

SOAH DOCKET NO. 454-06-1941.P1
DWC NO. _____

LUMBERMENS MUTUAL CASUALTY COMPANY, Petitioner	§ § § § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
v.		
TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION AND JOHN GRAMBLING ADAMS, M.D., Respondents		

DECISION AND ORDER

Lumbermens Mutual Casualty Company (Carrier) challenges a medical interlocutory order (MIO) issued by the Texas Department of Insurance, Division of Workers' Compensation (Division), requiring it to pay for one office visit per month and three prescriptions (Hydrocodone, Flexeril, and Zoloft) over a three-month period. This decision concludes that the treatment is medically necessary.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The MIO was issued on March 14, 2006, pursuant to the Division's Prospective Review of Medical Examination (PRME) rules at 28 TEX. ADMIN. CODE (TAC) § 134.650. Larry Charles Stetzner, M.D., performed the medical review. The Carrier filed a timely hearing request. After proper and timely notice, the hearing convened on May 15, 2007, at the State Office of Administrative Hearings (SOAH), with the undersigned Administrative Law Judge

(ALJ) presiding. Carrier appeared and was represented by Tim White, attorney. The Division appeared and was represented by E. Renee Crenshaw, attorney. Claimant appeared by telephone and through Anthony Walker, Division ombudsman. Dr. John Grambling Adams appeared by telephone and represented himself. The record closed at the conclusion of the hearing.

SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073(b) and 413.055 and TEX. GOV'T CODE ANN. ch. 2003.

II. DISCUSSION

A. Background

Claimant suffered a series of unfortunate events in____. On____, she incurred a slip-and-fall injury when she fell while getting out of her car, as it was raining outside, to go into the office of her employer. Claimant grabbed her car door handle in an attempt to prevent falling, resulting in injuries to her back and shoulder, including a rotator cuff tear that required surgery to repair. On____, she was injured during a head-on automobile collision causing her head to hit the windshield of her car. Later that year, her father died unexpectedly and her son-in-law almost died the following week from a perforated ulcer.

As a result of the February 5th compensable injury, Claimant lost some range of motion in her neck and shoulders and suffers from post-traumatic anxiety, depression, muscle spasms, and possibly, fibromyalgia. She has been treated by Dr. Adams since the injury occurred. This matter concerns his treatment, consisting of prescriptions for Hydrocodone for pain, Flexeril as a muscle relaxer, and Zoloft for depression, during a three-month period of time during 2006. He

also prescribed monthly office visits in order to monitor her condition. Carrier has denied reimbursement for the treatment as being medically not necessary.

Employees have a right to necessary health care under TEX. LAB. CODE ANN. §§ 408.021 and 401.011. Section 408.021(a) provides: “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. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment.” Section 401.011(19) of the Labor Code provides that health care includes “all reasonable and necessary medical . . . services.”

The Carrier has the burden of proof in this proceeding. TEX. LAB. CODE ANN. § 413.055, 28 TEX. ADMIN. CODE § 148.14(a).

B. Evidence and Analysis

1. Carrier

Carrier contends that the medications and office visits are not necessary to treat the compensable injuries that occurred almost sixteen years ago. Carrier relies on the testimony of Charles Crane, M.D., who is Board-certified in physical medicine, rehabilitation, and electro-diagnostic medicine. Dr. Crane reviewed the Claimant’s medical records from her treatment with Dr. Adams in 2005.¹ According to Dr. Crane, the medications and office visits are not medically necessary because: (1) there is no objective evidence in the medical records supporting the need for the treatment; (2) the medications in issue are intended for short-term use; (3) there

¹ Dr. Crane testified that the date of the earliest record from Dr. Adams that he reviewed was March 31, 2005, and the latest record was from November 2005.

is no indication that Claimant has returned to work or improved her functional abilities as a result of the treatment; and (4) Claimant does not report a decrease in pain, even while on the medications.

