

**SOAH DOCKET NO. 453-05-2144.M5
TWCC MR NO. M5-04-4271-01**

**HIGHPOINT PHARMACY,
Petitioner**

V.

**INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Highpoint Pharmacy (Petitioner) seeks reimbursement of \$1,252.40 for prescriptions provided to a workers' compensation claimant (Claimant). The Texas Workers' Compensation Commission (Commission)¹, acting through an independent review organization (IRO), denied reimbursement on the basis that the services were not medically necessary. This decision also denies the requested reimbursement.

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 was held on September 6, 2005, before State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Kerry D. Sullivan. Petitioner was represented by its employee, Nicky Ottis. Attorney Steven Tipton represented the Respondent Insurance Company of the State of Pennsylvania (Carrier).

¹ Effective September 1, 2005, the functions of the Commission have been transferred to the newly created Division of Workers' Compensation at the Texas Department of Insurance.

II. DISCUSSION

A. Factual Background

The Claimant sustained a compensable injury to her lower back on____, when she slipped and fell on a wet sidewalk. At the time of the injury, the Carrier was the workers' compensation insurer for the Claimant's employer. The Claimant underwent an L3 discectomy in March 1997 and L3-4 fusion in January 2000. These operations have failed to relieve the Claimant's pain. The Claimant has also had a morphine pump installed and has long been on narcotic and other prescription drugs for pain relief. In 2003, the Claimant's treating physician, Jacob Rosenstein, M.D., prescribed the narcotic drugs Carisoprodol, Ultracet, Alparazolam, Oxycontin, and Imitrex for this purpose. These prescriptions were filled at the Petitioner's pharmacy in September and October 2003.

Carrier denied payment for the prescriptions based on the lack of medical necessity. The IRO reviewer upheld the denial on the basis that "use of narcotics for long-term pain control has not been proven productive or efficacious."²

B. Legal Standards

Petitioner has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE §§148.21(h) and (i); 1 TEX. ADMIN. CODE §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.

² Petitioner Ex. 2, p. 4.

CODE ANN. § 401.011(19)(A). The IRO was authorized to hear the medical dispute pursuant to 28 TEX. ADMIN. CODE § 133.308.

C. Evidence and Argument

The documentary records consist of various medical records pertaining to the Claimant and several medical journal articles submitted by the Carrier in support of its contention that the prescribed medication was medically unnecessary. The documents do not include any kind of status or progress notes pertaining to the Claimant. In addition to these documents, Rick Taylor, D.O., provided expert testimony on behalf of the Petitioner.

The ALJ finds that the Petitioner failed to meet its burden of proof. Although Dr. Taylor testified generally that the Claimant's physician followed the Commission's Official Disability Guidelines by first prescribing non-opioids, and adding the narcotic drugs in question only when the other drugs failed to relieve the Claimant's pain, he was somewhat equivocal about the prescribed drug regimen. In particular, he observed that he does not particularly "like" Carisoprodol. He also acknowledged that he did not know why the Claimant's doctor would have prescribed Alprazolam, which he described as a hypnotic drug.

In part because he had few records to review, Dr. Taylor also did not know the answers to a number of questions important to determining the medical necessity for the drug regimen at issue. These included whether the Claimant was taking other narcotic medications; if she were, that would have led Dr. Taylor to "great caution" in prescribing other narcotic medications. Based on the morphine pump implanted in the Claimant's body at the time, there is at least some indication the Claimant was, in fact, taking other narcotic medications. Dr. Taylor also did not know how long the Claimant had been on these drugs or whether the Claimant's dosage has increased, and he did not know if the Claimant ever refused a medication taper. Affirmative answers to any of these questions

would be contraindications for the continued use of these medications under the Disability Guidelines. In addition to these unknowns, the information that *is* known about the Claimant is also of concern. She has been off work since 1994 and has refused recommended psycho-social and behavioral care through a chronic pain management program. Both of these factors are contraindications for the continued use of the medications at issue based on the Commission's Disability Guidelines.

Based on the known information regarding the Claimant and what is unknown, as addressed above, the ALJ finds that the medications in dispute were not shown to be medically necessary for the Claimant. Accordingly, the ALJ finds that the Petitioner is not entitled to reimbursement from the Carrier for the provision of those drugs.

III. FINDINGS OF FACT

1. On __, the Claimant sustained a compensable injury to her lower back when she slipped and fell on a wet sidewalk.
2. At the time of the compensable injury, the Claimant's employer had workers' compensation insurance coverage with the Insurance Company of the State of Pennsylvania (Carrier).
3. The Claimant underwent an L3 discectomy in March 1997 and L3-4 fusion in January 2000. These operations have failed to relieve the Claimant's pain. The Claimant has also had a morphine pump installed and has long been on narcotic and other prescription drugs for pain relief.
4. In 2003, the Claimant's treating physician, Jacob Rosenstein, M.D., prescribed Carisoprodol, Ultracet, Alparazolam, Oxycontin, and Imitrex for her. These prescriptions were filled at Petitioner's pharmacy in September and October 2003.
5. Highpoint Pharmacy (Petitioner) filled the prescriptions described in Finding of Fact 4 in September and October 2003.
6. The Carrier denied reimbursement to the Petitioner for the prescriptions based on the lack of medical necessity.

7. The 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 the Carrier's denial of reimbursement on the basis that the prescriptions were not medically necessary. The 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. The Petitioner and the Carrier were represented at the hearing.
11. The medications in dispute are narcotic drugs prescribed to treat the Claimant's complaints of chronic pain.
12. The Claimant has been off work due to her injury since 1994 and has refused recommended psycho-social and behavioral care through a chronic pain management program.
13. The circumstances described in Finding of Fact 12 are relative contraindications for the continued use of the medications in dispute, which are highly addictive drugs not shown to be suitable for treatment of chronic pain.
14. The medications in dispute were not shown to be medically necessary.

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 § 133.308.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052.
5. The Petitioner had the burden of proof in this proceeding. 28 TEX. ADMIN. CODE §§ 148.21(h) and (i); 1 TEX. ADMIN. CODE § 155.41.

6. 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).
7. 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).
8. The Petitioner is not entitled to reimbursement for the Carisoprodol, Ultracet, Alparazolam, Oxycontin, and Imitrex it dispensed to Claimant in September and October 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 from the Insurance Company of the State of Pennsylvania for the Carisoprodol, Ultracet, Alparazolam, Oxycontin, and Imitrex it dispensed to the Claimant in September and October 2003.

SIGNED December 19, 2005.

**KERRY D. SULLIVAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**