

SOAH DOCKET NO. 454-07-0952.P1

**LUMBERMENS MUTUAL
CASUALTY COMPANY,
Petitioner**

V.

**TEXAS DEPARTMENT OF
INSURANCE, DIVISION OF
WORKERS COMPENSATION AND
MICHAEL J.
PENDLETON, M.D.,
Respondents**

§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. INTRODUCTION

Lumbermen's Mutual Casualty Company (Carrier) requested a hearing to contest a medical interlocutory order issued by the Texas Department of Insurance, Division of Workers' Compensation (Division) regarding an office visit and prescriptions for two drugs provided in October 2006 by Michael J. Pendleton, M.D., to a workers' compensation claimant (Claimant). This decision finds that the Carrier has not shown that the services in dispute were not medically necessary.

I. PROCEDURAL HISTORY

The Carrier denied the medical necessity of the disputed services and medications, which consisted of one office visit and prescriptions for 90 day supplies of Flexaril and Motrin. Dr. Pendleton requested review by the Division, and the matter was referred to an independent doctor for a Prospective Review Medical Examination (PRME). The PRME doctor found that the prescribed medications and related office visit were medically necessary to treat the Claimant's compensable injury. Accordingly, the Division ordered the requested reimbursement, and the Carrier has timely appealed that decision to the State Office of Administrative Hearings (SOAH).

The hearing was conducted on October 17, 2007, before SOAH Administrative Law Judge Kerry D. Sullivan. The Carrier was represented by attorney Meggan Shel Crow. The Division was represented by staff attorney Dean L. Krohn. Dr. Pendleton participated by telephone. The record closed on October 19, 2007, with the filing of additional documentation referenced at the hearing.

II. LEGAL FRAMEWORK, DISCUSSION, AND ANALYSIS

A. Legal Framework.

Employees have a right to necessary health care under TEX. LABOR CODE ANN. (Labor Code) §§ 408.021 and 401.011. Section 408.021(a) provides: AAn 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.¹

B. Evidence and Arguments.

This case involves a compensable injury to Claimant that occurred on _____, when Claimant hurt her lower back while lifting a heavy item in the course of her duties as a _____. An MRI revealed disc herniation at L4/L5. Claimant underwent a lumbar laminectomy on October 17, 2001. She has also received extensive chiropractic and physical therapy. Her treating doctor determined that the Claimant was at maximum medical improvement on December 24, 2002, and assessed an impairment rating of 13%.

The Claimant has continued to complain of back pain. Dr. Pendleton began treating the Claimant in July 2006. He stated that, in October 2006, when he prescribed the medications in dispute, the Claimant was experiencing an acute exacerbation of her back injury and that he observed that she was experiencing spasms. At that time he prescribed 90 day supplies of Flexaril, a non-narcotic muscle relaxant, and prescription Motrin, an anti-inflammatory. Dr. Pendleton saw the Claimant for the last time on January 29, 2007, at which time she reported that the medication relieved her pain, helped her function, and allowed her to sleep better.

The Carrier urges that the medications were not medically necessary. The Carrier’s witness, John Sklar, M.D., testified that muscle-relaxing medication is generally not appropriate for chronic back pain and that he would also not prescribe Motrin under these circumstances because it can increase risk of renal failure. The Carrier also points out that, although Dr. Sklar did not physically examine the Claimant, at least three other doctors have examined her over the last two

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

years and recommended that no further medical treatment was necessary at that time. Finally, the Carrier asserts that the Claimant's pain, if any, is attributable to degenerative disc disease rather than to her compensable injury.

C. Analysis.

The ALJ is persuaded by Dr. Pendleton's testimony that the rather benign, non-narcotic drugs he prescribed were appropriate and medically necessary to treat the Claimant's compensable injury. While these medications are likely not appropriate as routine long-term solutions for chronic pain, the Claimant was experiencing an acute flare up during this period, as evidenced in part by the spasms Dr. Pendleton observed. The medications in dispute were prescribed for only a 90 day period with one associated office visit, and Dr. Pendleton received feedback that the medications were beneficial to the Claimant. Under these circumstances, the ALJ cannot conclude that these medications were proven to be medically unnecessary.