Dr. Crane cited to the Official Disability Guidelines' discussion of Hydrocodone as a short-term pain reliever to be used in the acute phase of pain which, according to Dr. Crane, is approximately three to six months. Dr. Crane testified that Hydrocodone is not intended for long-term chronic use and that he concurred with the recommendation of John Sklar, M.D., that Claimant should be weaned off Hydrocodone and her other medications. Dr. Sklar, performed a required medical evaluation of Claimant in March 2004. He noted that Claimant was in the process of weaning off Hydrocodone at that time and he recommended that she conclude her use of Hydrocodone within the next month. Carrier's Ex. 1, p. 2. Dr. Crane testified that Claimant should have been weaned from Hydrocodone by 2007, some three years later. He testified that if Claimant needed to be on a long-term pain reliever, which he disputed, there were other medications, such as oxycontin, oxycodone or morphine that might be effective and longer-lasting.

With regard to Flexeril, a muscle relaxer, Dr. Crane testified that it can be effective for short periods of time to treat acute muscle spasms. He discussed an August 2, 2005, peer review report by Michael Goldman, D.O. that referenced Claimant's use of Flexeril for severe muscle spasms. Dr. Goldman noted that the use of Flexeril appeared appropriate for treating muscle spasms. At that time, Claimant was taking Flexeril, 10 mg/three times a day. Dr. Osborne suggested that the frequency be gradually reduced, depending on whether the muscle spasms increased as a result, until it was used only as needed. Carrier's Ex. 1, p. 9.

According to Dr. Crane, the medical records he reviewed do not indicate that Claimant continues to suffer from severe muscle spasms. Consequently, he believes Flexeril should be discontinued altogether. Dr. Crane testified that it was unlikely that Claimant would continue to suffer from muscle spasms as a result of the compensable injury after so much time has elapsed and stated that the underlying problem causing the spasms, if they are continuing, needed to be identified and treated.

Dr. Crane concurred with Dr. Sklar's recommendation to wean Claimant from Zoloft. Dr. Crane testified that Zoloft is an anti-depressant and he testified that it might be helpful to seek psychiatric input regarding its continued use. Dr. Crane asserted that Claimant should be weaned from this medication, relying upon Claimant's own statements to physicians that she wanted to stop taking Zoloft.

Dr. Crane also disputed the need for office visits once a month for three months, pursuant to CPT Codes 99213 and 99214. He testified that there was no documentation that supported the need for the visits, particularly since he believed the continued medications were not medically necessary. He acknowledged, however, that if a treating physician was attempting to wean Claimant off medications, office visits to monitor the weaning process may be necessary. Otherwise, Dr. Crane disputed the need for extended office visits.

2. Evidence from Claimant and Provider

Claimant testified about the compensable injury she incurred in____, as well as the other devastating personal events that occurred to her that year. She testified that Dr. Adams has been her treating physician during the years since her injury. According to Claimant, her quality of life is greatly diminished. She has moved in with her daughter and is unable to help around the house due to her pain and the muscle spasms in her neck and shoulders. She describes the

muscle spasms as sporadic, but intense. Claimant testified that she does not take Flexeril every day, but only if she has intense muscle spasms.

Hydrocodone, according to Claimant, has been the only medication that helps her with the pain; however, she is unable to take it on a regular basis due to its cost. She said that Carrier has resisted paying for the medication since the injury and she is unable to afford it on her own. Claimant stated that she has tried to wean herself from the medications, but that the pain never goes away and is hard to manage at times. Claimant testified that she does not take Hydrocodone every day, but uses it when the pain gets bad.

Claimant also testified that she has undergone four psychiatric evaluations and that she has mental problems due to her severe and chronic pain, in addition to flashbacks of childhood abuse. She has been hospitalized for depression and has tried to commit suicide. Claimant testified that she has good days and bad days. She has gone through two rehabilitation programs and physical therapy, although nothing has really helped her. As Claimant noted, the medications do not cure her injury, but rather, allow her to deal with the pain from the injury.

Dr. Adams testified that he has treated Claimant for many years and that he last saw her in March 2007. According to Dr. Adams, the Official Disability Guidelines are inapplicable because Claimant's injury occurred prior to May 2007, the effective date for the guidelines. He testified that he is allowed to treat Claimant, who falls outside the treatment norms for her type of injuries, for the constant and debilitating pain that he says is the result of her compensable injury. He notes that Claimant received 18 percent whole person impairment from Dr. Phillip Osborne in March 2004.

Dr. Adams stated that Hydrocodone has been effective as a pain reliever for Claimant. He said that Claimant does not show any signs of addiction to the medication, such as increasing her dosage or requesting refills sooner than allowed, although he agreed that she was dependent on it. Dr. Adams testified that Flexeril was necessary to treat Claimant's continued and severe muscle spasms. His medical records indicate that he tried to decrease Claimant's use of Flexeril in September 2005, as suggested by other reviewing physicians, but the spasms returned. Carrier's Ex. 1, pp. 22; 16-17.

Noting that Zoloft had been of great help to Claimant in dealing with her chronic pain and resulting depression, Dr. Adams said that his prescription of this medication is in compliance with the relevant guidelines of treating persons with depression. He disputed the assertion of Carrier that Claimant suffered from fibromyalgia and said that he believes Claimant's symptoms are due to the ongoing effects of her compensable injury.

Dr. Adams agrees that Claimant's condition has been difficult to treat and says that he has worked to find a combination of medications that provides pain relief to Claimant, relieves her ongoing muscle spasms, and allows her to function as best she can. Regarding the need for the office visits (CPT Codes 99213 and 99214), Dr. Adams testified that his billing staff indicates the coding for the visits based upon the amount of time he spends with a patient. He said that his office visits with Claimant were thorough due to her condition.

3. Analysis

Carrier complains about treating Claimant's chronic, long-term pain, muscle spasms and depression with medications that are primarily intended for short-term use. Carrier's assertion that Claimant should be weaned from the medications is disputed by at least some of the evidence. For example, Dr. Adams attempted to wean Claimant from Flexeril as suggested,

reducing both the dosage amount and frequency, but found that Claimant's muscle spasms returned. He has reduced the amount of that medication and has prescribed a generic muscle relaxer, in an attempt to meet Claimant's needs and the Carrier's demands. The preponderance of the evidence indicates that the use of Flexeril to treat Claimant's muscle spasms is medically necessary.

It is clear that Claimant needs ongoing pain relief in order to minimally perform her activities of daily living (due to the injuries to her neck and shoulder and continuing muscle spasms). The use of Hydrocodone appears to provide that relief. While that medication is not normally used on a long-term basis, it appears to effectively relieve Claimant's pain as needed. There is no evidence that she is addicted to the medication and Claimant testified that she does not use the medication daily. Although Dr. Crane suggested alternative medications, he did not dispute Claimant's need for pain medication. Considering Dr. Adams' ongoing attempts to try different medications in order to effectively treat Claimant, the ALJ believes that his opinion, as Claimant's treating physician, and as supported by the PRME physician, that Hydrocodone should be used is more persuasive.

The evidence with respect to the use of Zoloft is not as clear. It is apparent that Claimant suffers from depression and has attempted suicide in the past. Whether this depression is due to her injuries and resulting impairment, or some other mental condition, is unclear and cannot be decided in this forum. Dr. Adams' testimony about the need for Zoloft to treat the compensable injury was limited, although his records contain some indication that he believes the depression is a result of the ongoing effects from her injury. According to Claimant, she has undergone psychiatric evaluation on several occasions; however, no evidence was offered concerning whether these evaluations concluded that her depression resulted from her compensable injury.

In contrast, Carrier offered the opinion of Dr. Sklar who stated that “it is unusual for events in adult life to cause treatable levels of mental illness.” Whether Claimant’s depression should be considered a mental illness or a condition resulting from the effects of her injury is not clear. In 2004, Dr. Sklar recommended that Claimant be weaned from Zoloft. The ALJ believes that this recommendation is appropriate; however, the Claimant will necessarily have to receive Zoloft for a limited period of time during the weaning process.

The need for the office visits (assuming that the medications are medically necessary) is not disputed by Carrier’s evidence; what is disputed is the amount of time for those visits. The evidence supports a more extensive office visit for Claimant, considering her ongoing muscle spasms and need for pain relief, and medication monitoring. As Claimant is weaned from Zoloft, it will be particularly important for Dr. Adams to be able to assess Claimant’s condition during that process. Thus, the office visits are determined to be medically necessary.

