records into evidence as Petitioner's Exhibits 1 and 2. Petitioner called Dr. Rick Taylor as a witness.<sup>2</sup> Nicky Otts testified on behalf of Petitioner. 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, Petitioner relied upon letters of medical necessity from Claimant's treating physician, Dr. A. J. Morris. In the letters dated October 31 and December 29, 2003, Dr. Morris

asserted that he is treating Claimant for a lumbar strain. He prescribed Carisoprodol "as an adjunct

---

<sup>1</sup> Carrier also refused to reimburse Petitioner for Hydrocodone for the same period of time; however, the IRO reviewing physician found that medication to be medically necessary. This finding was adopted by the Commission's Medical Review Division and was not appealed by Carrier.

<sup>2</sup> Although Dr. Taylor began giving telephonic testimony, the phone connection was broken. Mr. Otts elected to proceed without the remainder of Dr. Taylor's testimony.

to rest, physical therapy and other measures for the relief of discomfort associated with painful musculoskeletal conditions” and Temazepam to assist with Claimant’s difficulty sleeping as a result of the pain medications he takes. Dr. Morris noted that Claimant’s pain level is an 8 out of 10 and the medications help him perform the activities of daily living and assist in his recovery from the work-related injury. Petitioner’s Ex. 1, pp. 1-2.

Dr. Morris began treating Claimant on May 15, 2003, when Claimant was referred to him by Dr. Esquibel for a second opinion, after an “acute onset of lumbar pain secondary” to the accident of January 26, 2003. At that time, Claimant reported his pain level at 5-6 out of 10. The medical records reflect that Dr. Morris saw Claimant on ten occasions during the relevant time period.<sup>3</sup>

## **2. Carrier**

Carrier introduced into evidence Carrier’s Exhibit 1, containing eighty-one pages of medical records and Carrier’s Exhibit 2, consisting of a records review by Karl Erwin, M.D

Carrier submitted a peer review by Bill Timberlake, D.C., on May 12, 2003, wherein Dr. Timberlake concludes that Claimant suffers from a strain/sprain to the mid- and lower back. In Dr. Timberlake’s opinion, “[t]here appears to be remarkable conflict in the patient’s perception of impairment and his physical abilities.” Carrier’s Exhibit 1, pp. 8-9.<sup>4</sup>

Dr. Mark Doyne concluded in his peer review of August 4, 2003, that Claimant’s treatment with SOMA was inappropriate in the post-acute stage (two to three weeks post-injury) rather than on a long-term basis due to its potentially habituating effect. Carrier’s Exhibit 1, pp. 11-13. It appears that Dr. Morris prescribed the Restoril in September of 2003; consequently, neither Dr. Timberlake nor Dr. Doyne addressed the medical necessity of this medication.

## **C. Analysis and Conclusion**

---

<sup>3</sup> The dates of examination are May 15, May 27, June 10, June 16, July 16, August 20, September 22, October 22, November 19, and December 17, 2003.

<sup>4</sup> Dr. Timberlake also concluded that there was no medical necessity for continued chiropractic treatment, an MRI or durable medical equipment.

The ALJ finds there is insufficient evidence to support the use of the prescription medications for the compensable injury during the relevant time frame. The evidence presented by Petitioner did not consist of specific, objective medical findings to justify the medications being prescribed by the treating physician. Instead, Claimant's treatment appears to be supported through his subjective and medically unsubstantiated reports of pain. Claimant's pain levels actually appear to escalate as his treatment progresses, yet there is no indication that Dr. Morris attempted to discover and verify the reason for this.

Carrier's peer reviewers and the IRO reviewer agree that long-term use of the medications in issue is inappropriate for treatment of a lumbar strain/sprain. The treating physician's letters of medical necessity and treatment records do not address why the medications were needed on a long-term basis, when they would not normally be used in this way. As such, the ALJ finds that Petitioner failed to meet its burden of proving the medications to be medically reasonable and necessary to treat Claimant's lumbar strain/sprain.

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

1. Claimant sustained work-related injuries to his mid and lower back on \_\_\_\_, when he was moving materials out of the rain.
2. At the time of the compensable injuries, Claimant's employer had workers' compensation insurance coverage with American Home Assurance Company (Carrier).
3. From May 15, 2003, through December 17, 2003, Claimant's treating physician prescribed Carisprodol (SOMA) and Temazepam (Restoril) for Claimant's muscle spasms, pain, and difficulty sleeping.
4. Claimant's complaints of muscle spasms and pain were not supported by objective medical findings.
5. VONO (Petitioner) was the dispensing pharmacy of the medications listed in Finding of Fact No. 3.
6. Carrier declined to reimburse Petitioner for the medications because it considered them to be medically unnecessary.
7. Petitioner 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 31, 2004, Petitioner 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 23, 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 May 31, 2005. Petitioner and Carrier participated in the hearing. The record closed the same day.
14. The medication SOMA is appropriate for use in the acute phase of an injury, but is not appropriate for long-term use.
15. The medication Restoril is designed to address short-term problems with insomnia, but is not intended for long-term use.
16. There is no evidence that explains why Claimant's symptoms of pain and muscle spasm have continued for four to eleven months after his lumbar strain/sprain was incurred.
17. There is no specific, objective evidence that explains why the medications in issue are necessary to treat Claimant's condition four to eleven months after his injury.

## **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. Petitioner had the burden of proof in this proceeding. 28 TAC § 148.21(h); TEX. LAB. CODE ANN. § 413.031.
6. The disputed medications were not medically reasonable and necessary to treat Claimant's compensable injury.
7. Carrier should not reimburse Petitioner for the medications in dispute.

**ORDER**

It is **ORDERED** that VONO is not entitled to reimbursement from American Home Assurance Company for the medications Carisoprodol and Temazepam from May 15, 2003, through December 17, 2003.

**SIGNED July 12, 2005.**

---

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