

**SOAH DOCKET NO. 453-05-3244.M5  
MR NO. M5-04-2791-01**

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|------------------------------------|---|--------------------------------|
| <b>TPCIGA FOR RELIANCE</b>         | § | <b>BEFORE THE STATE OFFICE</b> |
| <b>NATIONAL, INC.,</b>             | § |                                |
| <b>Petitioner</b>                  | § |                                |
| <br>                               | § |                                |
| <b>V.</b>                          | § | <b>OF</b>                      |
| <br>                               | § |                                |
| <b>TEXAS WORKERS' COMPENSATION</b> | § |                                |
| <b>COMMISSION AND L.A.,</b>        | § |                                |
| <b>Respondent</b>                  | § | <b>ADMINISTRATIVE HEARINGS</b> |
|                                    |   | <b>DECISION AND ORDER</b>      |

Petitioner TPCIGA for Reliance National, Inc.(Carrier) disagrees with the decision of an independent review organization (IRO) issued on behalf of the Texas Workers' Compensation Commission (Commission)/Medical Review Division (MRD)<sup>1</sup> finding that the prescribed medications provided Claimant in July and August 2004 were medically necessary. Carrier denied payment for two medications, Ambien and Darvocet, in the amount of \$197.00. Ambien is a sleep aid and Darvocet is a narcotic used to treat pain. Carrier contends that neither is medically necessary.

After considering the evidence and arguments presented, the Administrative Law Judge (ALJ) finds that Carrier proved by a preponderance of the evidence that the medications prescribed to Claimant in July and August 2004 were not medically necessary. Therefore, Carrier is not required to reimburse Claimant for the Ambien and Darvocet purchased by Claimant in July and August 2004.

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<sup>1</sup> Effective September 1, 2005, the functions of TWCC have been transferred to the newly created Division of Worker's Compensation at the Texas Department of Insurance.

## **I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION**

The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing in this proceeding pursuant to TEX. LAB. CODE ANN. § 413.031 (k) and TEX. GOV'T CODE ANN. Ch. 2003. No party challenged jurisdiction or notice.

Administrative Law Judge (ALJ) Catherine C. Egan convened the hearing on the merits on April 3, 2006, at the SOAH hearing facilities in, Austin, Texas. Attorney David Swanson represented Carrier. Commission Ombudsman Barton Levy represented Claimant. The record closed the same day.

## **II. BACKGROUND**

On\_\_\_\_, Claimant, a thirty-seven-year-old female, fell while at work injuring her lower back. Claimant was initially treated with anti-inflammatory medications and conservative care. Later, Claimant was diagnosed with a herniated disc at the S1-L5 level and on November 2, 1998, underwent a laminectomy and diskectomy.

Claimant continued to experience depression and pain. In March 2001, Stephen Esses, M.D., recommended that Claimant undergo a second spine surgery, specifically a "diskectomy interbody fusion with insertion of BAK cages."<sup>2</sup> Claimant obtained a second surgical opinion that agreed with Dr. Esses' surgical recommendation. Claimant has not undergone this second surgery, and continues to experience back pain and depression.

The Commission ruled that Claimant's compensable injury also includes depression. Edward B. Gripon, M.D., P.A., a psychiatrist, has treated Claimant's depression since February 2000. On July 22, 2003, Dr. Gripon diagnosed Claimant as suffering with major depressive disorder and panic disorder that was severe, chronic and intractable, all related to her compensable injury.

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<sup>2</sup> Carrier Ex. 2 at 516.

In April 2004, Uma R. Gullapalli, M.D., examined Claimant.<sup>3</sup> Dr. Gullapalli opined that Claimant's psychiatric care was excessive and dominated her physical care, and explained that mental illness may distort a patient's perception of pain. According to Dr. Gullapalli, Claimant's mental condition was not improving and recommended that she not be treated with narcotic medications, but instead be placed on non-narcotic medication for the treatment of her compensable injury.

After receiving Dr. Gullapalli's report, Carrier began denying payment for certain medications. In July and August 2004, Claimant paid for Ambien and Darvocet herself. Then she submitted a request for reimbursement to the Commission. The Commission forwarded the claim to an IRO which found that the medications were medically necessary. Claimant later submitted a claim for each successive month, including September and October 2004. Each time Claimant submitted a claim, the Commission forwarded the claim to an IRO and charged Carrier with the IRO fee. Consequently, Carrier elected to appeal the decision regarding the July and August claims, but paid the successive months to avoid having to pay a monthly IRO fee.