Overall, the ALJ concludes, under the particular facts of this case, that the opinions of Claimant’s treating doctor and the PMRE doctor are the most convincing. There is a preponderance of evidence that the medications and the office visits were medically necessary to treat the Claimant’s chronic pain and ongoing muscle spasms as a result of her compensable injury. The Zoloft prescription is medically necessary in order to begin weaning Claimant from this medication.

III. FINDINGS OF FACT

1. On____, Claimant was injured in a slip and fall accident during the course of performing her job.
2. Claimant sustained injuries to her neck, shoulder and back, including a torn rotator cuff, as a result of the fall.
3. Claimant has been treated by Dr. John Grambling Adams for her compensable injuries.

4. As part of her treatment, Claimant underwent rotator cuff surgery.
5. Claimant has taken numerous medications and has had extensive physical therapy as part of her treatment.
6. Claimant has been hospitalized for depression as a result of her injury.
7. Claimant has received an 18 percent whole person impairment rating.
8. Since her injury, Claimant has suffered from chronic, debilitating pain, muscle spasms and depression.
9. Dr. Adams has treated Claimant with various pain medications as he attempted to find a medication that provided relief to Claimant.
10. In 2006, Dr. Adams prescribed Hydrocodone to treat Claimant's pain, Flexeril to treat Claimant's muscle spasms, and Zoloft to treat Claimant's depression.
11. Dr. Adams recommended one office per month for a three-month period in order to provide continued assessment of Claimant's medical condition, including medication monitoring.
12. The Claimant's employer's workers' compensation insurance carrier, Lumbermens Mutual Casualty Company, denied Dr. Adams' request to provide the treatment referred to in Finding of Facts Nos. 10 and 11.
13. Dr. Adams submitted a Request for Prospective Review of Medical Care Not Requiring Preauthorization, asking that the Texas Workers' Compensation Commission (Commission) order the disputed services to be provided.
14. The Commission appointed Larry Charles Stetzner, M.D., as the Prospective Review of Medical Examination (PRME) doctor.
15. On February 24, 2006, Dr. Stetzner opined that the requested services were medically necessary.
16. On March 14, 2006, the Texas Department of Insurance, Division of Workers' Compensation, issued a medical interlocutory order (MIO) directing the Carrier to pay for the disputed services.
17. The Carrier requested a hearing not more than 20 days after receiving notice of the MIO.

18. All parties received not less than 10 days notice of the hearing that 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.
19. Claimant has chronic pain as a residual effect of her injury and surgery.
20. Hydrocodone is a medication that relieves pain.
21. Hydrocodone has helped relieve the Claimant's pain and allow her to perform some activities of daily living.
22. Hydrocodone is reasonably required to treat Claimant's chronic pain that resulted from her injury.
23. Claimant has ongoing, sporadic muscle spasms as an effect of her injury. These spasms are acute and painful.
24. Flexeril is a muscle relaxer that is used to treat muscle spasms.
25. Flexeril has helped relieve Claimant's muscle spasms and is reasonably required to continue to treat her muscle spasms.
26. Claimant has depression as an effect of her injury.
27. Zoloft is a medication that is an anti-depressant.
28. The use of Zoloft has helped relieve Claimant's depression.
29. Zoloft is reasonably required to treat Claimant's depression.
30. Claimant should be weaned from Zoloft.
31. The office visits requested by Dr. Adams were needed for medication monitoring and the continued assessment of Claimant's medical condition.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073(b) and 413.055 and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. Carrier has the burden of proof in this proceeding. TEX. LAB. CODE ANN. § 413.055, 28 TEX. ADMIN. CODE (TAC) § 148.14(a).
4. The use of Hydrocodone, Flexeril, Zoloft, and office visits are medically necessary to treat the Claimant's compensable injury. TEX. LAB. CODE ANN. § 408.021.

ORDER

IT IS THEREFORE, ORDERED that Hydrocodone, Flexeril, and Zoloft, and one office visit per month (using either CPT Code 99213 or 99214) over a three-month period were medically necessary to treat the Claimant's compensable injury and that Lumbermens Mutual Casualty Company is ineligible for reimbursement for payments for those treatments and services.

SIGNED July 3, 2007.

**SUZANNE FORMBY MARSHALL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**