

SOAH 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.

II. DISCUSSION

A. Background

Claimant injured his lower back on _____, when he fell through a ceiling and landed fourteen feet below onto a concrete surface. On March 20, 2000, Claimant underwent a fusion at L3-L4 and subsequently received an impairment rating. The parties agree that Claimant suffers from severe ongoing and chronic pain, although they disagree about its appropriate treatment. Dr. Lewis has prescribed the narcotic medications in issue to treat Claimant's chronic pain. Carrier has denied reimbursement for the treatment as being medically not necessary.

Employees have a right to necessary health care under TEX. LAB. CODE ANN. §§ 408.021 and 401.011. Section 408.021(a) provides: "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. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment." Section 401.011(19) of the Labor Code provides that health care includes "all reasonable and necessary medical . . . services."

The Carrier has the burden of proof in this proceeding. TEX. LAB. CODE ANN. § 413.055, 28 TEX. ADMIN. CODE § 148.14(a).

B. Evidence and Analysis**1. Carrier**

Carrier contends that the medications and office visits are not necessary to treat the compensable injury that occurred almost eight years ago. As its evidence, Carrier relies on the testimony and written evaluation of Wright Singleton, M.D. and a medical review by Mark Sanders, M.D.

Dr. Singleton examined Claimant on April 21, 2006, and prepared a written report of the examination.¹ The report notes that Claimant suffers from lumbar disc pain, a S/P lumbar fusion and non-occupational facet arthropathy. Dr. Singleton stated that Claimant's prognosis was poor, although his physical exam did not reflect a progression of radiculopathy or other change.² According to Dr. Singleton, the use of Hydrocodone and Duragesic were appropriate for treatment of severe pain and post-surgical low back pain, but the long term use of Duragesic was no longer indicated. Dr. Singleton recommended that Claimant be weaned from his medications based upon Claimant's stated desire "to be off medications."

During his testimony, Dr. Singleton stated that Claimant suffers from "failed back syndrome" with a substantial amount of residual pain. According to Dr. Singleton, a patient who uses narcotics on a long-term basis runs the risk of habituation and increased tolerance to the medications, leading to addiction. He testified that patients needed to be weaned off the narcotics because their side effects are likely to increase over time. Dr. Singleton disputed the use of narcotic medications for long-term use without a showing of increase in functionality. Dr. Singleton testified that, as of April

¹ Carrier's Ex. 1, p. 8.

² Carrier's Ex. 1, p. 9.

2006, a gradual weaning period should have begun. He agreed that an office visit once a month (every three months) was medically necessary while Claimant was on the medications.

Carrier also relies on a medical review performed in 2005 by Dr. Sanders, an orthopedic surgeon, to evaluate whether a spinal cord stimulator was medically necessary to treat Claimant. Dr. Sanders concluded that Claimant did not need additional structured physical therapy “or further treatments beyond the occasional use of anti-inflammatory medications and/or analgesics for pain.”³

2. Evidence from Provider

Dr. Lewis testified that he began treating Claimant in April 2004. He diagnosed Claimant as having “failed back syndrome” with lumbar spondylosis and lumbar radiculopathy. According to Dr. Lewis, it has been difficult to treat Claimant’s severe pain with anything other than narcotic medications due to Carrier’s refusal to approve alternative treatments.

Dr. Lewis did not disagree with the concept of weaning a patient from narcotic medications, but noted that something else was required to replace them in order to respond to Claimant’s chronic pain. For example, Dr. Lewis said that he had recently prescribed Dilaudid in place of Lorcet because the amount of Lorcet Claimant takes exceeds the maximum dose; however, Carrier denied payment for the prescription. Dr. Lewis noted that the use of a spinal cord stimulator has been shown to result in a reduction or even replacement of narcotics. Carrier has denied approval for a spinal chord simulator.

³ Carrier’s Ex. 1, p. 21.

Lorcet is a short-term narcotic that lasts three to four hours; it takes approximately 30 minutes to be absorbed in the bloodstream. The pain relief lasts three to four hours and then returns. Dr. Lewis prescribed the Duragesic patch to assist with pain relief as well as Claimant's movement. The patch is time-released and provides a longer-acting and more effective method to control constant pain.

Dr. Lewis testified that he did not believe it was reasonable to remove narcotics from Claimant at this time. He stated that the goal was to improve the Claimant's functional ability and that he had not had success with attempts to wean the Claimant off narcotics, noting that Claimant continued to report pain levels of 10 on a scale of 1 to 10 even while using the narcotics.

Dr. Lewis testified that, with the medications, Claimant is able to be at home, get out and perhaps go to the grocery store. Without them, Dr. Lewis said that Claimant would be bedridden and not able to function. Although he had considered a de-toxification program, Dr. Lewis said that there is a 90 percent rate of recidivism and that there would still be a need for pain relief from some source.

