

**SOAH DOCKET NO. 453-05-0541.M5
TWCC MR NO. M5-04-3431-01**

**HIGHPOINT PHARMACY,
Petitioner**

V.

**AMERICAN HOME ASSURANCE
COMPANY,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Highpoint Pharmacy (Petitioner) appealed the findings and decision of the Texas Workers' Compensation Commission's designee, an independent review organization (IRO), which found that prescriptions that Petitioner provided a workers' compensation claimant (Claimant) were not medically necessary healthcare. The IRO's decision upheld a denial of reimbursement by the American Home Assurance Company (Carrier). This decision and order finds the prescriptions were not shown to be medically necessary for Claimant.

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.

The hearing in this matter convened and the record closed April 6, 2005, before State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Ann Landeros. Petitioner was represented by its employee, Nicky Otts. Attorney Steven Tipton represented Respondent. The Commission Staff did not participate in the hearing.

II. DISCUSSION

A. Factual Background

Claimant sustained a compensable injury to her back, left shoulder, and neck in _____. At the time of the injury, Carrier was the workers' compensation insurer for Claimant's employer. In 2003, Claimant's treating physician, Jacob Rosenstein, M.D., prescribed Carisoprodol, and Amerge for her. These prescriptions were filled at Petitioner's pharmacy on June 10 and 19 and July 2, 2003.

Carrier denied payment for the prescriptions based on the lack of medical necessity. The IRO reviewer upheld the denial, writing:

It is clear from the long term duration of this pain syndrome and the two (so far) failed spine surgeries and the failure of epidural steroid injections and trigger point injections and nerve blocks that the patient has chronic pain syndrome. . . .

Carisoprodol is a very highly addictive "muscle relaxant" which is widely known as metabolized quickly to meprobamate and really has no place in long term treatment of chronic pain. This is not going to produce long term muscle relaxation or prevent spasms but rather primarily will produce cognitive/mental slowing sedation and high likelihood for an addiction. There is no indication in the records that this patient has a migraine syndrome, hence, there is not indication for Amerge or other triptans. (Carrier Ex. 1).

Petitioner timely appealed the denial.

B. Legal Standards

Petitioner has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE (TAC) §§ 148.21(h) and (i); 1 TAC §155.41. Pursuant to the Texas Worker's Compensation Act (Act), 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). Health care includes all reasonable and necessary medical services. TEX. LAB. CODE ANN. §401.011(19)(A). The IRO was authorized to hear the medical dispute pursuant to 28 TAC §133.308.

C. Evidence and Argument

Both Petitioner and Carrier proffered the records they submitted to the IRO. (Pet. Exs. 1 and 2; Carrier Ex. 1).

1. Petitioner's Case

Petitioner's documents established that in July 2002, Dr. Rosenstein gave Claimant the following diagnoses: bilateral cervical radiculopathy; low back pain; right lumbar radiculopathy; 2-3 mm C5-6 disc protrusion; status post C7-T1 ACDF in April 2000; and Status post L5-S1 PLIF with fusion cages in 1999. (Pet. Ex. 2, p. 12). These diagnoses were repeated in his January 8, and June 10, 2003, office notes, with an additional diagnosis of cervical radiculopathy. (Pet. Ex. 2, pp. 7, 9).

According to Dr. Rosenstein's office notes, he started Claimant on Carisoprodol in September 2002, because the Robaxin previously prescribed was not working. (Pet. Ex. 2, p. 11). In his January 8, 2003, note, Dr. Rosenstein stated Claimant was taking Vioxx, Darvocet, Carisoprodol, and Topamax, which were "working somewhat better than the Robaxin." (Pet. Ex. 2, p. 9). In his June note, he stated she was still taking multiple medication, including Carisoprodol and Amerge, as needed. (Pet. Ex. 2, p. 7). On July 29, 2002, Dr. Rosenstein noted Claimant was

taking Vioxx, Phenergan, and Amerge "which help." (Pet. Ex. 2, p. 12).

In letters of medical necessity dated August 18 and 22, 2003, Dr. Rosenstein wrote that Claimant was prescribed Carisoprodol on June 19 and July 2, 2005, for her muscle spasms, explaining that the drug was a muscle relaxant that was reasonable and necessary to treat Claimant's her pain, reduce spasm, improve function, and improve activities of daily living. (Pet. Ex. 2, pp. 2-3). He did not mention the Amerge prescriptions in these letters.

Petitioner argued that just because Dr. Rosenstein and the IRO reviewer disagreed about how Carisoprodol should be used did not prove the Carisoprodol was not medically necessary for Claimant.

2. Carrier's Case

Carrier cited to Claimant's evaluation by occupational medicine specialist Jeffrey Pardee, M.D., in February 2003 (and updated in April 2003), in which Dr. Pardee found no need for any ongoing medical care. (Carrier Ex. 1, p. 6-13). Carrier argued that Carisoprodol is, as the IRO reviewer noted, a highly addictive drug, which is not appropriate for chronic pain. Carrier further argued that the record lacked any documentation to support a prescription for Amerge, a migraine treatment, because Claimant's symptoms involved back, shoulder and neck pain, not headaches.

D. Analysis

Petitioner failed to meet its burden of proof. Dr. Rosenstein's letters of medical necessity contained only conclusory statements that the prescriptions were necessary and his office notes did not address the medical necessity of Carisoprodol in long term usage despite its addictive nature or address the purpose of the Amerge at all.

Petitioner was correct that a mere difference of opinion between the IRO reviewer and Dr. Rosenstein over the use of Carisoprodol might not by itself be enough to show the drug was not medically necessary. In this case, Petitioner had the burden of proof to show the prescriptions were appropriate and failed to do so.

Dr. Rosenstein kept Claimant on Carisoprodol from September 2002 into July 2003. Even if the drug relieved Claimant's chronic pain, its addictive nature rendered it contraindicated for this long term use. To show medical necessity in June and July 2003, Petitioner needed medical evidence to support the long term use of Carisoprodol. Neither Dr. Rosenstein's letters nor his office notes explained why he found it appropriate to keep Claimant on Carisoprodol for nine months, despite its highly addictive nature.

The only evidence regarding the Amerge prescription, Dr. Rosenstein's office note that did not specify why Claimant needed the drug, did not prove the drug was medically necessary when prescribed in June 2003.

Petitioner failed to establish that prescriptions provided Claimant were medically necessary healthcare, and it is not entitled to reimbursement from Carrier for those drugs.

III. FINDINGS OF FACT

1. In___, Claimant sustained injuries to her back, shoulder, and neck that were compensable under the Texas Workers' Compensation Act (Act).
2. At the time of the compensable injuries, Claimant's employer had workers' compensation insurance coverage with American Home Assurance Company (Carrier).
3. Beginning in September 2002, Claimant's treating physician, Jacob Rosenstein, M.D., prescribed Carisoprodol, a muscle relaxer, for Claimant's chronic back, shoulder, and neck pain.
4. Dr. Rosenstein also prescribed Amerge, a triptan drug, for Claimant.

5. Highpoint Pharmacy (Petitioner) filled Claimant's drug prescriptions for Carisoprodol and Amerge on June 10, 19, and July 2, 2003.
6. Carrier denied reimbursement to Petitioner for the prescriptions based on the lack of medical necessity.
7. Petitioner's appeal of the denial was considered by the Texas Workers' Compensation Commission's (Commission) designee, an Independent Review Organization (IRO).
8. The IRO's decision upheld Carrier's denial of reimbursement on the basis that the prescriptions were not medically necessary. Petitioner timely appealed that decision.
9. The Commission Staff's notice of hearing stated the date, time, and location of the hearing and cited to the legal statutes and rules involved along with a short, plain statement of the factual matters involved.
10. Petitioner and Carrier were represented at the hearing but the Commission Staff chose not to participate.
11. The Carisoprodol prescriptions were to treat Claimant's complaints of chronic pain in her back, shoulder, and neck.
12. Amerge is a triptan drug used to treat migraines.
13. Claimant was not shown to suffer from migraines.
14. Carisoprodol is a highly addictive drug that is not suitable for treatment of chronic pain.
15. Petitioner failed to adequately document that Carisoprodol is an appropriate drug to treat Claimant's chronic pain.
16. Carisoprodol and Amerge were not medically necessary for Claimant's compensable injuries when dispensed by Petitioner on June 10, 19 or July 2, 2003.

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(d) of the Act and TEX. GOV'T CODE ANN. ch. 2003.

3. The IRO was authorized to hear the medical dispute pursuant to 28 TEX. ADMIN. CODE (TAC) § 133.308.
4. 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).
5. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
6. Petitioner had the burden of proof in this proceeding. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41.
7. Pursuant to the Act, 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).
8. Health care includes all reasonable and necessary medical services. TEX. LAB. CODE benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. § 401.011(31).
9. Petitioner is not entitled to reimbursement for the Carisoprodol or Amerge it dispensed to Claimant on June 10, 19 or July 7, 2003, because those drugs were not shown to be reasonable or medically necessary healthcare for her.

ORDER

It is ORDERED that Highpoint Pharmacy is not entitled to reimbursement by American Home Assurance Company for the Carisoprodol or Amerge it dispensed to Claimant on June 10, 19, or July 2, 2003.

SIGNED April 13, 2005.

**ANN LANDEROS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**