

Upon proper notice, the hearing convened on February 8, 2007, before Administrative Law Judge (ALJ) Penny A. Wilkov, at the State Office of Administrative Hearings (SOAH). The hearing concluded and the record closed the same day. Attorney Steve Tipton represented Carrier and attorney Alyssa J. Long represented the Division. Harold Clay Henderson, M.D., *pro se*, participated by telephone. The injured employee (Claimant) participated by telephone, with the assistance of Division Ombudsman Anthony Walker, who attended the hearing.

II. DISCUSSION

A. Background and Applicable Law

Claimant sustained a work-related shoulder injury on [REDACTED], when she slipped and fell on her outstretched left arm. The nine-page medical record in evidence included a three-page "life-care plan," prepared by Dr. Henderson, loosely chronicling Claimant's medical history of seven surgeries on her left shoulder, a nerve block for damaged nerves, chronic pain treatment, and failed occupational therapy. The record also recounts a significant psychiatric history of depression, anxiety, drug dependence, a manic-affective disorder, and suicide attempts.

Dr. Henderson's examination in December 2006 revealed myofascial spasms, decreased right flexion and left shoulder rotation, left shoulder musculature atrophy, and no left shoulder range of motion. Claimant subjectively reported ongoing sensitivity to touch, chronic pain, depression, sleep disorder, chronic fatigue, and stress.

Dr. Henderson submitted a Prospective Review Medical Examination (PRME) request after Carrier denied the following care over a 90-day period:

- ▶ Oxycotin, 40 mg., one tablet four times daily, 120 tablets;
- ▶ Xanax, 20 mg., one tablet twice daily, 60 tablets;
- ▶ Cymbalta, 30 mg., one tablet once daily, 30 tablets;
- ▶ Seroquel, 100 mg., one tablet once daily, 30 tablets;
- ▶ Namenda, 10 mg., one tablet twice daily, 60 tablets;
- ▶ Lyrica, 75 mg., two tablets twice daily, 120 tablets; and
- ▶ Monthly office visits for three months.

A PRME doctor found the care to be medically necessary to treat Claimant. After Carrier continued to dispute reimbursement, the Commission issued the MIO and Carrier requested a hearing before SOAH. Carrier has the burden of proof in this proceeding.¹

Employees have a right to necessary health care under TEX. LABOR 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."

B. Summary of Disputed Issue

The Division asserted that the six medications and three office visits prescribed by Claimant's physician, Dr. Henderson, are medically necessary treatments for Claimant's compensable injury, as confirmed in the PRME opinion by Dr. Stephen R. Fowler, M.D., a commission-appointed physician. Conversely, Carrier argued that the proposed medications are not medically necessary, claiming that they would delay Claimant's recovery and preserve a pattern of

¹ TEX. LAB. CODE ANN. §413.055; 28 TEX. ADMIN. CODE (TAC) §148.14(a).

over-treatment. The issue presented is whether the prescribed medications and associated office visits were medically necessary to treat Claimant's compensable injury.

C. Evidence and Argument Concerning Proposed Treatments

1. Oxycontin

Dr. Henderson, a board-certified pain management specialist, testified that Oxycontin is a slow-release opiate, one of only five drugs capable of gradually delivering pain relief by blocking pain sensation in the cortex of the brain. Opioids, according to Dr. Henderson, are the foundation of chronic pain relief. After treating Claimant and consulting with her family, he concluded that Claimant's ability to function independently with her pain would cease without this medication.

Carrier presented the testimony of Nicholas Tsourmas, M.D., an orthopedic surgeon, who reviewed Claimant's medical records. Dr. Tsourmas related that a side-effect of Oxycontin is depression and, when combined with Claimant's significant psychiatric history, a pattern of depression and anti-depression medication would evolve. Without an objective psychological evaluation or documented improvements in function or pain, Dr. Tsourmas disputed Claimant's self-reported pain as a reliable efficacy gauge, particularly in light of her six-year dependency.

