

**HIGHPOINT PHARMACY,
Petitioner**

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BEFORE THE STATE OFFICE

V.

OF

**LIBERTY INSURANCE
CORPORATION,
Respondent**

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

In this case, Highpoint Pharmacy (Petitioner), challenges a decision of an independent review organization (IRO) on behalf of the Texas Workers' Compensation Commission (Commission) in a dispute regarding the medical necessity of prescription medications. The IRO found that the insurer, Liberty Insurance Corporation (Respondent), properly denied reimbursement for medications that Petitioner provided between April 18 and June 4, 2003, to a claimant suffering from a back injury.

Petitioner challenged the decision on the basis that the treatment at issue was, in fact, medically necessary, within the meaning of §§ 408.021 and 401.011(19) of the Texas Workers' Compensation Act (the Act), TEX. LABOR CODE ANN. ch. 401 *et seq.*

This decision agrees with that of the IRO, finding that reimbursement of Petitioner for the disputed medications should be denied.

JURISDICTION AND NOTICE

The Commission has jurisdiction over this matter pursuant to §413.031 of the Act. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003. No party challenged jurisdiction or adequacy of notice.

STATEMENT OF THE CASE

The hearing in this docket was convened on May 18, 2005, at SOAH facilities in the William P. Clements Building, 300 W. 15th St., Austin, Texas. Administrative Law Judge (ALJ) Mike Rogan presided. Petitioner was represented by Nicky Otts, who appeared by telephone. Respondent was represented by Kevin Franta, Attorney. Both parties presented evidence and argument, after which the hearing was adjourned and the record closed on the same date.¹

The record revealed that on or about ____, the claimant suffered a compensable injury to the lumbosacral spine - *i.e.*, a superior endplate fracture at L1. Although this fracture had resolved by February of 2002, the claimant has continued to complain of chronic low-back pain, which has resisted several types of treatment, including electrical stimulation, facet injections, epidural steroid injections, and oral pain medications.

When Petitioner billed Respondent (the insurer for the claimant's employer) for three medications provided to the claimant between April 18 and June 4, 2003, (*i.e.*, Carisoprodol, Hydrocodone/APAP, and Promethazine) Respondent denied reimbursement on the grounds that the treatment was medically unnecessary.

Petitioner sought medical dispute resolution through the Commission. The IRO to which the Commission referred the dispute issued a decision on June 15, 2004, concluding that the requested

¹ The staff of the Commission formally elected not to participate in this proceeding, although it filed a general "Statement of Matters Asserted" with the notice of the hearing.

medications were not medically necessary. The IRO presented the following rationale for decision:

Carisoprodol is a sedative muscle relaxant generally used for acute painful musculoskeletal conditions in concert with rest and physical therapy modalities. It is metabolized into Meprobamate, an abusable sedative. Hydrocodone is a narcotic agent, generally used for the management of . . . acute painful musculoskeletal conditions and peri-operative conditions. Promethazine is an anti-emetic generally used for control of nausea and vomiting associated with anesthesia and post-operative conditions. All of the above medications are generally used for acute painful musculoskeletal conditions and are not indicated for management of chronic pain syndromes. Clinical evidence indicates the superior endplate fracture, a minor self limited injury, has fully resolved. There is no documentation of exhaustion of conservative measures and treatment including, but not limited to, over the counter non-steroidal anti-inflammatory medications, oral cortico steroids, bracing, and physical therapy emphasizing dynamic spinal stabilization (McKenzie) to manage claimant's chronic pain syndrome. Generally, following use of the above medications for acute . . . conditions, there is documentation of attempts to wean the patient from use of narcotics and sedative type muscle relaxants with dependency risk issues. There is no [such] documentation [in this case]. The documentation does not support that the continued use of these medications is medically necessary in this clinical setting.

The Commission's Medical Review Division (MRD) reviewed the IRO's decision and, on July 20, 2004, issued its own decision confirming that the disputed services were not medically necessary and should not be reimbursed. Petitioner then made a timely request for review of the IRO and MRD decisions before SOAH.