### **III. DISCUSSION**

Carrier had the burden of proof. Carrier's expert, Michael Nahmias, M.D., a psychiatrist, specializes in the treatment of addiction and pain management.<sup>4</sup> Dr. Nahmias examined and tested Claimant four to six weeks prior to his report dated June 26, 2005. At that time, Claimant was taking Wellbutrin, Paxil, Ambien, Resperdal, Ativan, Darvocet, and Soma.

Dr. Nahmias reported that Claimant had chronic pain disorder associated with psychological factors and medical conditions, chronic adjustment disorder with mixed anxiety and depressive mood, and an unspecified personality disorder. In Dr. Nahmias's opinion, some of Claimant's

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<sup>3</sup> Carrier Ex. 2 at 513.

<sup>4</sup> Dr. Nahmias testified that he is board certified in psychiatry and pain management.

prescribed medications are medically necessary to treat her compensable injury, but not Ambien or Darvocet.

Dr. Nahmias testified that Ambien is a sleeping pill that is addictive and can cause "mild but significant rebound insomnia . . . ." <sup>5</sup> Dr. Nahmias expressed concern that Claimant was psychologically dependent on Ambien because she has been taking this medication most nights since 2000 despite its failure to resolve her sleeping problems. According to Dr. Nahmias, it is atypical to take Ambien for this long. The recommended length of time to take Ambien is for seven to ten days. As set forth in the Physician Desk Reference and other medical publications, Ambien should not be prescribed for more than one month. Because of the rebounding effects of Ambien, Dr. Nahmias explained, when Claimant stops taking Ambien, she will have difficulty falling asleep.

Darvocet, a narcotic pain reliever, carries a risk for kidney disease if used long-term. According to Dr. Nahmias, Darvocet can cause dependency and is "well known for worsening depression and, most importantly, if taken in overdose causes substantial respiratory depression." <sup>6</sup> According to Dr. Nahmias, Darvocet is indicated for mild to moderate pain for short periods, not for years as Claimant has done. Moreover, Darvocet worsens depression associated with chronic pain. Other medications are available that are not habit forming or addictive, but nothing in the records indicates Dr. Gripon has considered using those drugs. Dr. Nahmias contends that this is not just a difference in medical opinion as Dr. Gripon suggests in his letter. Following Dr. Gripon's logic, Dr. Nahmias postulates that even morphine could be prescribed to treat chronic pain. Although Dr. Nahmias agrees that Claimant should be tapered off Ambien and Darvocet, on July 29, 2004, it was not medically necessary for Claimant to be prescribed Darvocet and on August 12, 2004, it was not medically necessary for Claimant to be prescribed Ambien.

Claimant testified that Dr. Gripon began treating her in February 2000 for anxiety and depression related to her compensable injury. Although, Claimant underwent back surgery in 1998,

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<sup>5</sup> Carrier Ex. 5 at 8.

<sup>6</sup> Carrier Ex. 5 at 7.

it was unsuccessful. Claimant explained that since the injury she has not had a period of time without chronic pain. The Ambien helps her to sleep at night and stops her back spasms. According to Claimant, the combination of Ambien and Darvocet allows her to pursue a life. Darvocet reduces her pain and is the only medication that she has tried that works. She does not take it if she does not need it, but usually she takes one or two Darvocets a day.

Dr. Gripon did not testify at the hearing. Instead, Claimant presented a letter from Dr. Gripon. Dr. Gripon reported in his January 24, 2006, letter that he is currently prescribing Soma, Darvocet, Ambien, and Ativan to Claimant to treat her dysthymia and pain disorder.<sup>7</sup> Dr. Gripon opined that he believed this course of treatment was medically necessary.

The IRO issued a report on November 17, 2004, that was adopted by the MRD in its order dated December 3, 2004. The IRO report noted that the issue in dispute was the necessity of Claimant's prescription medication prescribed from July 26, 2004, through August 2, 2004. The IRO did not identify the medication considered. The IRO found that the medications were medically necessary, stating the following basis for the decision:

Psychiatric issues complicating chronic pain cases are not uncommon. This patient appears to have developed a chronic pain syndrome. Such cases routinely require ongoing medical and psychiatric management.<sup>8</sup>

The IRO decision lacks a meaningful discussion of what medications the IRO was considering and why they were medically necessary. Claimant clearly remains in pain and has difficulty both physically and psychologically due to her compensable injury. Even Carrier's expert, Dr. Nahmias, agrees that Claimant should remain on most of the medications she has been prescribed. However, her condition does not warrant the continued use of Ambien and Darvocet.

