

**SOAH DOCKET NO. 454-07-2298.P1
(DWC NO. _____)**

TRANSPORTATION INSURANCE	§	BEFORE THE STATE OFFICE
COMPANY,	§	
PETITIONER	§	
	§	
V.	§	
	§	OF
TEXAS DEPARTMENT OF INSURANCE,	§	
DIVISION OF WORKERS'	§	
COMPENSATION AND RICHARD	§	
PORTER WILSON, M.D.,	§	
RESPONDENTS	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. INTRODUCTION

Transportation Insurance Company (Carrier) requested a hearing to contest a medical interlocutory order issued by the Texas Department of Insurance, Division of Workers' Compensation (Division) regarding medical services for ____ (Claimant), a _____. Richard Wilson, M.D., prescribed certain medications for Claimant, and Carrier denied the medical necessity of such medications and related office visits. The dispute was referred to an independent doctor for a Prospective Review Medical Examination (PRME). The PRME doctor found that the prescribed medications and related office visits were medically necessary to treat the Claimant's compensable injury, and the Division ordered the Carrier liable for reimbursing for the services.

The only dispute in this case is whether the prescribed medications and related office visits (every 90 days) are reasonably necessary to treat the Claimant's compensable injury. After considering the evidence and arguments presented, the Administrative Law Judge (ALJ) concludes that Carrier has shown that some of the prescribed medications—namely Xanax and Soma—are not medically necessary for Claimant, and Carrier is not required to reimburse for those treatments. However, Carrier has failed to show that Lortab and office visits every 90 days are not medically necessary treatment for Claimant. Therefore, the ALJ upholds the interlocutory order requiring the Carrier to reimburse for the Lortab and office visits.

II. DISCUSSION AND ANALYSIS

This case involves a compensable injury that occurred in ____, when Claimant injured herself while working as a ____ and lifting a patient. Claimant underwent back surgery in 1992, but continued to suffer ongoing chronic pain. In 1995, Richard Porter Wilson, M.D., became Claimant's primary treating physician. He provided different types of treatment for Claimant's ongoing back pain. In 1999, Dr. Wilson concluded that conservative care with a medication regimen and regular monitoring was the best course of treatment for Claimant. So, Dr. Wilson prescribed various medications to treat Claimant's symptoms. Although the medication regimen has been modified

somewhat, it has primarily consisted of daily dosages of Xanax, Soma, and Lortab in recent years.¹ Further, Claimant has an office visit every 90 days with Dr. Wilson to monitor her condition and treatment program. Carrier disputes that this treatment regimen is appropriate for Claimant.

At the hearing, Carrier presented evidence in support of its contention that the ongoing, long-term use of Xanax, Soma, and Lortab are not appropriate treatment for Claimant's chronic back pain. Carrier's evidence included the testimony of Samuel Bierner, M.D., medical reports from numerous doctors, and ODG treatment guidelines.² Of principle importance, Dr. Bierner concluded that:

- Long-term use of Xanax, Soma, and Lortab is not appropriate, given the habit-forming nature of these drugs;
- The most appropriate course of treatment for Claimant would likely include an exercise program, along with anti-inflammatory medications and over-the-counter pain relievers;
- Claimant's depression, which is the basis of Claimant's use of Xanax, has not been shown to be the result of her compensable injury;
- There is some evidence in the record indicating that Claimant has engaged in symptom magnification, thus causing additional concern about continuing to prescribe her potentially-addictive drugs.

In his testimony, Dr. Bierner elaborated on the basis of his conclusions, but the statements above essentially encompass the gist of his opinions.

In addition to Dr. Bierner's opinion, Carrier points out that numerous other doctors have questioned Claimant's treatment with the medications in issue. Dr. Chaula Rana conducted a PRME on Claimant in September 2005, and concluded that Claimant's depression—and, thus, her use of

¹ Xanax is a psychiatric anti-anxiety drug; Soma is a sedative; and Lortab is a pain reliever, also known as Hydrocodone.

² ODG treatment guidelines are prepared and issued by the Work Loss Data Institute, an independent non-governmental organization affiliated with the workers' compensation industry. Because the treatment guidelines offer only general guidance, were not in place during the time period relevant to the PRME, and are contradicted in part by some of the doctor reports, the ALJ finds them to have no evidentiary weight and does not address them in this Decision.