THE PARTIES' EVIDENCE AND ARGUMENTS

A. PETITIONER

Petitioner argued that the medications at issue helped relieve the chronic pain experienced by the claimant and helped enable his to return to employment. It thus constituted the type of care guaranteed to injured workers by § 408.021 of the Act.

Mr. Otts, a registered pharmacist, testified that Carisoprodol and Hydrocodone/APAP are commonly and reasonably used for chronic pain at the dosages provided in this case. He also stated that Promethazine is often prescribed in conjunction with Carisoprodol and Hydrocodone/APAP,

both to combat nausea that can be associated with pain and because it enhances the effectiveness of these other medications.

B. RESPONDENT

Respondent presented the testimony of Neal Blauzvern, D.O., a board-certified pain management specialist who has been in private practice since 1992 and who reviewed the medical records for this case. Dr. Blauzvern noted that Carisoprodol is a generic muscle relaxant that generally is not appropriate for long-term use. On the other hand, Hydrocodone/APAP is appropriate for long-term use, according to published guidelines from the Texas State Board of Medical Examiners (BME), only if 1) the drug is administered in conjunction with a definite written treatment plan, 2) progress notes demonstrate adherence with the treatment plan, and 3) evidence exists of the patient's *functional* improvement (not just subjective pain relief) in association with the drug's use. Dr. Blauzvern added that Promethazine is solely an anti-emetic, having no synergistic effect with Carisoprodol and/or Hydrocodone/APAP. No reason exists, he therefore concluded, for *routinely* prescribing these three drugs together.

In the context of the claimant's particular case, Dr. Blauzvern concluded that the record included no evidence of muscle spasms or other conditions that would support the use of Carisoprodol, even on a short-term basis. It also included no showing of a plan or other elements that would support the use of Hydrocodone under BME guidelines, nor any documentation of nausea that would support the use of Promethazine. According to Dr. Blauzvern, if the use of these medications was ever appropriate in this case, it certainly ceased to be after the diagnosed source of the patient's pain B his endplate fracture B had healed. Dr. Blauzvern thus expressed full agreement with a physician peer review dated April 22, 2003, which called for the discontinuance of these medications in the case. Moreover, Dr. Blauzvern noted, even the patient's treating physician, who continued to prescribe the medications, advised the patient to wean himself off them as much as possible, although he failed to define a strategy for helping the patient achieve that end.

In summary, Dr. Blauzvern declared that the treating physician had unjustifiably persisted in prescribing the disputed medications, despite a lack of change or improvement in the claimant's

condition over a period of years, while failing to determine whether a less risky regimen of over-the-counter drugs, home exercise, and other conservative therapy might provide comparable relief.

ANALYSIS

Petitioner bears the burden of proving that the factual basis or analytical rationale for the IRO's decision in this case was invalid. In the ALJ's view, it clearly has not discharged that burden. The IRO's rationale for decision in this case was more thoroughly and coherently presented than is often the case in disputes over medical necessity. Moreover, the fact that Dr. Blauzvern's presentation was significantly more persuasive and substantive than that of Petitioner's only witness has made even more evident the Petitioner's failure to demonstrate by a preponderance of the evidence that the prior decisions of the IRO and MRD in this case should be overturned.

The Petitioner provided no expert testimony supporting the position that the medications at issue were reasonable for advancing the patient's treatment in this specific case - only pharmaceutical evidence that such medications are often used in cases that generally involve chronic pain.

CONCLUSION

The ALJ finds that, under the record provided in this case, the medications at issue have not been shown to be medically necessary. Reimbursement for these medications should therefore be denied, as initially determined by the IRO.

FINDINGS OF FACT

1. On ____, claimant suffered an injury to his lumbosacral spine B *i.e.*, a superior endplate fracture at L1 - that was a compensable injury under the Texas Worker's Compensation Act (the Act), TEX. LABOR CODE ANN. § 401.001 *et seq.*
2. The fracture noted in Finding of Fact No. 1 had resolved by February of 2002, but the claimant has continued to complain of chronic low-back pain, which has resisted several types of treatment, including electrical stimulation, facet injections, epidural steroid injections, and oral pain medications.

