

<b>SENTRY INSURANCE A MUTUAL COMPANY, Petitioner</b>	§ § § § § § § § § §	<b>BEFORE THE STATE OFFICE</b>
<b>V.</b>		<b>OF</b>
<b>TEXAS DEPARTMENT OF INSURANCE' DIVISION OF WORKERS' COMPENSATION and ALVARO GARCIA, M.D., Respondents</b>		<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

**I. INTRODUCTION**

Sentry Insurance, A Mutual Company (Carrier) challenges a medical interlocutory order (MIO) issued by the Texas Department of Insurance's Division of Workers' Compensation (DWC) requiring Carrier to reimburse Alvaro Garcia, M.D., for providing medical services to \_\_\_\_\_. (Claimant). William Wayne Hairston, D. O., performed a prospective review medical examination (PRME) of Claimant and determined that Dr. Garcia's proposed treatment was medically necessary to treat Claimant's compensable injury. The Administrative Law Judge (ALJ) concludes that the proposed treatment was medically necessary and that Carrier is required to reimburse Dr. Garcia for providing the medical services to Claimant.

**II. FINDINGS OF FACT**

1. On \_\_\_\_\_, Claimant injured his neck, left shoulder, and left arm (compensable injury) while working with a heavy air gun in an attempt to clean castings.
2. On the date of injury, Carrier was the workers' compensation insurance carrier for Claimant's employer.
3. On July 12, 1995, an anterior cervical discectomy and fusion with bone grafting at C5-6 and C6-7 was performed on Claimant.
4. On August 13, 1996, Dr. Garcia became Claimant's treating doctor.
5. Dr. Garcia has diagnosed Claimant as having an injured cervical spine that causes chronic

- muscle spasms and radicular pain to Claimant's left shoulder and arm.
6. Dr. Garcia requested prospective review of Carrier's refusal to pay for Claimant's ongoing medications and office visits.
  7. On October 3, 2006, Dr. Hairston, the PRME doctor, examined Claimant and determined that one office visit in a 90-day period and the following medications were medically necessary to treat Claimant's compensable injury:
    - a. Maxidone, 10/850mg, 1 tablet every 8 hours, #90 per month for 90 days
    - b. Zanaflex, 4mg, 1 tablet 3 times per day, #90 per month for 90 days
    - c. Celebrex, 200mg, 1 capsule twice a day, #60 per month for 90 days
    - d. Ambien CR, 12.5mg, 1 tablet at bedtime, #30 per month for 90 days
    - e. Desyrel, 150mg, 1 by mouth at bedtime, #30 per month for 90 days
  8. On October 12, 2006, DWC issued an MIO. Based on the PRME doctor's review and under the authority of the Texas Labor Code ' 413.055, DWC required Carrier to reimburse Dr. Garcia for one office visit every 90 days and the medications noted above in Finding of Fact No. 7.
  9. On November 30, 2006, Carrier requested a hearing by a State Office of Administrative Hearings (SOAH) ALJ to appeal the MIO.
  10. 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.
  11. On October 12, 2007, SOAH ALJ Carol Wood conducted a hearing concerning the matter in Austin, Texas. The hearing concluded, and the record closed that same day.
  12. Carrier appeared at the hearing through its attorney, Scott Bouton.
  13. DWC appeared at the hearing through its attorney, Terra Colvin Thomas.
  14. Dr. Garcia appeared at the hearing by telephone.
  15. In order to wean Claimant from the medications, approximately two years ago Dr. Garcia attempted to put Claimant on long-acting analgesics. However, Dr. Garcia was unsuccessful because Claimant could not tolerate the analgesics' side effects of nausea, diarrhea, headaches, and gastrointestinal disturbances.
  16. Dr. Garcia only sees Claimant on an "as-needed" basis.
  17. Claimant has remained stable on the current dosages of his medications. He has never asked Dr. Garcia to increase his dosages or to prescribe his medications ahead of schedule.
  18. Claimant formerly took 80mg of hydrocodone daily, but now takes 30mg daily.

19. Dr. Garcia trained at Yale University and is a member of the Texas Society of Pain Medicine.
20. Dr. Garcia relies on his clinical experience and training in treating Claimant.
21. The following medications prescribed by Dr. Garcia improve Claimant's symptoms and allow him to remain functional, to interact with his family, to travel, and to perform daily activities:
  - a. Maxidone, a hydrocodone preparation, prescribed to relieve pain.
  - b. Zanaflex, a muscle relaxant, prescribed to relieve pain.
  - c. Celebrex, a nonsteroidal anti-inflammatory, prescribed to treat chronic pain.
  - d. Ambien CR, a nonbenzodiazepine hypnotic, prescribed as an aid to help Claimant sleep because his severe pain either keeps him awake at night or wakes him up.
  - e. Desyrel, an anti-depressant, prescribed to treat pain.
22. By means of an office visit every 3 months, Dr. Garcia monitors Claimant's condition and his use of the medications.
23. Dr. Garcia's treatment of Claimant is enhancing his medical condition and promoting his recovery.

### **III. CONCLUSIONS OF LAW**

1. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order. TEX. LABOR CODE (Labor Code) §§ 402.073(b) and 413.055(c) and TEX. GOV'T. CODE (Gov't Code) ch. 2003.
2. Notice of the hearing was proper and timely. Gov't Code §§ 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. Labor Code § 408.021(a).
4. 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 (TAC) § 155.41(b); 28 TAC § 148.21(h).
5. Based on the above Findings of Fact and Conclusions of Law, the proposed services are reasonably medically necessary to treat Claimant's compensable injury.
6. Based on the above Findings of Fact and Conclusions of Law, Carrier is required to reimburse or pay Dr. Garcia for providing the medical services to Claimant.

**ORDER**

**THEREFORE, IT IS ORDERED** that Carrier reimburse Dr. Garcia for one office visit every 90 days and the medications Maxidone, Zanaflex, Celebrex, Ambien, and Desyrel provided Claimant.

**SIGNED December 11, 2007.**

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**CAROL WOOD  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARING**