

SOAH DOCKET NO. 454-07-1790.P1
(DWC NO. ____)

TRANSPORTATION INSURANCE	§	BEFORE THE STATE OFFICE
COMPANY,	§	
Petitioner	§	
	§	
v.	§	
	§	OF
TEXAS DEPARTMENT OF INSURANCE,	§	
DIVISION OF WORKERS'	§	
COMPENSATION AND KENNETH M.	§	
NUGENT, M.D.,	§	
Respondents	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Transportation Insurance Company (Carrier) challenges a portion of a medical Interlocutory Order (MIO) issued by the Texas Department of Insurance, Division of Workers' Compensation (Division), ordering the Carrier to pay for two medications for the Claimant. Consistent with the agreed recommendation of the Carrier and the Division, the Administrative Law Judge (ALJ) finds that the Carrier is not liable for reimbursement for these two drugs.

I. BACKGROUND AND PROCEDURAL HISTORY

Claimant suffered a compensable injury on _____. His treating physician, Kenneth M. Nugent, M.D., prescribed several medications, including Flomax and Uroxatrol.¹ A prospective review process was initiated at the Commission pursuant to 28 TEX. ADMIN. CODE § 134.650(c), and the Division scheduled Claimant for a Prospective Review Medical Examination (PRME). The PRME doctor, Gerald Hill, issued an opinion on December 12, 2006, concluding that most of the medications were medically necessary, but that Flomax and Uroxatrol treat conditions unrelated to the compensable injury. Dr. Hill also observed that the Claimant was not currently taking Flomax and Uroxatrol.

¹ In the MIO, this medication is spelled "Urocotrol."

The Division issued an MIO on January 8, 2007, ordering the Carrier to pay for all of the medications then in dispute, including Flomax and Uroxatrol. The Carrier timely requested a hearing to challenge the provisions of the MIO requiring it to pay for Flomax and Uroxatrol.

The hearing convened in Austin on May 7, 2007. The Carrier was represented by attorney Erin Shanley. The Division was represented by Terra Colvin Thomas, Assistant General Counsel. Dr. Nugent did not participate. ALJ Kerry D. Sullivan presided. The record closed on May 7, 2007. As there were no issues concerning notice or jurisdiction, those matters are stated in the findings of fact and conclusions of law without further discussion.

II. DISCUSSION

At the hearing, the Carrier stated that it challenges only that portion of the MIO ordering it to pay for Flomax and Uroxatrol. The Division concurred that the Carrier should not be liable for these medications in light of the PRME report, which found them unrelated to the compensable injury. In light of these circumstances and the agreement of the parties, the ALJ concurs that the Carrier is not responsible for reimbursement for Flomax and Uroxatrol.

III. FINDINGS OF FACT

1. Claimant suffered a compensable injury on _____.
2. At the time of the injury, Claimant's employer had workers' compensation insurance coverage with Transportation Insurance Company (Carrier).
3. Claimant's treating physician, Kenneth M. Nugent, M.D., prescribed several medications, including Flomax and Uroxatrol.
4. Upon initiation of the prospective review process, the Texas Department of Insurance, Division of Workers' Compensation (Division) scheduled Claimant for a Prospective Review Medical Examination (PRME).

5. On December 12, 2006, the PRME doctor issued an opinion finding most of the medications prescribed to be medically necessary, but finding that the Flomax and Uroxatrol should not be reimbursed because they treat conditions unrelated to the compensable injury and the Claimant was not presently taking them.
6. On January 8, 2007, the division issued a Medical Interlocutory Order (MIO) ordering the Carrier to pay for all of the medications then in dispute, including Flomax and Uroxatrol.
7. On January 10, 2007, The Carrier filed a request for a hearing with the State Office of Administrative Hearings (SOAH) to challenge the MIO.
8. The Division issued a notice of the hearing on February 26, 2007, that stated the date, time, and location of the hearing cited the statutes and rules involved, and provided a short, plain statement of the factual matters asserted.
9. The hearing convened on May 7, 2007. The Carrier and the Division appeared. Dr. Nugent did not participate.
10. The Carrier disputes only that portion of the MIO holding its responsible for payments for Flomax and Uroxatrol.
11. The MIO order with respect to Flomax and Uroxatrol was contrary to the PRME's decision that these medications were not related to the compensable injury and were not being taken by the Claimant.
12. During the hearing, the Division stipulated that the Carrier should not be responsible for payments for Flomax and Uroxatrol.

IV. 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, pursuant to TEX. LABOR CODE. ANN. §§ 402.073(b) and 413.055(c) and TEX. GOV'T CODE ANN. Ch. 2003.
2. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. The Carrier had the burden of proof in this proceeding. 28 TEX. ADMIN. CODE §§ 148.14(a); 1 TEX. ADMIN. CODE § 155.41(b).
4. The Commission's MIO ordering the Carrier to pay for Flomax and Uroxatrol was not in accordance with the care identified as medically necessary by the PRME doctor as required by 28 TEX. ADMIN. CODE § 134.650(g)(1), and therefore should be set aside.

ORDER

IT IS THEREFORE, ORDERED that the Medical Interlocutory Order (MIO) is reversed in part and that Transportation Insurance Company is not responsible for reimbursement for Flomax and Uroxatrol provided to the Claimant. The MIO is otherwise affirmed.

SIGNED May 15, 2007.

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