

**SOAH DOCKET NOS. 453-05-4325.M5 AND 453-05-4511.M5
TWCC MR NOS. M5-05-0548-01 AND M5-05-0967-01**

HIGHPOINT PHARMACY,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
TEXAS MUTUAL INSURANCE	§	
COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Highpoint Pharmacy (Petitioner) seeks reimbursement of \$2,286.75 for prescriptions provided to two workers' compensation claimants. The Texas Workers' Compensation Commission (Commission),¹ acting through an independent review organization (IRO), denied reimbursement for the medications provided to each claimant on the basis that they 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 in the Findings of Fact and Conclusions of Law below.

The hearing was held on November 22, 2006, before State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Kerry D. Sullivan. Petitioner was represented by its employee, Nicky Otts. Attorney Patricia Eads represented the Respondent, Texas Mutual Insurance Company (Carrier). The record was left open until November 29, 2006, to allow the parties to file and reply to supplemental documentation.

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

The Claimants have both suffered compensable injuries to their necks and backs and are undergoing treatment for ongoing chronic pain. One claimant was injured on___; the other was injured on___. Both have filled prescriptions from Jacob Rosenstein, M.D., for “CKG cream.” The cream contains the active ingredients Clonidine, Ketamine, and Gabapentin, and was intended for pain relief.

There is some dispute regarding the claimants’ medical conditions - in particular, whether they were experiencing true “radiculopathy,” which Carrier witness N.F. Tsourmas, M.D., described as an anatomic condition producing unrelenting pain. For purposes of this hearing, the ALJ accepts that the claimants do suffer from this condition. The documentation shows that both claimants are experiencing significant and ongoing chronic pain characterized by their treating physician as “radiculopathy” based on the results of diagnostic studies.

Nevertheless, the ALJ concurs with the IRO decision and the expressed opinion of Dr. Tsourmas that the disputed medications were not shown to be medically necessary to treat the claimants’ medical conditions. Dr. Tsourmas testified that Clonidine is FDA approved for hypertension and nothing else. He has seen it used “off label” to treat ARSD,² but neither claimant has been diagnosed with that disorder. Dr. Tsourmas testified that Ketamine is used for pediatric patients who require anesthetic. It is a psychological drug with central nervous system action that can sometimes be used as an alternative to general anesthetic. He testified that it is used intravenously and has not been found useful for other purposes. Finally, Dr. Tsourmas testified that Gabapentin is a well know drug shown clinically to be efficacious in pill form for neuropathic pain, but that it has not been reliably assessed in cream form. According to Dr. Tsourmas, there are no reliable studies supporting the combination and form of drugs prescribed here for relief of radiculopathy.

The Petitioner acknowledged the prescribed medication is “perhaps not in the mainstream,”

² RSD presumably refers to reflex sympathetic dystrophy. *Stedman’s Medical Dictionary* (27th ed. 2000).

but relied on anecdotal studies obtained off the Internet in support of its contention that the prescriptions were appropriate and a more attractive alternative than opioid medications. Again, however, the ALJ concurs with the Carrier that these anecdotal studies relating to off label uses are inadequate to establish medical necessity here. This finding is further supported by Dr. Tsourmas's testimony that the medications are in fact dangerous because Clonidine is the only drug of the three in which the strength needed for transdermal application has been determined. Accordingly, the appropriate dosage, if any, for the cream form of the other drugs is unknown. Because the medications provided were not shown to be medically necessary, the Petitioner is not entitled to reimbursement for providing them to the claimants.

III. FINDINGS OF FACT

1. This proceeding relates to a reimbursement request by Highpoint Pharmacy (Petitioner) for medication the Petitioner provided to two workers' compensation claimants who have suffered compensable injuries.
2. At the time of the compensable injuries, the claimants' employers had workers' compensation insurance coverage with Texas Mutual Insurance Company (Carrier).
3. The claimants' injuries are to their necks and backs. They have each been diagnosed with radiculopathy and are undergoing treatment for ongoing chronic pain.
4. In 2003, the claimants' treating physician, Jacob Rosenstein, M.D., prescribed "CKG cream" for both claimants. The cream contains the active ingredients Clonidine, Ketamine, and Gabapentin, and was intended for pain relief.
5. Petitioner filled the prescriptions described in Finding of Fact 4 on several occasions from October 2003 through January 2004.
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 denials 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 denials 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 have not been shown to be medically necessary. They have not been shown to be efficacious in cream form for the treatment of radiculopathy or other chronic pain.

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. § 401.01(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 medications in dispute because the cream form of the active ingredients was not shown to be reasonable or medically necessary healthcare for the claimants.

ORDER

It is ORDERED that Highpoint Pharmacy is not entitled to reimbursement from the Texas Mutual Insurance Company for CKG cream it dispensed to the claimants between October 2003 and January 2004.

SIGNED January 27, 2006.

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