

DOCKET NO. 454-07-1289.P1

DWC NO. _____

FARMINGTON CASUALTY COMPANY, §
Petitioner §

BEFORE THE STATE OFFICE

v. §

OF

TEXAS DEPARTMENT OF §
INSURANCE, DIVISION OF WORKERS' §
COMPENSATION, AND FERNANDO §
TIMOTHY AVILA, M.D., §
Respondents §

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Farmington Casualty Company (Farmington) requested a hearing to contest a Medical Interlocutory Order (MIO) issued by the Texas Department of Insurance, Division of Workers' Compensation (Division), requiring payment for prescription drugs and one office visit per month for three months that were found to be medically necessary in a Prospective Review Medical Examination (PRME). The Administrative Law Judge (ALJ) concludes the disputed services were not medically necessary.

I. PROCEDURAL HISTORY

Fernando Avila, M.D., requested three months of medical care for an injured worker (Claimant) consisting of prescription medications and monthly office visits. Consistent with a PRME doctor's opinion, the Division issued an MIO on November 7, 2006, requiring Carrier to pay for the services. Farmington timely requested a hearing on the MIO.

A hearing convened and closed May 8, 2007, before the undersigned ALJ at the State Office of Administrative Hearings (SOAH), Austin, Texas. Farmington appeared and was represented by its

counsel, Jeanne Shafer. The Division appeared and was represented by its counsel, Robert Simons. Dr. Avila appeared telephonically. As there were no issues concerning notice or jurisdiction, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

II. DISCUSSION

A. Background

Claimant experienced a job-related injury to her neck and spine in _____. After conservative efforts to treat her failed, she underwent a cervical discectomy and fusion in June 1997. Following the fusion, Claimant's treatment consisted predominantly of prescription drug therapy involving a variety of drugs.¹

¹ The prescribed drugs include the following:

! Actiq
! Soma
! Elavil
! Restoril
! Lidoderm
! Lyrica
! Methadone
! Zanaflex
! Norco
! Lactulose Syrup
! Hydrocodone
! Fentanyl
! Provigil
! Carisoprodol
! Tizanidine
! Xodol
! Temazepam
! Ambien
! Amitriptylin
! Cyclobensaprine
! Tisanidine
! Gabitril
! Flexeril
! Lortab
! Vicodin ES
! Arthrotec
! Valium

In 2006, Dr. Avila prescribed Elavil, Soma, Lyrica, Lidoderm, Lactulose, Methadone, and Actiq along with monthly office visits for three months. He initiated a request for prospective review of the proposed services. When the request was not successfully resolved between Dr. Avila and Farmington, the PRME process was initiated. Following his medical examination, the appointed PRME doctor, Robert Charles Lowry, M.D., concluded the proposed services were medically necessary. Because Farmington did not agree to be liable for the services, the Department issued a medical interlocutory order requiring Farmington to pay for them. Farmington then requested a hearing, which culminated in this proceeding before SOAH.

B. Evidence and Argument

In support of its position that the pharmaceuticals were not medically necessary, Farmington cited several references in Claimant's medical records to medical opinions concluding that Claimant should be weaned from her long-term drug use. Farmington also noted that a review of Claimant's medical records suggested she was not improving over time; instead, her pain levels appeared to be increasing.

Dr. Avila, who specializes in pain treatment and anaesthesiology, described Claimant's problem as chronic pain syndrome caused by chronic nerve root pain. He testified that no meter exists for the measurement of chronic pain, and such pain can last a lifetime. He emphasized that due to Claimant's circumstances, her ability to function was the key. He noted that she was working two jobs to support her family because her husband was unable to work. She was also going to school. Consequently, her ability to function, not the level of pain she reported on any given visit, was the treatment "end-point." Dr. Avila also explained the nature and role of the prescribed drugs in treating Claimant, and he noted that all of the drugs are commonly prescribed for pain treatment.

In response to the concerns expressed regarding the habituation potential for the various drugs, Dr. Avila testified that he proposed to see Claimant monthly, he visits with her husband regarding her use of the drugs, and he performs random drug tests. He emphasized that Claimant was not abusing the drugs.

C. Conclusion

As reflected in detail in the Findings of Fact and Conclusions of Law, Farmington demonstrated by a preponderance of the evidence that the prescribed drugs and, thus, the proposed office visits, are not medically necessary to treat Claimant's compensable injury.