Xanax—was not related to her compensable injury.³ Dr. John Mendez reviewed Claimant’s medical records and issued a report in April 2004 concluding that the current treatment regimen of Claimant was not shown to be adequately documented. More specifically, Dr. Mendez expressed concerns about long-term usage of Lortab for chronic pain, noting that it was sub-optimal because it tended to mask pain rather than address the reasons for such long-term pain.⁴ Accordingly, Dr. Mendez concluded that Lortab was more appropriate for treatment of acute pain. Carrier also presented the report of Dr. James Hood, who examined Claimant in July 2007. Dr. Hood opined that “most” of the current medication regimen prescribed for Claimant was “totally inappropriate,” noting that both Xanax and Soma are not recommended for long-term use.⁵

In contrast, Dr. Wilson testified that the medications prescribed for Claimant have provided her relief and have been effective in treating her chronic pain. He noted that Claimant did not want any additional surgery, and he did not believe that would be beneficial for her. Dr. Wilson also pointed out that other doctor reports in the record substantiate his treatment. For example, Dr. Hood agreed that Lortab was appropriate for Claimant.⁶ And, Dr. Rana had found in 2005 that both Soma and Lortab were appropriate for Claimant;⁷ in 2007, Dr. Rana’s opinion was that all of the medications were appropriate for Claimant.⁸ Dr. Wilson notes that Carrier’s expert, Dr. Bierner, has never examined Claimant and is not as competent to offer an opinion on her course of treatment.

After considering the evidence, the ALJ concludes that the record adequately establishes that Soma and Xanax are not appropriate treatment for Claimant’s injury. In reaching this conclusion, the ALJ gives great weight to the opinion of Dr. Hood—a disinterested doctor who examined Claimant and adequately explained the rationale for his opinions. As the evidence in the record uniformly demonstrates, all of the prescribed medications are habit-forming drugs and generally

³ Ex. 10, at 19.

⁴ Ex. 10, at 64-67.

⁵ Ex. 11, at 3.

⁶ Ex. 11, at 3.

⁷ Ex. 10, at 19-20.

⁸ Ex. 10, at 29-31.

should not be used for long-term treatment. Although nearly all of the doctors who have offered an opinion have agreed that Lortab is appropriate for Claimant's treatment, most of them also agree that neither Soma nor Xanax are appropriate for treatment of Claimant's compensable injury. The ALJ finds such evidence persuasive.

First, the ALJ finds that the record does not support a conclusion that Claimant's depression is part of her compensable injury, so the need for Xanax is not part of her covered workers' compensation treatment. Even the PRME doctor initially indicated that Xanax was not appropriate for Claimant's compensable back injury, although her later opinion contradicted this without any explanation of the change. Because of the PRME doctor's failure to explain her change in opinion, the ALJ finds the PRME doctor's later conclusions to be of limited persuasive weight. In reviewing the record, the ALJ finds no diagnoses or other documentation reflecting that Claimant's depression is the result of her back injury. Moreover, even if her depression is part of her covered injury, the ALJ is persuaded by the opinions of Dr. Hood and Dr. Bierner that long-term usage of Xanax is ordinarily not appropriate without some clear evidence of the efficacy of the treatment. In this case, the evidence does not adequately support the efficacy of Xanax for Claimant; in fact, the evidence indicates that Valium was more helpful than Xanax for Claimant's depression.⁹

Second, the weight of the evidence supports a finding that Soma is not necessary for Claimant's treatment. Again, Dr. Hood and Dr. Bierner both agreed that long-term use of Soma presents a risk of addiction and a lack of efficacy and, therefore, should not be used for long-term treatment. In this case, Claimant has been on her medication regimen for nearly eight years, with little change. As such, continuing to take a sedative such as Soma appears contra-indicated and is not supported by the opinions of those doctors the ALJ found most credible. Therefore, the ALJ agrees that continued use of Soma by Claimant is not medically necessary under the circumstances.

However, the weight of the evidence supports ongoing use of Lortab. Dr. Rana, Dr. Wilson, and Dr. Hood all agree that Lortab is appropriate for Claimant's chronic pain—provided that

⁹ Ex.10, at 62.

Claimant's condition is monitored properly by Claimant's treating physician, Dr. Wilson. Dr. Mendez questioned the efficacy of the ongoing use of Lortab, but also indicated that there was the "medical probability that [Claimant] will require medications to control pain and improve functionality for the remainder of her life" and that "it is likely that [Claimant] will, as noted above, require future treatment, more likely than not with medications. However, to justify her current medication regimen, it should be shown to be efficacious" ¹⁰ Lortab is a pain relief drug and, as such, would likely fall within the type of treatment that Dr. Melvin indicates will be needed for Claimant for the rest of her life. Moreover, Dr. Wilson's medical reports show that Claimant has received pain relief from the medication. So, the ALJ concludes there is some efficacy from the treatment. The only doctor who clearly stated that Lortab is not appropriate for Claimant was Dr. Bierner. Given the weight of the evidence to the contrary, the ALJ finds that his opinion is not sufficient to support a finding that Lortab is not medically appropriate for Claimant.