The ALJ also finds that the pain treated by Dr. Pendleton related to the Claimant's compensable injury. The Carrier is correct that the Claimant also has degenerative disc disease, but the medical opinions contained in the record, with the exception of Dr. Sklar, consistently indicate that the Claimant's compensable injury was a producing cause of her pain. While Dr. Sklar questioned this connection, he provided no clear basis for his diverging view.

Accordingly, the ALJ concludes that the Carrier has failed to show that the office visit and prescription medications Flexaril and Motrin were not necessary for treatment of Claimant's compensable injury. Therefore, the medical interlocutory order is upheld.

In support of this decision, the ALJ makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. On _____, the Claimant hurt her lower back while lifting a heavy item as part of her duties as a _____.

2. On the date of injury, Lumbermen's Mutual Casualty Company (Carrier) was the workers' compensation insurance carrier for Claimant's employer.
3. Claimant was diagnosed with a herniated disc at L4/L5.
4. Claimant underwent a lumbar laminectomy on October 17, 2001. She has also received extensive chiropractic and physical therapy.
5. Claimant's treating doctor determined that the Claimant was at maximum medical improvement on December 24, 2002, and assessed an impairment rating of 13%.
6. Stephen Michael J. Pendleton, M.D., began treating Claimant in 2006.
7. In October 2006, the Claimant was suffering an acute exacerbation of her back pain, including spasms, when Dr. Pendleton examined the Claimant.
8. In October 2006, Dr. Pendleton prescribed for the Claimant a 90 day supply of Flexaril, a non-narcotic muscle relaxant, and prescription Motrin, a pain reliever and anti-inflammatory medication.
9. Claimant reported that the medication relieved her pain, helped her function, and allowed her to sleep better.
10. Flexaril and Motrin are appropriate medications to treat pain associated with acute exacerbations of Claimant's compensable injury.
11. On December 29, 2005, Dr. Pendleton requested a prospective review of medical care for the following treatment he proposed for Claimant: one office visit and 90 day prescriptions of Flexaril and Motrin.
12. The Texas Department of Insurance, Division of Workers' Compensation (Division) assigned the matter to a PRME doctor in accordance with 28 TEX. ADMIN. CODE ' 134.650.
13. The PRME doctor issued a decision concluding that the proposed services were medically necessary to treat the compensable injury.
14. On October 19, 2006, the Division issued an interlocutory order, based on the PRME doctor's review and under the authority of TEX. LABOR CODE ANN. ' 413.055(a), requiring Carrier to reimburse for the proposed services.
15. On November 7, 2006, Carrier requested a hearing by the State Office of Administrative Hearings (SOAH) to appeal the interlocutory order.
16. On November 30, 2006, the Division sent notice of the SOAH hearing in this matter to all parties. The hearing was continued at the request of the parties.

17. All parties received adequate 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.
18. On October 17, 2007, SOAH Administrative Law Judge Kerry D. Sullivan held a contested case hearing concerning the dispute in Austin, Texas. Carrier appeared at the hearing through its attorney, Meggan Shel Crow. Dr. Pendleton appeared by telephone. The Division appeared through its attorney, Dean L. Krohn. The record closed on October 19, 2007, with the filing of additional documentation referenced at the hearing.

IV. CONCLUSIONS OF LAW

19. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE ANN. §§ 402.073(b) and 413.055(c) and TEX. GOV'T. CODE ANN. ch. 2003.
20. Notice of the hearing was proper and timely. TEX. GOV'T. CODE ANN. §§ 2001.051 and 2001.052.
21. 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).
22. Carrier had the burden of proving by the preponderance of the evidence that the proposed services are not reasonably medically necessary to treat Claimant's compensable injury. 1 TEX. ADMIN. CODE § 155.41(b); 28 TEX. ADMIN. CODE § 148.14(a).
23. Based on the above Findings of Fact and Conclusions of Law, Carrier has failed to show that the treatment in issue was not medically necessary to treat Claimant's compensable injury.
24. Based on the above Findings of Fact and Conclusions of Law, the interlocutory order should be upheld.

ORDER

IT IS ORDERED THAT the Division's interlocutory order of October 19, 2006, in this matter is upheld.

SIGNED November 1, 2007.

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