

HIGHPOINT PHARMACY,
Petitioner

V.

LIBERTY INSURANCE COMPANY,
Respondent

§
§
§
§
§
§
§
§
§
§

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 Liberty Insurance 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 July 11, 2005, before State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Ann Landeros. Petitioner was represented by its employee, Nicky Otts. Attorney Kevin Franta represented Respondent. The Commission Staff did not participate in the hearing.

II. DISCUSSION

A. Factual Background

Claimant sustained a compensable injury to her back in _____. At the time of the injury, Carrier was the workers' compensation insurer for Claimant's employer. In 2000, Claimant

underwent a two-level cervical microdiscectomy with fusion. Post-operatively, her treating physician, Jacob Rosenstein, M.D., who had diagnosed her with chronic pain syndrome, prescribed carisoprodol and hydrocodone for her. These prescriptions were filled at Petitioner's pharmacy in May, June, and July 2003.

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

She has been on carisoprodol and hydrocodone for an extended period of time. There is no benefit to continue these medications at this time. . . . The carisoprodol, although it is not listed as a dangerous drug, is an addictive drug by its secondary metabolite. There is a dependency on hydrocodone after an extended period of time without sufficient pain relief. . . . (Carrier Ex. 1, p. A4).

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 and some additional records. (Pet. Exs. 1 and 2; Carrier Exs. 1 and 2).

1. Petitioner's Case

Dr. Rosenstein diagnosed Claimant with incurable chronic pain syndrome. He began prescribing hydrocodone for her in 2000. The record was not clear how long Claimant had been taking carisoprodol, but she was taking an unspecified muscle relaxer in March 2001 and was definitely taking carisoprodol before June 2002 when she took herself off the drug because she did not think it was helping her. (Carrier Exh. 1, pp. 81, 142). Despite this perceived lack of efficacy, Dr. Rosenstein restarted her on carisoprodol at some point and she was taking it in May, June, and July 2003, the dates at issue in this case.

In his letter of medical necessity dated July 28, 2003, Dr. Rosenstein wrote that on June 20, 2003, he prescribed Claimant carisoprodol for her muscle spasms and hydrocodone for her pain. He stated that the drugs were both reasonable and medically necessary to treat Claimant's work-related injury. (Pet. Ex.1, p. 1). In response to the peer reviewer's conclusion that these medications were not necessary, Dr. Rosenstein wrote that the hydrocodone decreased Claimant's pain, improved her activities of daily living, and kept her pain from being intractable. With regard to the carisoprodol, Dr. Rosenstein stated Claimant, who suffers from chronic spasms, derived good therapeutic benefit from that drug. (Pet. Ex. 1, p. 2).

Petitioner's witness Richard Taylor, D.O., testified that he reviewed Claimant's medical records in this case. A pain management specialist, Dr. Taylor stated he does not usually prescribe carisoprodol to treat chronic pain but he did not think Dr. Rosenstein was wrong to do so. Although he could not cite to any specific peer review studies that support the long-term use of muscle relaxants such as carisoprodol, Dr. Taylor thought that each patient must be evaluated based on the the patient's actual reaction to a specific medicine. In this case, Dr. Taylor found that Dr. Rosenstein's records adequately documented that Claimant's benefitted from the carisoprodol and hydrocodone in that her pain was reduced and she was able to engage more fully in activities of daily living while taking the medication.

Dr. Taylor admitted that patients who use drugs, including carisoprodol and hydrocodone, long term can develop a tolerance that reduces the drug's efficacy. He also admitted both drugs were potentially addictive. But with adequate monitoring by the prescribing physician, he thought that

both drug tolerance and addiction can be avoided. He saw no evidence of drug addiction or overuse

in Claimant's records. She appeared to be taking the recommended dosage of no more than four carisoprodol a day as needed. With regard to Claimant's statement in June 2003 that the carisoprodol was not helping, Dr. Taylor surmised that she might have needed a "drug holiday" at that time but after her tolerance levels fell, subsequently benefitted from that drug again.

Dr. Taylor found that, given Claimant's intractable chronic pain and muscle spasms, the carisoprodol and hydrocodone prescriptions that Petitioner filled in May, June, and July 2003 were reasonable and medically necessary.

2. Carrier's Case

Carrier argued that both carisoprodol and hydrocodone are, as the IRO reviewer noted, highly addictive drugs, which are not appropriate for chronic pain. It cited to a lecture given by Peter Staats, M.D., who head the Chief of Pain Medicine at Johns Hopkins University, to prove its point that carisoprodol is not appropriate treatment for chronic pain. Dr. Staats stated there is little or no data supporting the long-term use of muscle relaxants. For that reason, he rarely uses carisoprodol for chronic pain although he has had to treat chronic pain patients with addictions to that drug on many occasions. (Carrier Exh. 2, p., 17).

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 long term use carisoprodol or hydrocodone despite the drugs' addictive properties.

Dr. Rosenstein has kept Claimant on hydrocodone since 2000 and on carisoprodol since before June 2002. Even if the drugs relieved Claimant's chronic pain, they were contraindicated for long-term use by their addictive nature. In May, June, and July 2003, both prescriptions had been used by Claimant for a relatively long period.

To show the prescriptions were medically necessary in May, June and July 2003, Petitioner

needed medical evidence to support the long term use of the drugs. Neither Dr. Rosenstein's letters nor his office notes explained why he found it appropriate to keep Claimant on hydrocodone for three years and on carisoprodol at least a year, despite their highly addictive nature. While Dr. Taylor may be correct that Dr. Rosenstein had evaluated Claimant's clinical picture and found legitimate reasons to maintain her on these drugs long-term, those reasons are not evident from the record and Dr. Taylor's speculation is not a valid substitute for a reasoned explanation from Dr. Rosenstein.

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 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 Liberty Insurance Company (Carrier).
3. Beginning in 2000, Claimant's treating physician, Jacob Rosenstein, M. D., prescribed hydrocodone, a highly addictive narcotic for Claimant's chronic back pain.
4. By June 2002, Dr. Rosenstein had prescribed carisoprodol, an addictive muscle relaxer, for Claimant's muscle spasms.
5. Highpoint Pharmacy (Petitioner) filled Claimant's drug prescriptions for carisoprodol or hydrocodone or both on May 23, June 6 and 20, and July 1 and 18, 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 appealed that decision within the required time.
9. The Commission Staff sent notice of hearing to the parties that 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 disputed prescriptions were to treat Claimant's complaints of chronic pain in her back.
12. Both carisoprodol and hydrocodone are highly addictive drugs that are not suitable for long-term treatment of chronic pain.
13. By May 2003, Claimant had been taking carisoprodol for at least a year and hydrocodone for several years, long enough for her use of these drugs to be considered long-term.
14. Petitioner failed to adequately document that carisoprodol and hydrocodone prescriptions filled in May, June, and July 2003 were appropriate to treat Claimant's chronic pain.
15. Carisoprodol and hydrocodone was not medically necessary for Claimant's compensable injuries when dispensed by Petitioner on in May, June, and July 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.
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
8. 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).

9. Health care includes all reasonable and necessary medical services. TEX. LAB. CODE ANN. § 401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. § 401.011(31).

10. Petitioner is not entitled to reimbursement for the carisoprodol or hydrocodone it dispensed to Claimant in May, June, 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 Liberty Insurance Company for the carisoprodol or hydrocodone it dispensed to Claimant in May, June, and July 2003.

SIGNED July 20, 2005.

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