

**DOCKET NO. 453-05-4411.M5  
TWCC Docket No. M5-05-0180-01**

—”	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>VS.</b>	§	<b>OF</b>
	§	
<b>SENTRY INSURANCE,</b>	§	
<b>A MUTUAL COMPANY,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Claimant\_\_ (Claimant) has challenged a decision by an Independent Review Organization (IRO) upholding a decision by Sentry Insurance (Carrier) denying her reimbursement, on the basis of medical necessity, for out-of-pocket expenses she incurred for prescription medications purchased between October 22, 2003, and August 25, 2004 (the disputed medications). The Administrative Law Judge (ALJ) finds that Claimant failed to meet her burden of establishing that the disputed medications were medically necessary to treat or relieve the effects of her compensable injury and, therefore, Claimant is not entitled to reimbursement.

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

The hearing convened on October 3, 2005, before ALJ Renee M. Rusch. Claimant appeared *pro se* and by telephone. She was assisted by Anthony Walker, an Ombudsman with the Division of Workers' Compensation at the Texas Department of Insurance.<sup>1</sup> Carrier was represented by attorney Robert Josey. Neither party challenged notice or jurisdiction. After the presentation of evidence, the hearing concluded the same day. The record closed October 26, 2005, following the parties' submission of citations to those pages in the documentary record on which each relies.

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

## II. DISCUSSION

### A. Summary of the Evidence

On\_\_\_, Claimant suffered a compensable back injury when she pushed a falling box of documents back onto a shelf. She was diagnosed with a lumbar strain. MRIs revealed pre-existing chronic degenerative disk disease. She was treated with physical therapy, non-steroidal anti-inflammatory medication, muscle relaxants, pain medication, epidural steroid injections, and a home exercise program. She has not worked since July 24, 2001. A doctor who performed an impairment rating on Claimant on May 20, 2002, opined that she would need only maintenance care, such as over-the-counter pain medication and non-steroidal anti-inflammatory medications, prospectively. (Resp. Ex. A at 92.) During the time frame at issue in this proceeding, Claimant experienced pain in the area from her spine to her tailbone and numbness in her left buttock and extremity.

The disputed medications include Carisprodol, Hydrocone, Tramadol, Augmentin XR, Methocarbamol, Axert, Mobic, and a Lidoderm patch, for which Claimant paid a total of \$738.38 between October 22, 2003, and August 25, 2004. All of the disputed medications were prescribed by one or the other of two doctors: Jerry Franz, M.D., and John Townsend, M.D., who were at the time affiliated with Jupiter Healthworks, a clinic at which Claimant was then treating. Dr. Franz testified that he prescribed three of the medications: Carizoprodol (a muscle relaxant), Hydrocodone (a low level narcotic used to treat pain), and Tramadol (also used to relieve pain). According to Dr. Franz, Claimant has a “documented pathology in her spine” for which she has not had “definitive treatment,” such as surgery; therefore, she had to rely on pain medications for relief. Dr. Franz believed he saw Claimant two or three times; however, he was unable to describe her compensable injury, comment on her condition, “vividly” recall anything about her, or recall whether the medications he prescribed relieved her pain.<sup>2</sup>

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<sup>2</sup> Dr. Franz testified that he needed to refresh his recollection by reviewing his office notes regarding his treatment of Claimant; however, at the time of the hearing, the records were locked inside a clinic building to which he did not have access. Claimant apparently did not authorize a release of her medical records until the day before or the day of the hearing.

The IRO and doctors who reviewed Claimant's medical records for the Carrier believed Claimant's ongoing pain was due, not to her compensable injury, but to her degenerative disk disease, which they characterized as a result of the aging process and an ordinary disease of life. (*See, e.g.*, Pet. Ex. 1 at 32.) According to Farrukh Hamid, M.D.,

The only future care that would be reasonable for [the compensable] injury would be a home exercise program. . . . Ongoing care for degenerative spine disease is not related compensable injury. (Pet. Ex. 1 at 38.)