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<sup>7</sup> Carrier Ex. 2 at 5.

<sup>8</sup> Carrier Ex. 3 at 4; Claimant Ex. 1 at 45.

Ambien is intended for short-term use. If used as Claimant has been prescribed, Ambien creates its own type of insomnia according to the undisputed testimony of Dr. Nahmias. Likewise, Darvocet, a narcotic, is contraindicated for prolonged continuous use. Darvocet provides short-term treatment of pain, not prolonged treatment. Moreover, it is addictive and contributes to depression. Claimant is being treated for depression. Any drug that aggravates this condition should be avoided. The ALJ finds that Carrier proved by a preponderance of the evidence that in July and August 2004, it was not medically necessary to treat Claimant with Ambien and Darvocet. Therefore, Carrier is not obligated to reimburse Claimant the \$197.00 for these prescriptions.

#### **IV. FINDINGS OF FACT**

1. On\_\_\_, Claimant sustained a work-related injury to her lower back as a result of her work activities (compensable injuries).
2. At the time of Claimant's compensable injuries, Claimant's employer's workers' compensation insurance carrier was TPCIGA For Reliance National Inc. (Carrier).
3. As a result of the compensable injury, the Claimant suffered with a herniated disk at the S1-L5 level. Claimant under a laminectomy and diskectomy at the S1-L5 level on November 2, 1998.
4. The back surgery was not successful, and Claimant continued to experience depression and pain.
5. In February 2000, Edward B. Gripon, M.D., P.A., a psychiatrist, began treating Claimant's depression.
6. On July 22, 2003, Dr. Gripon diagnosed Claimant as suffering with severe, chronic, and intractable major depressive disorder and panic disorder relating to her compensable injury.
7. The compensable injury includes Claimant's depression.
8. Dr. Gripon prescribed Ambien and Darvocet, among other medications, to treat Claimant's depression and pain.
9. In April 2004, Uma R. Gullapalli, M.D., examined Claimant and found that Claimant's psychiatric care was excessive and dominated her physical care. Dr. Gullapalli recommended Claimant be placed on non-narcotic medications for the treatment of her compensable injury.

10. Claimant's mental condition did not improve with the Ambien and Darvocet.
11. In July and August 2004 Carrier denied payment for Ambien and Darvocet as medically unnecessary.
12. Ambien is a sleeping pill that is addictive and can cause rebound insomnia if taken too long.
13. Ambien is recommended for the short-term treatment of insomnia, seven to ten days, and should not be taken longer than one month.
14. Claimant has been taking Ambien since 2000, and it has not resolved her sleeping problems.
15. Although Claimant has become psychologically dependent on Ambien, it is not medically necessary to treat her compensable injury.
16. Darvocet is a narcotic pain reliever used to treat mild to moderate pain for short periods, not for years.
17. Darvocet can cause dependency and makes depression worse.
18. Darvocet was not medically necessary to treat Claimant's pain in July and August 2004.
19. On November 17, 2004, an independent review organization (IRO) reviewed the medical dispute and found that the disputed medications were medically necessary.
20. Based on the IRO's findings, the Texas Workers' Compensation Commission's Medical Review Division (MRD) ordered Carrier to reimburse Provider for the Ambien and Darvocet provided to Claimant in July and August 2004.
21. After the MRD order was issued, Carrier requested a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).
22. Required notice of a contested-case hearing concerning the dispute was mailed to the parties.
23. On April 3, 2006, SOAH ALJ Catherine C. Egan held a contested-case hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Attorney David Swanson represented Carrier. Commission Ombudsman Barton Levy represented Claimant. The hearing concluded and the record closed on that same day.

## V. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) and TEX. GOV' T CODE ANN. (Gov' t Code) ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with Gov' t Code §§ 2001.051 and 2001.052.
3. Based on the above Findings of Fact and Gov't Code §2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) § 155.41(b) (2004), and 28 TAC §§ 133.308(v) and 148.21(h) (2004), Claimant has the burden of proof in this case.
4. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed 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. Labor Code § 408.021 (a).
5. Based on the above Findings of Fact and Conclusions of Law, the disputed medications, Ambien and Darvocet prescribed by Provider to Claimant between July and August 2004, were not medically necessary to treat Claimant' s compensable injuries.

## ORDER

**IT IS ORDERED THAT** TPCIGA For Reliance National, Inc. (Carrier) is not required to reimburse Claimant for Ambien and Darvocet purchased by Claimant in July and August 2004.

**SIGNED June 2, 2006.**

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**CATHERINE C. EGAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**