

SOAH DOCKET NO. 454-06-2586.P1

**LUMBERMENS MUTUAL
CASUALTY COMPANY,
Petitioner**

V.

**TEXAS DEPARTMENT OF INSURANCE-
DIVISION OF WORKERS'
COMPENSATION AND BILL WELDON,
D.O.,
Respondents**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. INTRODUCTION

Lumbermens Mutual Casualty Company (Carrier) challenges a medical interlocutory order (MIO) issued by the Texas Department of Insurance's Division of Workers' Compensation (DWC) requiring Carrier to reimburse or pay Bill Weldon, D.O., for providing medical services to J. B. (Claimant). Stephen R. Fowler, M.D., performed a prospective review medical examination (PRME) of Claimant and determined that Dr. Weldon's proposed treatment was medically necessary to treat Claimant's compensable injury. The Administrative Law Judge (ALJ) concludes that the proposed medical treatment is medically necessary and that Carrier is required to reimburse or pay Dr. Weldon for providing the proposed medical services to Claimant.

II. FINDINGS OF FACT

1. On____, Claimant fell 15 feet from a crane into a water tank and suffered an injury to his lower back (compensable injury) during the course and scope of his employment.
2. On the date of injury, Carrier was the workers' compensation insurance carrier for Claimant's employer.
3. On September 15, 1995, Dr. Weldon became Claimant's treating doctor.

4. Dr. Weldon has diagnosed Claimant's condition as lumbar intervertebral disc syndrome with radiculopathy.
5. On April 11, 2006, Dr. Weldon requested prospective review of Carrier's refusal to pay for Claimant's ongoing medications and office visits per peer review.
6. On May 17, 2006, Dr. Fowler, the PRME doctor, examined Claimant and determined that one office visit and the following medications were medically necessary to treat his compensable injury:
 - a. Lortab 10mg, 1 tablet every 6 hours as needed, total tablets 240.
 - b. Soma 300mg, 1 tablet every 8 hours as needed, total tablets 120.
 - c. Xanax 2mg, 1 tablet every 8 hours as needed, total tablets 180.
 - d. Feldene 20 mg, 1 tablet a day, total tablets 90.
7. Claimant's symptoms are the same type and at the same location as those at the time of injury and immediately following the injury.
8. On May 24, 2006, DWC issued an MIO. Based on the PRME doctor's review and under the authority of the Texas Labor Code § 413.055, DWC required Carrier to reimburse Dr. Weldon for one office visit and the medications noted above in Finding of Fact No.6.
9. On June 15, 2006, Carrier requested a hearing by a State Office of Administrative Hearings (SOAH) ALJ to appeal the MIO.
10. All parties received adequate notice of not less than 10 days of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
11. On May 7, 2006, SOAH ALJ Carol Wood conducted a hearing concerning the matter in Austin, Texas. The hearing concluded, and the record closed May 8, 2007.
12. Carrier appeared at the hearing through its attorney, Tim White.
13. DWC appeared at the hearing through its attorney, Renee Crenshaw.
14. Dr. Weldon appeared at the hearing by telephone.
15. Claimant's symptoms are inconsistent, that is, his pain symptoms and muscle spasms may be less one day but greater the next.
16. Dr. Weldon has prescribed the medications Lortab, Soma, and Xanax for Claimant on an "as needed" basis.

17. While being treated by Dr. Weldon, Claimant for approximately 15 years has not required a significant increase in the dosage of the medications described above in Finding of Fact No. 6.
18. The medications prescribed by Dr. Weldon improve Claimant's symptoms and allow him to be active, to do home exercises, and to perform daily activities:
 - a. Lortab, a narcotic, is prescribed to relieve moderate to moderately-severe pain.
 - b. Soma is prescribed for muscle spasms.
 - c. Xanax is prescribed to reduce anxiety and depression.
 - d. Feldene, a nonsteroidal antiinflammatory drug, is prescribed to reduce swelling, inflammation, and soreness.
18. By means of an office visit every 3 months, Dr. Weldon monitors Claimant's condition and his use of Lortab, Soma, Xanax, and Feldene.
19. Dr. Weldon's treatment of Claimant is enhancing his medical condition and promoting his recovery.

III. 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. TEX. LABOR CODE (Labor Code) §§ 402.073(b) and 413.055(c) and TEX. GOV'T. CODE (Gov't Code) ch. 2003.
2. Notice of the hearing was proper and timely. Gov't Code §§ 2001.051 and 2001.052.
3. 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. Labor Code § 408.021(a).
4. Carrier had the burden of proving by the preponderance of the evidence that the proposed services are not reasonably medically necessary to treat Claimant's compensable injury. 1 TEX. ADMIN. CODE (TAC) § 155.41(b); 28 TAC § 148.21(h).
5. Based on the above Findings of Fact and Conclusions of Law, the proposed services are reasonably medically necessary to treat Claimant's compensable injury.

6. Based on the above Findings of Fact and Conclusions of Law, Carrier is required to reimburse or pay Dr. Weldon for providing the medical services to Claimant.

ORDER

THEREFORE, IT IS ORDERED that Carrier reimburse or pay Dr. Weldon for one office visit and the medications Lortab, Soma, Xanax, and Feldene provided Claimant.

SIGNED July 13, 2007.

**CAROL WOOD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARING**