

**SOAH DOCKET NO. 453-05-0588.M5
TWCC MR NO. M5-04-2887-01**

LIBERTY MUTUAL FIRE INSURANCE COMPANY, Petitioner	§ § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
V.		
VONO, Respondent		

DECISION AND ORDER

This case is a dispute over whether Liberty Mutual Fire Insurance Company (Carrier) should reimburse VONO (Provider) for prescription medications Celebrex, Hydrocodone/APAP, and Cyclobenzaprine from May 9, 2003 through July 9, 2003. The medical necessity of the medications is the only issue to be resolved. The Administrative Law Judge (ALJ) concludes that Carrier did meet its burden of proving the medications were medically unnecessary. 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.

Administrative Law Judge Bill Zukauckas convened a hearing in this case on July 12, 2005, at the State Office of Administrative Hearings (SOAH), William Clements State Office Building, Austin, Texas. Provider appeared through Nicky Ottis. Carrier appeared through its attorney, Kevin Franta. The record closed the same day.

II. DISCUSSION

A. Introduction

Claimant is a 68-year-old female who suffered a repetitive-type injury to her low back on ____, from bending and squatting. The records indicate she was a sales associate and worked in sales, merchandising, and stocking in the sunglass department of a large store and sustained a compensable injury to her lower back when she repeatedly bent down to arrange sunglasses in the display cabinets. The evidence indicates that she suffered a sprain and as of ____, became symptomatic with chronic back pain. The evidence also indicated there were multiple levels of disc degeneration in the Claimant's back, even at the time of the work injury, and that as recently as 2003, this disease of life has progressed despite the fact that Claimant has been out of work with no opportunity for further at-work accidents.

The dispute in this case involves prescriptions for Celebrex, Hydrocodone/APAP, and Cyclobenzaprine from May 9, 2003 through July 9, 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 Provider that the prescription medications were medically necessary. On August 27, 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. Provider filed a timely request for a hearing before SOAH.

B. Evidence and Arguments

1. Provider

Rick Taylor, D.O., testified on behalf of Respondent. Dr. Taylor has a degree in osteopathic medicine and is board certified in family medicine and pain management. He testified that Celebrex

is a reasonable and necessary medication for treatment of the pain associated with this intractable

back pain because it is the one remaining nonsteroidal anti-inflammatory “Cox-2 inhibitor” on the market. Dr. Taylor stated that Celebrex is a good choice for an anti-inflammatory medication because it has a lower incidence of bleeding ulcers with long term use, and Celebrex is not addictive or dangerous. Dr. Taylor testified that cyclobenzaprine (the generic form of Flexoril), is an appropriate medication for the treatment of muscle spasms. He agrees with Carrier that the medical records should document muscle spasms and believes these medical records do that. He believes it would be inappropriate to stop this medication just to find out whether spasms might reappear, as Carrier’s counsel suggested. With regard to the Hydrocodone/APAP (also known as Vicodin), Dr. Taylor said that this was an appropriate medication for breakthrough pain. Dr. Taylor also noted that Claimant was taking Oxycontin, a more long-acting narcotic, and believes the current trend is to prescribe these longer-acting narcotics for long-term chronic pain. He personally testified that he would not prescribe Hydrocodone/APAP more than three times per day for any patient, but he said the prescription at a more frequent rate would not necessarily be wrong or outside the standard of care.

Dr. Taylor admitted that Claimant’s overall disc degeneration problems could not have been caused by one day’s worth of repetitive bending back in 1997 and that her disc degeneration problems are the source of her current back pain.

2. Carrier

Carrier introduced into evidence Carrier’s Exhibit A, containing 284 of medical records and Carrier’s Ex. B, containing 27 pages of medical records. Carrier also presented the testimony of Dr. Neal Blauzvern, D.O., a board certified physician by the American Board of Anesthesiology specializing in comprehensive pain management, who testified that the medications were not reasonably necessary to treat Claimant’s original injury. Dr. Blauzvern testified that the records reflect that Claimant suffered, at most, a lumbo-sacral strain in 1997. He testified that the records reflect Claimant was suffering from disc degeneration at least two years prior to _____. He notes that she

reported back pain from an injury on _____, and that x-rays at that time documented disc

degeneration. He believes the records reflect Claimant was experiencing ordinary diseases of life when she became symptomatic with back pain and that any sprain should have been resolved just a few months after her injury. He agrees with Dr. Patrick Denovan, M.D.'s "Required Medical Evaluation" of February 10, 2004, that Claimant's ongoing back pain is mostly due to her pre-existing lumbar degenerative spondylosis and spinal stenosis, with noted progression over the past seven years, and is definitely unrelated to the original work injury. Ex. A, p.260.

With regard to the three medications at issue, assuming for argument sake they were addressing pain from a work injury, Dr. Blauzvern believes Dr. Weldon's chart notes fail to show any sort of planned treatment direction. For instance, the Hydrocodone APAP (or Vicodin), is a short-acting-opioid narcotic and was apparently being used in conjunction with Oxycontin, a longer-acting-opioid narcotic. In general terms, Dr. Blauzvern believes this combination should not be used except when Hydrocodone/APAP is needed for break through pain. Dr. Blauzvern saw no medical records from Dr. Weldon showing he was prescribing the Hydrocodone/APAP for this sort of pain relief. Dr. Blauzvern also notes that the Texas Board of Medical Examiners gives doctors written guidelines for the appropriate use of opiates in a chronic pain setting. Those guidelines require a written treatment plan, documentation of the progress, and documentation of functional improvement. Dr. Blauzvern did not see any medical records from Dr. Weldon addressing these guidelines and believes this evidences the overall lack of direction in the Claimant's treatment plan, and most specifically, with regard the Hydrocodone/APAP.

With regard to the Cyclobezaprine (or Flexoril), Dr. Blauzvern believes it is to be used only for short-term-muscular-skeletal pain, not long-term-chronic-back pain. He agrees medications can be used "off label," but knows of no appropriate off-label use in this case for this medication and does not see one documented. With regard to the Celebrex, the most costly prescription at issue here, Dr. Blauzvern believes it is the only "Cox-2 inhibitor" remaining on the market and would be reasonable if there was documentation that it was relieving pain, but there is no documentation of its efficacy in the record. Consequently, Dr. Blauzvern could not say its use was reasonable and, as

previously discussed, could not say it was needed to treat the original compensable injury.

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 for the compensable injury. On the contrary, there were extensive medical records showing that the original compensable injury could not possibly be the source of Claimant's current back pain, even if Claimant became symptomatic at the time of the ___ at-work injury. The ALJ has no doubt that the Claimant needs a comprehensive ongoing chronic pain management program, but the evidence indicates this ongoing pain is linked to degenerative changes in Claimant's back and not to her ___ at work injury.

The ALJ finds that Carrier met its burden of proving that the medications were not medically reasonable and necessary for treatment of Claimant's ___ compensable injury.

III. FINDINGS OF FACT

1. Claimant sustained work-related injuries to her back on ____, when she sprained her lower back when she repeatedly bent down to arrange sunglasses in the display cabinets of a large department store.
2. At the time of the compensable injuries, Claimant's employer had workers' compensation insurance coverage with Liberty Mutual Fire Insurance Company (Carrier).
3. Claimant's treating physician prescribed prescriptions for Celebrex, Hydrocodone/APAP, and Cyclobenzaprine, from May 9, 2003 through July 9, 2003, for treatment of her chronic back pain.
4. VONO (Provider) was the dispensing pharmacy of the medications listed in Finding of Fact No. 3.
5. Carrier declined to reimburse Provider for the medications because it considered them to be medically unnecessary.
6. Provider filed a timely request for medical dispute resolution.
7. An Independent Review Organization (IRO) agreed with Provider that the prescription

medications at issue were medically necessary.

8. On August 27, 2004, the Medical Review Division of the Texas Worker's Compensation Commission issued its Findings and Decision, adopting the IRO decision.
9. Provider filed a timely request for a hearing before the State Office of Administrative Hearings.
10. Notice of the hearing was sent to all parties on October 8, 2004.
11. 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.
12. The hearing was held July 12, 2005. Provider and Carrier participated in the hearing. The record closed the same day.
13. There is no objective evidence that explains why the medications in issue are necessary to treat Claimant's original back sprain more than seven years after her 1997 compensable injuries.
14. There is abundant evidence showing that any back sprain cause by the 1997 compensable injury is long resolved and that current back pain is due to degenerative disc problems in Claimant's back.
15. The degenerative disc problems in Claimant's back existed before and after her 1997 injury and are progressively worsening.

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, 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. Carrier 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 Liberty Mutual Fire Insurance Company for the medications Celebrex, Hydrocodone/APAP, and Cyclobenzaprine from May 9, 2003 through July 9, 2003.

SIGNED August 8, 2005.

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