Claimant testified that when Oxycontin was previously discontinued in an earlier dispute with an insurance company, she was bedridden and unable to feed, dress, or bathe herself unassisted.

2. Xanax

Xanax was necessary, according to Dr. Henderson, as an anti-anxiety medication and muscle relaxant to treat Claimant's anxiety, trembling, and depression. Dr. Tsourmas took issue with the prescribed dosage of Xanax, contending that Claimant suffered from depression and not anxiety.

3. Cymbalta

Dr. Henderson prescribed Cymbalta, a neuropathic pain and anti-depression medication, explaining that most chronic pain patients are depressed due to lifestyle change, sleep deprivation, pain, grief, loss of income, relationship failures, and reduced ability to travel. He testified that Claimant's severe depression necessitated two medications: Cymbalta, at maximum dosage, and Seroquel. Dr. Tsourmas disagreed that two anti-depression medications were required, pointing out that Claimant was taking numerous pills per day.

4. Seroquel

Seroquel, like Cymbalta, was necessary as an anti-depression medication and sleeping aid, according to Dr. Henderson. Dr. Tsourmas's opinion was that one medication was sufficient.

5. Namenda

According to Dr. Henderson, Namenda is being prescribed "off label," (i.e. not approved for a particular use) to reverse medication tolerance. He based this off-label use on a published clinical trial. Dr. Henderson testified that it is common for physicians to prescribe off-label uses.

Dr. Tsourmas pointed out that Namenda was approved to treat Alzheimer's disease and that he did not find clinical support in the medical literature to support the medication's use for shoulder pain.

6. Lyrica

Dr. Henderson prescribed Lyrica, off-label, for Claimant's headaches and Reflex Sympathetic Dystrophy (RSD). Dr. Henderson explained that Lyrica curtails electrical activity at the nerve and nerve endings so that the pain message is not generated to the brain and, working in tandem with Oxycontin, the cortex does not receive messages of pain from the nerves.

Dr. Tsourmas pointed out that Lyrica is approved for diabetic nerve pain and that there was no clinical evidence that Lyrica has an ability to curtail shoulder pain.

7. Office Visits

Dr. Henderson recommended the office visits to monitor Claimant's use of the medications. Carrier did not present evidence that the visits were not necessary.

D. ALJ's Analysis and Decision

The ALJ finds that Carrier did not establish that the medications in question were not medically reasonable and necessary for the treatment of Claimant's compensable injury.

Although Dr. Tsourmas is a well-qualified orthopedic surgeon, Dr. Henderson is a board-certified pain management specialist with twenty years of experience in this specific field. Dr.

Henderson has personally treated Claimant since 2005, and he met with her family, leading to an understanding of Claimant's medical condition. Dr. Tsourmas, on the other hand, has based his opinion on a one-time record review. Dr. Henderson relied on the American Academy of Pain Management guidelines, including the numeric standards of reasonable and standard doses for chronic pain, for guidance in his practice. Conversely, Carrier challenged the medication amount and dosage and speculated that another narcotic or drug regimen might be more appropriate, but it offered no other course of treatment.

Claimant has had seven surgeries, with accompanying post-surgical chronic pain and complications. Dr. Henderson's life care plan is based on Claimant's history of surgeries and tests and her description of symptoms and pain, with a current care plan and treatment goals to reduce the medication. Dr. Henderson has also noted that Claimant's functioning has increased as measured by personal observation, family reports, and her history. Therefore, the evidence indicates that these medications offer Claimant a better quality of life, promote her ability to maintain independence, and relieve the effects of the compensable injury.

Accordingly, the ALJ concludes that Carrier failed to prove by a preponderance of the evidence that the disputed services and medications were not medically necessary to treat Claimant's compensable injury.