Because the ALJ finds that Lortab is appropriate ongoing treatment for Claimant's chronic pain, then it is also necessary for Claimant's condition to be monitored on a regular basis. Therefore, office visits every 90 days are also appropriate. Further, although it is not in issue in this case, the ALJ expects that Dr. Wilson will conduct the necessary testing on a regular basis to ensure that the long-term use of Lortab is not causing any damage to Claimant's internal organs.

In conclusion, then, the ALJ finds that Lortab, in the recommended dosage at four times per day, and one office visit every 90 days are medically necessary treatment for Claimant's chronic pain. However, daily use of Xanax and Soma are not. In support of this decision, the ALJ makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

5. In __, ____ (Claimant) suffered a compensable injury to her back while working as a ____ and lifting a patient.
6. On the date of injury, the Transportation Insurance Company (Carrier) was the workers'

¹⁰ Ex. 10, at 66-67.

compensation insurance carrier for Claimant's employer.

7. Claimant underwent back surgery in 1992, but continued to suffer ongoing chronic pain.
8. In 1995, Richard Porter Wilson, M.D., became Claimant's primary treating physician, and he provided different types of treatment for Claimant's ongoing back pain.
9. In 1999, Dr. Wilson concluded that conservative care with a medication regimen and regular monitoring was the best course of treatment for Claimant. So, Dr. Wilson prescribed various medications to treat Claimant's symptoms.
10. Although the medication regimen has been modified somewhat, in recent years it has primarily consisted of daily dosages of Xanax, Soma, and Lortab. Further, Claimant has an office visit every 90 days with Dr. Wilson to monitor her condition and treatment program.
11. Lortab is a pain relief drug, also known as hydrocodone.
12. Xanax is a psychiatric anti-anxiety drug.
13. Soma is a sedative drug.
14. Claimant continues to suffer from chronic pain and is expected to need treatment for the remainder of her life, most likely with medication.
15. Lortab is an appropriate medication for Claimant to take long-term for her chronic pain.
16. Neither Xanax nor Soma are appropriate medications to take long term for Claimant's chronic pain.
17. It is appropriate for Dr. Wilson to see Claimant once every three months to monitor her progress and her medication level.
18. When Carrier denied the necessity of the medication and office visit treatment regimen prescribed by Dr. Wilson, he requested a prospective review of medical care for the following treatment he proposed for Claimant: one office visit every three months and the daily use of Xanax, Lortab, and Soma.
19. 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.
20. On January 8, 2007, the PRME doctor issued a decision concluding that the proposed services were medically necessary to treat the compensable injury.
21. On February 15, 2007, 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.

22. On February 20, 2007, Carrier requested a hearing by the State Office of Administrative Hearings (SOAH) to appeal the interlocutory order.
23. On July 17, 2007, the Division sent notice of the SOAH hearing in this matter to all parties.
24. 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.
25. On September 19, 2007, SOAH Administrative Law Judge Craig R. Bennett held a contested case hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Carrier appeared at the hearing through its attorney, Erin Shanley. Dr. Wilson appeared at the hearing by telephone. The Division appeared at the hearing through its attorney, Terra Colvin Thomas. The hearing concluded and the record closed that same day.

IV. CONCLUSIONS OF LAW

26. 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© and TEX. GOV'T. CODE ANN. ch. 2003.
27. Notice of the hearing was proper and timely. TEX. GOV'T. CODE ANN. §§ 2001.051-.052.
28. 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).
29. 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).
30. Based on the above Findings of Fact, Carrier has shown that the medications Soma and Xanax are not medically necessary for treatment of Claimant's compensable injury.
31. Based on the above Findings of Fact, Carrier has not shown that the daily use of Lortab and one office visit every 90 days are not medically necessary to treat Claimant's compensable injury.
32. Based on the above Findings of Fact and Conclusions of Law, the interlocutory order should be upheld in part, and set aside in part.

ORDER

IT IS ORDERED THAT the Division's interlocutory order of February 15, 2007, in this matter is upheld in regard to ordering reimbursement for daily use of Lortab and one office visit every 90 days. The Division's interlocutory order is set aside, however, in regard to ordering reimbursement for daily use of Soma and Xanax.

SIGNED September 25, 2007.

**CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**