## **B. ALJ's Analysis**

Claimant had the burden of proof by a preponderance of the evidence. Although Claimant was treated by multiple doctors, the only doctor who testified on her behalf at the hearing, Dr. Franz, did not have access to her medical records and lacked sufficient independent recollection regarding Claimant and her condition to attest that the medications at issue were medically necessary to relieve the effects of her compensable injury. The ALJ appreciates the difficulty Claimant had in presenting her case in these circumstances, even with the assistance of a very able ombudsman. And the ALJ does not doubt Claimant's testimony that she was in pain and believes the disputed medications brought her relief. However, the ALJ could not determine, from the evidence presented, whether the prescription medications at issue were medically necessary to relieve the effects of Claimant's compensable injury or whether they were prescribed to relieve the symptoms of her chronic degenerative disk disease. Thus, based on the evidentiary record presented, the ALJ must conclude that Claimant is not entitled to reimbursement.<sup>3</sup>

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<sup>3</sup> The findings and conclusions contained in this Decision and Order are, of course, limited to the dates of service at issue in this proceeding only.

### III. FINDINGS OF FACT

1. On \_\_, Claimant \_\_ (Claimant) suffered a compensable back injury as a result of her work activities.
2. At the time of her injury, Sentry Insurance, a mutual company (Carrier), was the workers' compensation insurer for her employer.
3. Claimant was diagnosed with a lumbar strain.
4. Claimant has chronic degenerative disk disease.
5. Degenerative disk disease results from the aging process and is an ordinary disease of life.
6. Between October 22, 2003, and August 25, 2004, Claimant paid a total of \$738.38 for prescription medications including Carisprodol, Hydrocone, Tramadol, Augmentin XR, Methocarbamol, Axert, Mobic, and a Lidoderm patch (the disputed medications).
7. The evidence does not show whether the disputed medications were prescribed to relieve the effects of Claimant's compensable injury or to relieve the symptoms of her chronic degenerative disk disease.
8. Claimant sought reimbursement from Carrier for the disputed medications.
9. Carrier denied reimbursement.
10. Claimant filed a request for medical dispute resolution with the Texas Workers' Compensation Commission's (Commission's) Medical Review Division (MRD).
11. An independent review organization (IRO) to which the MRD referred the dispute found that the disputed medications were not medically necessary.
12. Based on the IRO's findings, the MRD declined to order Carrier to reimburse Claimant for the disputed medications.
13. Claimant timely requested a hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).
14. On March 8, 2005, the Commission issued a notice of hearing, which stated the date, time, and location of the hearing; cited the statutes and rules involved; and provided a short, plain statement of the factual matters asserted.

15. This matter was referred by the Commission and accepted by SOAH for hearing prior to September 1, 2005.
16. The hearing was held October 3, 2005, at SOAH's hearings facility, William P. Clements Building, 300 W. 15<sup>th</sup> Street, Austin, Texas, before ALJ Renee M. Rusch. Claimant and Carrier appeared and presented evidence and argument. The record closed October 26, 2005.

#### **IV. CONCLUSIONS OF LAW**

1. SOAH 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. §§ 402.073(b) and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. Claimant timely filed a notice of appeal of the MRD decision pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 133.308(u) and 148.3(a).
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 and 28 TAC 148.5(a).
4. Claimant had the burden of proof by a preponderance of the evidence. 28 TAC § 148.14.
5. 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. TEX. LABOR CODE ANN. § 408.021.
6. The preponderance of the evidence does not show that the disputed medications constituted reasonable and medically necessary health care for Claimant's compensable injury, pursuant to TEX. LAB. CODE ANN. §§ 401.011(19) and 408.021(a).
7. Based upon the foregoing Findings of Fact and Conclusions of Law, Claimant's request for reimbursement should be denied.

#### **ORDER**

**IT IS ORDERED THAT** Sentry Insurance is not required to reimburse Claimant\_\_ for the disputed medications Claimant purchased between October 22, 2003, and August 25, 2004.

**SIGNED December 12, 2005.**

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**RENEE M. RUSCH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**