3. In response to the persisting chronic pain, the claimant has been prescribed the medications Carisoprodol, Hydrocodone/APAP, and Promethazine for much of the time period since the injury noted in Finding of Fact No. 1,
4. Highpoint Pharmacy ("Petitioner") sought reimbursement for filling the claimant's prescriptions for Carisoprodol, Hydrocodone/APAP, and Promethazine between April 18 and June 4, 2003, from Liberty Insurance Corporation ("Respondent"), the insurer for claimant's employer.
5. Respondent denied the requested reimbursement on grounds that the medication was medically unnecessary for the claimant's treatment.
6. Petitioner made a timely request to the Texas Workers' Compensation Commission ("Commission") for medical dispute resolution with respect to the requested reimbursement.
7. The independent review organization ("IRO") to which the Commission referred the dispute issued a decision on June 15, 2004, and concluded that the disputed medications were not medically necessary.
8. The Commission's Medical Review Division reviewed and concurred with the IRO's decision in a decision dated July 20, 2004, in dispute resolution docket No. M5-04-2549-01.
9. Petitioner requested in timely manner a hearing with the State Office of Administrative Hearings ("SOAH"), seeking review and reversal of the MRD decision regarding reimbursement.
10. The Commission mailed notice of the hearing's setting to the parties at their addresses on August 26, 2004; the hearing was subsequently rescheduled upon motion of Respondent, with further notice provided to the parties.
11. A hearing in this matter was convened on May 18, 2005, at the William P. Clements Building, 300 W. 15th St., Austin, Texas, before Mike Rogan, an Administrative Law Judge with SOAH. Petitioner and Respondent were represented.
12. Carisoprodol is a generic muscle relaxant that is metabolized into Meprobamate, an abusable sedative; thus, Carisoprodol is generally not appropriate for long-term use.
13. Hydrocodone/APAP, a narcotic agent, is appropriate for long-term use, according to published guidelines from the Texas State Board of Medical Examiners ("BME"), only if 1) the drug is administered in conjunction with a definite written treatment plan, 2) progress notes demonstrate adherence with the treatment plan, and 3) evidence exists of the patient's *functional* improvement in association with the drug's use.
14. Promethazine is solely an anti-emetic, having no synergistic effect with Carisoprodol and/or Hydrocodone/APAP.

15. The claimant suffered no muscle spasms or other conditions that would support the use of Carisoprodol, even on a short-term basis.
16. The record in claimant's case included no showing of a plan or other elements that would support the use of Hydrocodone under BME guidelines.
17. The claimant suffered no nausea that would support the use of Promethazine.
18. The claimant's treating physician unwarrantedly persisted in prescribing the disputed medications, despite a lack of change or improvement in the claimant's condition over a period of years.
19. The claimant's treating physician failed to determine whether a less risky regimen of over-the-counter drugs, home exercise, and other conservative therapy might provide comparable pain relief.

CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act ("the Act"), TEX. LABOR CODE ANN. § 413.031.
2. 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 §413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TEX. ADMINISTRATIVE CODE ("TAC") § 133.305(g) and §§ 148.001-148.028.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Petitioner, the party seeking relief, bore the burden of proof in this case, pursuant to 28 TAC § 148.21(h).
6. Based upon the foregoing Findings of Fact, the medications for the claimant noted in Findings of Fact Nos. 3 and 7 do not represent elements of health care medically necessary under § 408.021 of the Act.
7. Based upon the foregoing Findings of Fact and Conclusions of Law, the findings and decisions of the IRO issued on June 15, 2004, and of the MRD, issued in this matter on July 20, 2004, were correct; Petitioner's request of reimbursement for medications noted in Findings of Fact Nos. 3 and 7 should be denied.

ORDER

IT IS THEREFORE, ORDERED that the reimbursement sought by Highpoint Pharmacy for prescribed medications provided between April 18 and June 4, 2003, be denied, in accordance with the findings and decision of the independent review organization issued in this matter on June 15, 2004, which concluded that the disputed medications had not been shown to be medically necessary.

SIGNED May 27, 2005.

**MIKE ROGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**