III. FINDINGS OF FACT

1. The injured employee (Claimant) injured her shoulder in a work-related accident on)
2. As a result of her injury, Claimant has suffered from myofascial spasms, decreased right flexion and left shoulder rotation, atrophy of the left shoulder musculature, and no left shoulder range of motion.

3. Claimant also has ongoing sensitivity to touch, chronic pain, depression, a sleep disorder, chronic fatigue, and stress.
4. Claimant's medical history included seven surgeries on her left shoulder, nerve blocks for damaged nerves, chronic pain treatment, and failed occupational therapy.
5. Claimant began treatment with Harold Clay Henderson, M.D., in May 2005, and Dr. Henderson remains Claimant's primary treating physician.
6. Dr. Henderson submitted a prospective review of medical necessity request after Carrier denied the following care over a 90-day period:

Oxycontin, 40 mg., one tablet four times daily, 120 tablets;
Xanax, 20 mg., one tablet twice daily, 60 tablets;
Cymbalta, 30 mg., one tablet once daily, 30 tablets;
Seroquel, 100 mg., one tablet once daily, 30 tablets;
Namenda, 10 mg., one tablet twice daily, 60 tablets;
Lyrica, 75 mg., two tablets twice daily, 120 tablets; and
Monthly office visits for three months.
7. A prospective review medical examination (PRME) doctor found the disputed care to be medically necessary to treat Claimant.
8. After Carrier continued to deny payment for the disputed care, the Commission issued a medical interlocutory order (MIO) directing Carrier to pay for the care.
9. Carrier requested a hearing before SOAH.
10. Oxycontin, a slow-release opiate, gradually delivers chronic pain relief by blocking pain sensation in the cortex of the brain.
11. Oxycontin is an appropriate medication to treat Claimant's chronic pain caused by her compensable injury.
12. Xanax is an anti-anxiety medication reasonably suited to treat Claimant's anxiety, trembling and depression as a result of her compensable injury.
13. Chronic pain frequently causes depression and sleep disorders.

14. Claimant's current depression and sleep disorders are caused by her compensable injury.
15. Cymbalta is an acceptable medication to treat Claimant's depression and neuropathic pain.
16. Seroquel is an appropriate medication to treat Claimant's depression and sleep disorder.
17. It is common for physicians to prescribe medications for off-label uses.
18. Namenda is used off-label, based on a published clinical trial, to reverse medication tolerance.
19. Namenda is a proper medication to reverse Claimant's medication tolerance resulting from the pharmaceutical treatment of her compensable injury.
20. Lyrica is used off-label to treat headaches and Reflex Sympathetic Dystrophy (RSD) symptoms.
21. Lyrica is an appropriate medication to treat Claimant's headaches and RSD caused by her compensable injury.
22. The disputed medications helped relieve the effects naturally resulting from Claimant's compensable injury.
23. The monthly office visits with Dr. Henderson are medically reasonable and necessary to treat Claimant's compensable injury.

IV. CONCLUSIONS OF LAW

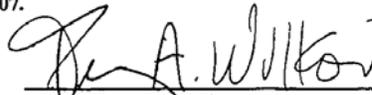
1. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§402.073(b) and 413.055 and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
3. The Carrier has the burden of proof in this proceeding. TEX. LAB. CODE ANN. §413.055; 28 TEX. ADMIN. CODE §148.14(a).

4. Carrier failed to prove that the disputed care was not medically necessary. TEX. LAB. CODE ANN. §408.021.

ORDER

IT IS ORDERED that TPCIGA for Reliance National Indemnity Company failed to prove by a preponderance of the evidence that the disputed care was not medically necessary to treat Claimant's compensable injury. **IT IS THEREFORE ORDERED** that TPCIGA for Reliance National Indemnity Company's request, under 28 TEX. ADMIN. CODE § 134.650, to be reimbursed for the disputed care and medications is **DENIED**.

SIGNED April 6, 2007.



PENNY A. WILKOV
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS