

| | | |
|--|--|--|
| <p>_____, Petitioner</p> <p>V.</p> <p>TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION and A.L. SHAW, M.D., Respondents</p> | <p>§ § § § § § § § §</p> | <p>BEFORE THE STATE OFFICE</p> <p>OF</p> <p>ADMINISTRATIVE HEARINGS</p> |
|--|--|--|

DECISION AND ORDER

_____ (Carrier) challenges a medical interlocutory order (MIO) issued by the Texas Department of Insurance, Division of Workers’ Compensation (Division) requiring Carrier to pay A. L. Shaw, M.D. (Provider) for providing medical services to an injured worker (Claimant). Carl Simpson, M.D., performed a prospective review medical examination (PRME) of Claimant and determined that the office visits and medications requested by Provider to treat Claimant were medically necessary. Based on the evidence presented at the hearing on September 4, 2007, and based on stipulations submitted by the parties on September 13, 2007 via a Joint Motion to Consider Stipulations and Petitioner’s Request for Decision, which is granted, the Administrative Law Judge (ALJ) concludes that the medical treatment was not medically necessary to treat a compensable injury.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

After proper notice, the hearing convened on September 4, 2007, at the State Office of Administrative Hearings (SOAH), with ALJ Gary W. Elkins presiding. Counsel for Carrier and the Division appeared in person, while Provider appeared *pro se* by telephone. The hearing concluded and the record was closed on September 13, 2007, after the parties filed their agreed stipulations.

II. DECISION AND ANALYSIS

Based on the evidence and stipulations presented by the parties at the hearing on the merits, the ALJ makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. On _____, ____ (Claimant) injured her lower back while lifting a 50-pound box of potatoes.
2. Dr. A. L. Shaw, M.D. (Provider) began treating Claimant for her injuries and prescribed the medications at issue in this case.
3. Provider prescribed office visits and four medications for pain. The prescribed office visits and medications were:

For 90 days:
 - three office visits to monitor prescription medication;
 - Zanaflex, 4 mg., 3 times per day, 270 tablets total;
 - Neurontin, 600 mg., 4 times per day, 360 tablets total; and
 - Zoloft, 50 mg., 1 time per day, 90 tablets total.
For 30 days:
 - Norco, 10/325, 2 times per day, 60 tablets total.
4. On October 27, 2005, Carl Simpson, M.D., performed a Prospective Review Medical Examination (PRME) and concluded that the office visits to monitor prescription medication and the medications prescribed were necessary to treat Claimant.
5. On November 3, 2005, the Texas Department of Insurance, Division of Workers' Compensation (Division) issued its Medical Interlocutory Order regarding the PRME findings.
6. _____ (Carrier) reimbursed Provider for the medications described in Finding of Fact No. 3 in accordance with the fee guidelines issued by the Division.
7. Carrier appealed the PRME Order and sought a finding that the proposed care was not medically necessary to treat Claimant's compensable injury.
8. Carrier timely requested a hearing on the Medical Interlocutory Order.
9. The Division issued notices of hearing that included the date, time, and location of the hearing, the applicable statutes under which the hearing would be conducted, and a short, plain statement of matters asserted.
10. The only issue in this matter is whether the treatment provided to Claimant was reasonably required by the nature of the compensable injury to her lower back.
11. Administrative Law Judge (ALJ) Gary W. Elkins conducted a hearing on the merits on September 4, 2007, and the record was closed on September 13, 2007, after the parties filed their agreed stipulations.
12. Carrier appeared at the hearing through its attorney, Mark Sickles.
13. The Division appeared at the hearing through its attorney, E. Renee Crenshaw.

14. Provider appeared *pro se* at the hearing by telephone.
15. A Benefit Contested Case Hearing was held on September 19, 2006, January 8, 2007, and February 13, 2007, with the record closing on February 20, 2007, and decided the following disputed issues:
 - Does the compensable injury of _____, include the lumbosacral neuritis, somatic dysfunction pelvic region, lumbar disc displacement, lumbar disc herniation at L4-5 and L5-S1, lumbar spinal stenosis, lumbar radiculopathy at L5-S1, lumbar facet joint hypertrophy at L2-3, L4-5 and L5-S1, left trochanteric bursitis, left anterior thigh meralgia paraesthetica, chronic pain syndrome and depression?
 - What is the impairment rating (IR)?
16. The Benefit Contested Case Hearing officer found that the compensable injury of _____, did not include the lumbosacral neuritis, somatic dysfunction pelvic region, lumbar disc displacement, lumbar disc herniation at L4-5 and L5-S1, lumbar spinal stenosis, lumbar radiculopathy at L5-S1, lumbar facet joint hypertrophy at L2-3, L4-5 and L5-S1, left trochanteric bursitis, left anterior thigh meralgia paraesthetica, chronic pain syndrome and depression, and that the Claimant's impairment rating was 5%.
17. The medications provided to Claimant under the authority of the Medical Interlocutory Order were based on the recommendations of Provider for the lumbosacral neuritis, somatic dysfunction pelvic region, lumbar disc displacement, lumbar disc herniation at L4-5 and L5-S1, lumbar spinal stenosis, lumbar radiculopathy at L5-S1, lumbar facet joint hypertrophy at L2-3, L4-5 and L5-S1, left trochanteric bursitis, left anterior thigh meralgia paraesthetica, chronic pain syndrome and depression.
18. Based on the testimony of Provider, the medications prescribed in this dispute were for the lumbosacral neuritis, somatic dysfunction pelvic region, lumbar disc displacement, lumbar disc herniation at L4-5 and L5-S1, lumbar spinal stenosis, lumbar radiculopathy at L5-S1, lumbar facet joint hypertrophy at L2-3, L4-5 and L5-S1, left trochanteric bursitis, left anterior thigh meralgia paraesthetica, chronic pain syndrome and depression, all of which are non-compensable body parts.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073 and 413.055(c) and TEX. GOV'T CODE ANN. ch. 2003.

2. Proper and timely notice of the hearing was provided to the parties according to TEX. GOV'T CODE ANN. §§ 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. TEX. LAB. CODE ANN. § 408.021(a).
4. The prescribed medications and office visits for which Provider received prospective authorization were not medically necessary. TEX. LAB. CODE ANN. § 408.021.
5. Based on the above Findings of Fact and Conclusions of Law, Carrier is entitled to seek reimbursement for the services it was ordered to pay for by virtue of the PRME opinion dated October 27, 2005.

ORDER

IT IS, THEREFORE, ORDERED that the prescribed medications and office visits authorized in the Medical Interlocutory Order dated November 2, 2005, are not medically necessary to treat Claimant's compensable injury, and _____ is eligible to seek reimbursement from the subsequent injury fund for all amounts paid in this matter.

SIGNED November 2, 2007.

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