

**DOCKET NO. 453-05-3083.M5
MR NO. M5-04-1742-01**

—,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
PACIFIC EMPLOYERS INSURANCE	§	ADMINISTRATIVE HEARINGS
COMPANY	§	
Respondent	§	

DECISION AND ORDER

___, a workers' compensation claimant, seeks reimbursement of \$510 for co-payments associated with her purchase of seven medications (Tizanidine, Effexor, Arthrotec, Duragesic, Bextra, Neurontin, and Carisoprodol) during the period from February 14, 2003, through December 3, 2003. The Texas Workers' Compensation Commission (Commission), acting through an independent review organization (IRO), denied reimbursement on the basis that the medications were not medically necessary. This decision orders reimbursement of \$50 for one drug shown to have been medically necessary.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

There are no contested issues of notice or jurisdiction in this proceeding. Those matters are addressed in the findings of fact and conclusions of law. The hearing convened and closed on May 3, 2005, before Administrative Law Judge (ALJ) Kerry D. Sullivan. The Claimant represented herself with the assistance of Commission ombudsman Barton Levy. The Carrier was represented by F. Javier Gonzalez.

II. BASIS FOR DECISION

On ___, the Claimant suffered a compensable injury to her lower back while working for Levi Strauss as a sewing machine operator. Since that time, she has suffered significant lower back pain with radicular pain in her right leg. She was initially treated conservatively but subsequently underwent two surgical interventions, including fusion of L4-5. The second surgery occurred in

1997. Both surgeries were unsuccessful, and the Claimant continues to experience significant chronic pain. Various doctors have prescribed the medications in dispute in order to address the Claimant's pain and related conditions.

The IRO found that the documentation provided did not support the relationship of the prescription medications to the Claimant's compensable injury. It provided no more detail than this statement.¹ Based on the IRO decision, the Claimant was in a difficult situation at the hearing. As the person appealing the decision, the Claimant bore the burden to show that the disputed medications were medically necessary. The Claimant is not trained in medicine. Additionally, none of her doctors testified and only one provided a written statement in support of the prescribed medication— and that was couched in language as conclusory as that found in the IRO decision.

The record does, however, contain an April 27, 2004 report by Mark A. Huff, Jr., M.D., who performed a required medical examination of the Claimant on behalf of the Commission. Dr. Huff noted the two failed surgeries and an EMG indicating continuing radiculopathy. In his view the Claimant did have degenerative changes, but they were aggravated by her compensable injury. Accordingly, Dr. Huff concluded the Claimant's current complaints and treatments remain related to the original injury. The ALJ finds Dr. Huff's assessment to be the clearest and most persuasive in the record, and it comports with the Claimant's own testimony.

But while Dr. Huff linked the Claimant's current pain to her compensable injury, he also found that most of the pain management medications the Claimant has been taking should be discontinued due to the extended period she has been on them and the fact that the medicines at issue can become non-effective or habit-forming over time. Of the drugs at issue in this proceeding, Dr. Huff supported only the continued use of Bextra, which he described as a "very good non-steroidal anti-inflammatory."

Based on this state of the record, the ALJ finds that the Claimant's ongoing pain is related to her original injury and the failed operations that followed. Nevertheless, of the drugs at issue in this docket, only Bextra was shown to be medically necessary and appropriate to treat the Claimant during the period in dispute. The Claimant made co-payments totaling \$50 for Bextra during the

¹ The only other medical assessment in the record supporting the IRO decision is a peer review dated March 1, 2002 performed by David H. Trotter, M.D. This document is not self explanatory and is apparently a supplement to another report not included in the record. Dr. Trotter surmised that the Claimant's initial injury may have been nothing more than a strain. He also appears to imply that there were no real complications from the surgical interventions, and he asserts that the Claimant may be magnifying her symptoms.

time frame from February 14, 2003, through December 3, 2003. Accordingly, the ALJ finds that the Carrier should be required to reimburse the Claimant this amount.

III. FINDINGS OF FACT

1. The Claimant sustained a compensable injury on ____.
2. Pacific Employers Insurance Company (the Carrier) was the workers' compensation provider for the Claimant's employer.
3. The Claimant paid \$510 as co-payment for the purchase of seven medications (Tizanidine, Effexor, Arthrotec, Duragesic, Bextra, Neurontin, and Carisoprodol) prescribed by her doctors for the period February 14, 2003, through December 3, 2003.
4. The Carrier denied reimbursement for the services described in Finding of Fact 3 as medically unnecessary.
5. The Claimant filed a request for medical dispute resolution with the Texas Workers' Compensation Commission, which referred the matter to an Independent Review Organization (IRO).
6. The IRO found in favor of the Carrier.
7. The Claimant filed a timely appeal of the IRO decision.
8. Notice of the hearing was sent January 12, 2005.
9. 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.
10. The hearing was held May 3, 2005, with Claimant and the Carrier participating. The Claimant was assisted by the Commission Ombudsman. The hearing was adjourned the same day.
11. The Claimant was initially treated conservatively for her compensable injury, but she subsequently underwent two surgical interventions, including fusion of L4-5. The second surgery occurred in 1997. Both were unsuccessful, and the Claimant continues to experience significant chronic pain.
12. With the exception of Bextra, the medications in dispute in this proceeding were not shown to be medically necessary to treat the Claimant during the period from February 14, 2003,

through December 3, 2003. The Claimant had been on these medications for an extended period. The medications lose their effectiveness with time and some can be habit-forming.

13. The \$50 the Claimant spent on Bextra was medically necessary to treat her work-related injury. Bextra was shown to be an effective non-steroidal anti-inflammatory medication appropriate to treat the Claimant's back pain.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. ch. 401 *et seq.*
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
4. The Claimant, as the Petitioner, has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).
5. The Claimant did not establish that Tizanidine, Effexor, Arthrotec, Duragesic, Neurontin, and Carisoprodol were medically necessary to treat the Claimant's compensable injury for the period February 14, 2003, through December 3, 2003.
6. The Claimant established that Bextra was medically necessary to treat the Claimant's compensable injury for the period February 14, 2003, through December 3, 2003.
7. The Petitioner's request for reimbursement should be granted for the purchase of Bextra but otherwise denied.

ORDER

IT IS, THEREFORE, ORDERED that Pacific Employers Insurance Company pay the Claimant \$50 as reimbursement of her co-payments for Bextra from during the period from February 14, 2003, through December 3, 2003. All other requests for relief are denied for want of merit.

Signed July 1, 2005.

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