3. Analysis

Carrier complains about treating Claimant's chronic, long-term pain with narcotic medications that are primarily intended for short-term use, but does not dispute that Claimant suffers from debilitating pain. As noted by Dr. Lewis, Claimant is unable to function without significant pain relief. This was not disputed by Carrier's evidence.

Carrier's main contention is that Claimant should be weaned off narcotics, but it did not suggest an alternative pain relief treatment once the narcotics are withdrawn. The evidence clearly indicates that Claimant needs pain relief and the medications provide that relief. Further, it appeared

that recommendations for other treatment modalities, such as a spinal chord stimulator, have been denied by Claimant, leaving the treating physician little treatment options besides the use of narcotic medications in the way of pain management. The evidence demonstrates that Claimant's ongoing treatment relieves the effects of his compensable injury. Accordingly, the ALJ finds the medications are medically necessary to treat Claimant's chronic pain resulting from the injury and his back fusion.

The need for the office visits, assuming narcotic pain management is necessary, is not disputed by Carrier's evidence. Thus, the office visits are determined to be medically necessary.

Overall, the ALJ concludes, under the particular facts of this case, that the opinions of Claimant's treating doctor and the PMRE doctor are the most convincing. The ALJ concludes that the medications and the office visits were medically necessary to treat the Claimant's chronic pain as a result of his compensable injury

III. FINDINGS OF FACT

1. On / , Claimant fell fourteen feet onto a concrete surface during the course of performing his job.
2. Claimant sustained a lower back injury as a result of the fall.
3. As part of his treatment, Claimant has been prescribed narcotic medications.
4. In 2000, Claimant underwent back fusion surgery.
5. Claimant has received an impairment rating.
6. Since his injury, Claimant has suffered from chronic and debilitating pain. The pain has persisted even after the back fusion.

7. In 2005, Claimant began treatment with Jerry Lewis, M.D., a pain management specialist.
8. The Claimant suffers from back pain with radiculopathy.
9. Dr. Lewis has treated Claimant with various pain medications as he attempted to find a combination of medications that provided relief to Claimant.
10. In October 2006, Dr. Lewis recommended continued prescriptions for Lorcet and a Duragesic patch and three office visits for medication management.
11. The Claimant's employer's workers' compensation insurance carrier, One Beacon America Insurance Company, denied Dr. Lewis' request to provide the treatment referred to in Finding of Fact No. 10.
12. Dr. Lewis submitted a Request for Prospective Review of Medical Care Not Requiring Preauthorization, asking that the Texas Workers' Compensation Commission (Commission) order the disputed services to be provided.
13. The Commission appointed Ferral Lee Endsley, D.O., as the Prospective Review of Medical Examination (PRME) doctor.
14. On April 17, 2006, Dr. Endsley opined that the requested services were medically necessary.
15. On May 16, 2006, the Texas Department of Insurance, Division of Workers' Compensation, issued a medical interlocutory order (MIO) directing the Carrier to pay for the disputed services.
16. The Carrier requested a hearing not more than 20 days after receiving notice of the MIO.
17. All parties received not less than 10 days notice of the hearing that contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
18. Claimant has chronic pain as a residual effect of his injury and surgery.
19. Lorcet and a Duragesic patch are medications that relieve pain.
20. Lorcet and a Duragesic patch have helped relieve the Claimant's pain and allow him to perform activities of daily living.

21. Lorcet and a Duragesic patch are reasonably required to treat Claimant's chronic pain that resulted from his injury and fusion surgery.
22. Office visits are necessary to monitor a patient's use of medications.
23. The office visits requested by Dr. Lewis were needed to determine whether to refill prescriptions and monitor the Claimant's use of narcotic medications.

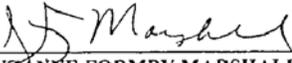
IV. CONCLUSIONS OF LAW

1. 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.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. Carrier has the burden of proof in this proceeding. TEX. LAB. CODE ANN. § 413.055, 28 TEX. ADMIN. CODE (TAC) § 148.14(a).
4. The Lorcet, Duragesic patch, and office visits are medically necessary to treat the Claimant's compensable injury. TEX. LAB. CODE ANN. § 408.021.

ORDER

IT IS THEREFORE, ORDERED that Lorcet and a Duragesic patch, and one office visit per month over a three-month period were medically necessary to treat the Claimant's compensable injury and that One Beacon America Insurance Company is ineligible for reimbursement for payments for those treatments and services.

SIGNED April 12, 2007



SUZANNE FORMBY MARSHALL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS