

SOAH DOCKET NO. 454-06-2157.P1
DWC NO. _____

ALBERTSONS, INC.,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
VS.	§	
	§	
TEXAS DEPARTMENT OF INSURANCE,	§	OF
DIVISION OF WORKERS'	§	
COMPENSATION and JEFFREY	§	
CHARNOV, M.D.,	§	
Respondents	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Albertsons, Inc.(Carrier) challenges a medical interlocutory order (MIO) issued by the Texas Department of Insurance, Division of Workers' Compensation (Division) on April 3,2006, requiring it to pay for certain medications and office visits over a 90-day period for ___ (Claimant). Carrier did not establish that the medications and office visits were medically unnecessary to treat Claimant's compensable injury. The Administrative Law Judge (ALJ) finds that Carrier should not be reimbursed for payments it has made for the disputed treatment.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The MIO was issued pursuant to the Commission's Prospective Review of Medical Care rules at 28 TEX. ADMIN. CODE (TAC) § 134.650. Carrier filed a timely hearing request on April 21, 2006, contesting the MIO. After proper notice, the hearing convened on May 29, 2007, before ALJ Sharon Cloninger at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Attorney Steven M. Tipton represented Carrier. Alyssa J. Long, Staff Attorney, represented the Division. Jeffrey Charnov, M.D., participated by telephone, pro se. The hearing concluded and the record closed the same day.

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. FINDINGS OF FACT

1. Claimant injured her left knee in a work-related accident on_____, when she fell while moving a tray of chickens to the freezer.
2. As a result of her compensable injury, Claimant continues to suffer from complex regional pain syndrome – a chronic condition requiring ongoing maintenance care with follow-up doctor visits and medications – in her lower left extremity.
3. Typically, complex regional pain syndrome lasts several years if not for a lifetime.
4. Claimant has been under the care of Jeffrey Charnov, M.D., who is a pain specialist, since the late 1990s.
5. As of January 18, 2000, Claimant had a whole body impairment rating of 29 percent, with a maximum medical improvement date of December 16, 1997.
6. In late 2005 or early 2006, Dr. Charnov proposed the following care to treat Claimant's complex regional pain syndrome:
 - (a) one office visit monthly to monitor medications prescribed for three months, for a total of three office visits;
 - (b) Topamax, 100 mg, one tablet three times a day, 90 tablets per month (270 total);
 - (c) Klonopin, 0.5 mg, one tablet three times a day, 90 tablets per month (270 total);
 - (d) Elavil, 10 mg, 1 tablet per day, 30 tablets per month (90 total); and
 - (e) Lidoderm patches, apply every day day, 60 patches per month (180 total).
7. Upon denial of the proposed care by Albertson's, Inc. (Carrier), Dr. Charnov submitted a prospective review of medical necessity request that was received by the Texas Department of Insurance, Texas Workers' Compensation Division (Division) on March 9, 2006, indicating the proposed care was necessary to treat Claimant's neuropathic pain.

8. The Division appointed Suzanne E. Page, M.D., to conduct a prospective review medical examination of Claimant, which was done on March 27, 2006.
9. In an opinion issued March 27, 2006, Dr. Page found the disputed care to be medically necessary to treat Claimant's compensable injury, but provided no detail as to why the treatment was necessary.
10. After Carrier continued to deny payment for the disputed care, the Division issued an MIO on April 3, 2006, directing Carrier to pay for the treatment and services.
11. On April 21, 2006, Carrier requested a hearing before SOAH to appeal the MIO.
12. On May 4, 2006, the Division sent the parties a Notice of Hearing, which contained statement of the time, place and nature of the hearing; 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.
13. Claimant's treatment has included implanting a spinal chord stimulator in July 1999, which required a high dose of narcotics from which Claimant has been weaned; and two sympathetic blocks in the past four years, which had short-term benefit.
14. After trying various treatments, the disputed medications have proved to work well in combination to treat Claimant's neuropathic pain; she is prone to flare-ups without the medications.
15. The disputed medications have been used by Claimant since 2000, and have kept her functionality stable.
16. Without the pain management afforded by the disputed medications, Claimant could face surgery to reposition the spinal chord stimulator.
17. The prescribed medications are medically reasonable or necessary to treat Claimant's compensable injury, because taken together, they help Claimant manage the chronic pain naturally resulting from her compensable injury:
 - (a) Topamax is used to treat Claimant's neuropathic pain. She experiences a more intense burning sensation without it.
 - (b) Klonopin is used to treat Claimant's neuropathic pain, which becomes worse when she does not take Klonopin.
 - (c) Lidoderm patches are a non-narcotic, non-addicting topical anesthetic that minimize Claimant's localized burning pain.

- (d) Elavil is one of the mainstream medications used to treat neuropathic pain.
- (f) Monthly office visits for three months to monitor the disputed medications was medically necessary and reasonable to relieve the effects naturally resulting from Claimant's compensable injury, because the disputed medications were required to treat Claimant's chronic neuropathic pain.

III. 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 and 28 TEX. ADMIN. CODE (TAC) § 148.14(a).
4. Carrier failed to prove that the disputed care was not medically necessary. TEX. LAB. CODE ANN. § 408.021.
5. Carrier is not entitled to reimbursement for the disputed services under 28 TAC § 134.650.

ORDER

IT IS THEREFORE ORDERED that the request of Albertsons, Inc., to be reimbursed for the disputed care and medications is denied.

SIGNED July 19, 2007.

**SHARON CLONINGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**