

<b>GRAY INSURANCE COMPANY,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	
	§	<b>OF</b>
<b>TEXAS DEPARTMENT OF</b>	§	
<b>INSURANCE, DIVISION OF</b>	§	
<b>WORKERS'</b>	§	
<b>COMPENSATION and</b>	§	<b>ADMINISTRATIVE HEARINGS</b>
<b>JAIRO A. PUENTES, M.D.</b>		

**DECISION AND ORDER**

Gray Insurance Company (Carrier) challenges a medical interlocutory order (MIO) issued by the Texas Department of Insurance, Division of Workers' Compensation (Division), requiring Carrier to reimburse Jairo A. Puentes, M.D. (Dr. Puentes) for providing medical services to an injured worker (Claimant). Thomas M. Raymond, M.D., performed a prospective review medical examination (PRME) of Claimant and found that an office visit and a 90-day supply of Lortab were medically necessary to treat Claimant's compensable injury. However, Dr. Raymond questioned the medical necessity of the proposed epidural steroid injections (ESIs). The Division ordered Carrier to pay Dr. Puentes for the office visit, Lortab, and the ESIs. The Administrative Law Judge (ALJ) concludes that the office visit and the Lortab were medically necessary, but that the ESIs were not medically necessary.

**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

The Division issued the MIO on November 14, 2005, pursuant to the Division's PRME rules.<sup>1</sup> Carrier filed a timely hearing request. After proper notice, the hearing convened on August 16, 2007, at the State Office of Administrative Hearings (SOAH), with ALJ Catherine C. Egan presiding. Counsel for Carrier and the Division appeared in person, while Dr. Puentes appeared *pro se* by telephone. The hearing concluded and the record was closed the same day.

**II. DISCUSSION AND ANALYSIS**

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<sup>1</sup> 28 TEX. ADMIN. CODE (TAC) § 134.650.

## **A. Background**

Claimant sustained a compensable injury on \_\_\_\_\_, when a large tire, weighing approximately 200 pounds, fell on him while he was working. Claimant tried to brace himself, but twisted and he injured his back, right hand, and right knee. He was immediately taken to the emergency room where he underwent a drug test, had x-rays taken, and received an injection of Demerol. He returned to the job site, but went home because of continued pain. Two days later he saw Dr. Puentes for treatment.

Dr. Puentes' evaluation of Claimant's injury included a Magnetic Imaging Resonance (MRI) of his back and right knee. The MRI revealed a bulging or herniated disc in the L4/5 area of his back and a torn ligament in his right knee. Dr. Puentes treated Claimant with ESIs, but Claimant experienced only temporary and short-lived relief from his pain. Claimant also received physical therapy for his hand and back for a three-month period. On November 5, 2005, Claimant underwent surgery on his knee.

On February 24, 2005, Claimant went to John P. Masciale, M.D. for a consult regarding his spinal injury. Dr. Masciale found that Claimant was not a candidate for surgery, but he opined that Claimant would benefit from antidepressants and anxiolytic medications, muscle relaxers, long-acting opiates, ESIs, and aquatic exercise. Acting upon Dr. Masciale's opinion, Dr. Puentes administered additional ESIs to Claimant over the next five month period and prescribed Lortab, Ambien, Flexeril, and Zoloft.

Carrier denied this treatment as not being medically necessary. On September 20, 2005, Dr. Puentes requested a PRME. The Division referred the matter to Dr. Raymond for a PRME. Dr. Raymond found the treatments, with the exception of the ESIs, to be reasonably medically necessary for Claimant's compensable injury. Dr. Raymond found that radiculopathy was not currently active and stated that he was uncertain "what further is being accomplished with the steroid injections." Dr. Raymond concluded that monthly steroid injections for Claimant's back were not medically indicated.<sup>2</sup> Despite Dr. Raymond's conclusion regarding the ESIs, the Division issued an MIO requiring Carrier to pay for all requested medical services, including the ESIs.<sup>3</sup> Carrier requested a hearing on the matter, and the case was referred to SOAH.

## **B. Parties' Positions and Evidence**

Carrier's argument rests primarily on the fact that the PRME doctor, Dr. Raymond, did not find that continued ESIs were medically necessary, as confirmed by Carl Blauzvern, D.O., Carrier's expert witness. Carrier further argues that Lortab is an opiate and is not appropriate for the long-term treatment of pain. Dr. Blauzvern testified that Lortab is a narcotic and is not only addictive but can also sensitize a patient to pain. Other nonnarcotic pain relievers should have been used to address Claimant's pain in his opinion.

As for the ESIs, Dr. Blauzvern explained that because Claimant experienced only short-term relief from his back pain, the ESIs were ineffective and should not have been continued. Dr. Blauzvern testified that ESIs are used to treat radiculopathy. Neither Dr. Blauzvern nor Dr. Raymond found any evidence that Claimant suffered with radiculopathy. According to Dr. Blauzvern, the appropriate treatment for Claimant's compensable injury at that time was non-narcotic pain medication and a home exercise program.

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<sup>2</sup> Ex. 3 at DWC 007.

<sup>3</sup> The MIO was nonspecific as to the duration of time or the number of ESIs.

Dr. Puentes disagrees. According to Dr. Puentes, both he and Dr. Masciale found that ESIs and an opiate pain reliever were medically necessary to treat Claimant's compensable injury. Dr. Puentes explained that Claimant also had knee pain from his surgery and that, in turn, was aggravating Claimant's spinal injury. Dr. Puentes had only performed one ESI, but maintains it was medically necessary to treat Claimant with additional ESIs. As for the medication, Dr. Puentes explained that because of the knee surgery Claimant was experiencing more pain and required Lortab to address both his knee pain and his back pain.

### **C. ALJ's Analysis**

The burden of proof in this matter was on the Carrier to show that the treatment in issue was not medically necessary for Claimant's compensable injury. After considering the evidence and testimony presented, the ALJ finds that Carrier proved by a preponderance of evidence that the ESIs were not reasonably medically necessary to cure or relieve the pain associated with Claimant's compensable injury. Both Dr. Blauzvern and Dr. Raymond stated that the ESIs were not medically necessary because they did little to relieve Claimant's pain, as he continued to complain of pain.

As for the medication, the ALJ finds that Claimant did require medication to address the pain he was experiencing as a result of the compensable injury to both his knee and back. While Dr. Blauzvern might disagree as to the long-term use of an opiate, he did agree that Claimant needed pain medication. Dr. Raymond and Dr. Masciale both agreed with Dr. Puentes that Lortab was an appropriate medication to address Claimant's complaints of pain. Therefore, the ALJ concludes that Carrier did not prove by a preponderance of the evidence that the Lortab was not medically necessary. Consequently, Carrier must reimburse Dr. Puentes for the Lortab. Carrier stated on the record that it did not dispute the medical necessity of the office visit.

### **III. FINDINGS OF FACT**

1. On \_\_\_\_, Claimant, an injured worker sustained a compensable injury in the course and scope of his employment when a large, heavy tire fell on him.
2. On the date of Claimant's injury, Gray Insurance Company (Carrier) was the workers' compensation insurance carrier for Claimant's employer.
3. Claimant was taken to the emergency room immediately after he was injured, and he was seen

by his physician, Jairo A. Puentes, M.D. (Dr. Puentes) two days later.

4. Diagnostic tests, which included x-rays and magnetic resonance imaging (MRI), revealed that Claimant had a bulging or herniated disc in the L4/5 area of his back and a torn ligament in his right knee.
6. Claimant received three months of physical therapy for his back and knee, monthly Epidural Steroid Injections (ESIs) for his back pain, arthroscopic surgery for his knee, and he was prescribed several medications to treat his compensable injury that Carrier paid. After the third month, Carrier began denying payment for Dr. Puentes' treatment as not medically necessary.
7. On September 20, 2005, Dr. Puentes requested a prospective review medical examination (PRME) of Carrier's refusal to pay for Claimant's ongoing medical treatments for his compensable injury.
8. On October 24, 2005, Thomas M. Raymond, M.D., the PRME doctor, determined that the following was reasonably medically necessary to treat Claimant's compensable injury:
  - Lortab, 10mg three times a day for 90 days
  - One office visit within 90 days to monitor medications
9. Dr. Raymond found that continued ESIs were not medically necessary to treat Claimant's back.
10. On November 14, 2005, the Texas Department of Insurance, Division of Workers' Compensation (Division) issued a Medical Interlocutory Order (MIO). Based in part on the PRME doctor's review and under the authority of the Texas Labor Code § 413.055, the Division required Carrier to reimburse Dr. Puentes for one office visit, a 90-day supply of Lortab, and Epidural Steroid Injections (ESIs).
11. On December 5, 2005, Carrier requested a hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) to appeal the MIO.
12. All parties received timely and proper 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.
13. On August 16, 2007, SOAH ALJ Catherine C. Egan conducted a hearing concerning the matter in Austin, Texas. Carrier appeared at the hearing through its attorney, Steve Tipton. The Division appeared at the hearing through its attorney, E. Renee Crenshaw. Dr. Puentes appeared *pro se* at the hearing by telephone. The hearing concluded and the record closed on the same day.
14. The office visit and the Lortab as set forth in the MIO were medically necessary to treat Claimant's compensable injury.
15. The ESIs given to Claimant for the first three months did not effectively relieve his back pain.

16. The continued ESIs requested by Dr. Puentes were not medically necessary to cure or relieve Claimant's compensable injury.

#### **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. Carrier has the burden of proving by a preponderance of the evidence that the services proposed in the MIO are not reasonably medically necessary to treat Claimant's compensable injury. 1 TEX. ADMIN. CODE § 155.41(b), and 28 TEX. ADMIN. CODE § 148.14(a).
5. Carrier has failed to show that the treatments of Lortab 10mg, 3 times a day for 90 days and an office visit within a 90-day period to monitor the medications were not medically necessary to treat Claimant's compensable injury.
6. Carrier proved by a preponderance of the evidence that continued ESIs were not medically necessary to treat Claimant's compensable injury
7. Based on the above Findings of Fact and Conclusions of Law, the interlocutory order should be upheld as to the office visit and Lortab only.

#### **ORDER**

**IT IS ORDERED** that the medical interlocutory order (MIO) of November 14, 2005,

ordering Gray Insurance Company (Carrier) to reimburse Jairo A. Puentes, M.D., for the office visit and the Lortab provided to Claimant is sustained, but that the MIO ordering reimbursement for the epidural steroid injections is overruled.

**SIGNED October 15, 2007.**

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**CATHERINE C. EGAN  
ADMINISTRATIVE LAW JUDGES  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**