III. FINDINGS OF FACT

- ! Claimant experienced an job-related injury to her neck and spine in ____.
- ! After conservative efforts to treat Claimant failed, she underwent a cervical discectomy and fusion. Following the fusion, Claimant's treatment consisted predominantly of a prescription drug therapy involving a variety of drugs, including the following:
 - a. Actiq
 - b. Soma
 - c. Elavil
 - d. Restoril
 - e. Lidoderm
 - f. Lyrica
 - g. Methadone
 - h. Zanaflex
 - I. Norco
 - j. Lactulose Syrup
 - k. Hydrocodone
 - l. Fentanyl
 - m. Provigil
 - n. Carisoprodol
 - o. Tizanidine
 - p. Xodol
 - q. Temazepam
 - r. Ambien

- s. Amitriptylin
- t. Cyclobensaprine
- u. Tisanidine
- v. Gabitril
- w. Exeril
- x. Lortab
- y. Vicodin ES
- z. Arthrotec
- aa. Valium

- ! In October 2006, Fernando Timothy Avila, M.D. prescribed Elavil, Soma, Lyrica, Lidoderm, Lactulose, Methadone, and Actiq along with monthly office visits for three months for the treatment of Claimant's compensable injury. He initiated a request for prospective review of the proposed services.
- ! When the request was not successfully resolved between Dr. Avila and Farmington, the Prospective Review Medical Examination (PRME) process was initiated.
- ! Following his medical examination of Claimant, the appointed PRME doctor, Robert Charles Lowry, M.D., concluded the proposed services were medically necessary.
- ! Farmington did not agree to be liable for the proposed services, so the Department issued a Medical Interlocutory Order on November 7, 2006 ordering Farmington to pay for them.
- ! In response to the medical interlocutory order, Farmington requested a hearing.
- ! Notice of the hearing was sent to the parties on January 5, 2007. The notice informed the parties of the date, time, and location of the hearing; the matters to be considered; the legal authority under which the hearing would be held; and the statutory provisions applicable to the matters to be considered.
- ! The hearing convened and closed on May 8, 2007, before State Office of Administrative Hearings Administrative Law Judge Gary Elkins.
- ! As of June 14, 2006, Claimant had no objective symptoms of ongoing neuropathic issues. She had no focal sensory or motor deficits involving her upper extremities and had normal and symmetric deep-tendon reflexes.
- ! As of June 14, 2006, Claimant was capable of full-duty employment without restrictions, and additional chronic pain management was not necessary.
- ! As of May 1998, Claimant had no cervical spinal canal pathology.

- ! A May 1998 CT scan on Claimant's neck was essentially normal.
- ! Claimant has chronic pain syndrome.
- ! For approximately one year prior to June 2006, Claimant had been using large amounts of narcotic analgesics, including the daily use of hydrocodone, methadone, and Actiq.
- ! The drug Actiq has been prescribed to Claimant for several years.
- ! Actiq is designed to be a short-acting analgesic used for treating acute pain. The long-term use of Actiq is contra-indicated.
- ! An effort to wean Claimant from narcotics was made in 1998.
- ! Detoxification and weaning of Claimant from the drugs she has been prescribed was recommended in April 2004 and December 2005.
- ! As of August 2003, any pain experienced by Claimant was most likely not caused by her neck injury or surgery.
- ! As of January 2003, there was not an organic or physical problem at the site of Claimant's neck operation.
- ! On November 15, 2002, an orthopaedic surgeon concluded that continued therapy for Claimant would not be helpful.
- ! Since May 2004, Claimant's reported levels of pain have varied between five and eight on a scale of one-to-ten, with ten being the worst level of pain. Claimant's three most recent reported levels of pain were eight.

IV. CONCLUSIONS OF LAW

- ! 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.
- ! Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
- ! Carrier has the burden of proof in this proceeding. TEX. LAB. CODE ANN. § 413.055, 28 TEX. ADMIN. CODE (TAC) § 148.14(a).

! The prescribed drugs and three office visits are not medically necessary to treat Claimant's compensable injury. TEX. LAB. CODE ANN. § 408.021.

ORDER

IT IS THEREFORE, ORDERED that the three-month prescription for Elavil, Soma, Lyrica, Lidoderm, Lactulose Syrup, Methadone, and Actiq prescribed by Fernando Timothy Avila, M.D., along with the three office visits, were not medically necessary to treat Claimant's compensable injury, and Farmington Casualty Company is eligible to seek reimbursement for all amounts paid for those drugs and office visits.

SIGNED June 28, 2007.

GARY W. ELKINS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS