

SOAH DOCKET NO. 454-07-2300.P1
(TWCC NO. _____)

AMERICAN MOTORISTS	§	BEFORE THE STATE OFFICE
INSURANCE COMPANY,	§	
Petitioner	§	
 	§	
V.	§	
 	§	OF
TEXAS DEPARTMENT OF	§	
INSURANCE-DIVISION OF WORKERS'	§	
COMPENSATION and JULIAN	§	
LOWELL HARO, M.D.,	§	
Respondents	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

American Motorists Insurance Company (Carrier) requested a hearing to contest a medical interlocutory order (MIO)¹ issued by the Division of Workers' Compensation of the Texas Department of Insurance (Division). The MIO required the Carrier to pay for three office visits to Julian Lowell Haro, M.D., to monitor medication, and for the medications MS Contin and Roxicodone, Zoloft, Baclofen, Zonegran, and Sonata. Those services and medications were found to be medically necessary for a worker's compensation claimant in a Prospective Review Medical Examination (PRME).² This decision finds that the Carrier should not be reimbursed for payments it made for these services.

1 The MIO was issued under authority of TEX. LABOR CODE ANN. §413.055, which allows the Division to enter an order requiring payment of medical benefits.

2 The PRME doctor issued the opinion in accordance with the procedure set out in 28 TEX. ADMIN. CODE §134.650, providing for a PRME of the medical necessity of proposed care and, if necessary, a determination of whether the compensable injury is the producing cause of the medical condition that is the subject of the care. If a PRME doctor issues an opinion that the care is medically necessary, the rule requires the Division to attempt to get the insurance carrier's voluntary agreement to provide the service. If an agreement is not reached, the Division is required to order the insurance carrier to pay for the benefits. The insurance carrier is required to comply with the order and pay for care found to be medically necessary. The carrier may then request a hearing to attempt to obtain reimbursement from the Division's subsequent injury fund.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing on the merits was held on September 18, 2007, at the State Office of Administrative Hearings (SOAH), 300 W. 15th St., Austin, Texas. Attorney Brandi Prejean represented the Carrier and Staff Attorney E. Renee Crenshaw represented the Division. Dr. Haro appeared by phone and represented himself. Administrative Law Judge (ALJ) Bill Zukauckas presided. Neither party challenged notice or jurisdiction. The record closed at the end of the hearing.

II. ANALYSIS

As the party that requested a hearing before SOAH, the burden of proof is on the Carrier. Although 28 TAC § 134.650(g)(2) states that the PRME opinion is presumed to be correct unless the great weight of other evidence indicates otherwise, SOAH has considered and ruled on this issue in another case.³ The ALJ adopts that ruling and notes that the outcome of this decision is mostly predicated on the Carrier not being able to tip the scales in proving the lack of medical necessity for all the prescription drugs and the three office visits for medication reviews.

This case is confusing because the Claimant's injury is not recent, and the medical records and testimony call into question the source of her back pain. Also confusing is the fact that multiple physicians have persuasively suggested that gradual opioid detox for Claimant might be her best treatment option. But ultimately, the ALJ finds the evidence in this case is evenly mostly balanced and that the party with the burden of proof, the Carrier, does not prevail when the evidence is balanced.

Since the date of injury _____, the Claimant has been treated dozens if not hundreds of times for back pain by multiple physicians. While the medical record does not clearly indicate that

³ SOAH Docket No. 453-05-5005.P1; *Order No. 2–Degree or Standard of Proof for Overturning Prospective Review Medical Examination Opinion; American Zurich Insurance Company, v. Texas Department of Insurance, Division of Workers' Compensation, and Jack Barnett, D.C., Respondents* (November 29, 2005).

Claimant's continued back pain is from the compensable injury, as opposed to ordinary degenerative disk changes, the ALJ agrees with the Division that compensability is not at issue in this case.

If the injury is compensable, the limited inquiry becomes whether the Carrier has shown the medications and office visits were not medically necessary.

Dr. Haro testified that each of Claimant's medication helps relieve her pain, albeit temporarily, or helps treat other associated problems like lack of sleep or depression resulting from the pain. Specifically, Dr. Haro testified that he prescribed the MS Contin and Roxicodone, long-acting and short-term opioids respectively, for relief of Claimant's pain. When she takes them, he testified, that Claimant reported her pain is a 4 on a scale of 1-10. When she does not take them, her pain is a 9 on a scale of 1-10.

Charles Crane, M.D., testified on behalf of the Carrier. His opinion was that the same medical findings referenced by Dr. Haro indicated to him that Claimant has not seen any functional improvement or overall pain decrease and exhibits escalating disability with increased opioid dosages. Dr. Crane's opinion was that the opioids are not medically necessary to treat her compensable injury, which should have resolved itself within six months to two years after any injury.

Respondent's showing of some significant pain relief to Claimant, even on a pill-to-pill basis that materially improves Claimant's overall quality of life, is all that is needed to defeat Petitioner's burden of showing that the opioids are not medically necessary. And while the ALJ notes that multiple peer reviewing physicians⁴ have expressed medical concerns regarding the Claimant's overall high and chronic usage of the opiates, for this limited-scope review, those peer concerns do not meet Carrier's burden in this case.

4 See medical records of Drs. Phillip Osborne, M.D., Eddie Sassoon, M.D, and John Sklar, M.D.

Once a decision is made that no reimbursement is due Carrier for the opioids, it follows that the Carrier is due no reimbursement is due for other medications that tangentially support the pain relief goal, such as the Zoloft for depression, the Baclofen for muscle spasms, Zonegran for neuropathic pain, and the Sonata for sleep aide.

III. FINDINGS OF FACT

1. A workers' compensation claimant suffered a compensable injury on _____.
2. At the time of the injury, the Claimant's employer had workers' compensation insurance coverage with American Motorists Insurance Company (Carrier).
3. Since the date of injury, the Claimant has been treated dozens if not hundreds of times for back pain by multiple physicians.
4. The Claimant's treating physician, Julian Haro, M.D., sought authorization through the Division of Workers' Compensation of the Texas Department of Insurance (Division) PRME process to provide the claimant with the medications MS Contin and Roxicodone, Zoloft, Baclofen, Zonegran, and Sonata , and three follow up office visits for medication review.
5. The Division issued a medical interlocutory order (MIO) on February 7, 2007, requiring the Carrier to reimburse the Dr. Haro for office visits and the six above-described medications.
6. The Carrier reimbursed Dr. Haro for the treatments they provided to the Claimant.
7. On March 29, 2007, the Carrier requested a hearing before the State Office of Administrative Hearings (SOAH) to challenge the MIO.
8. The Division issued a notice of the hearing on April 6, 2007.
9. The notice of hearing stated the date, time, and location of the hearing, cited the statutes and rules involved, and provided a short, plain statement of the factual matters asserted.
10. The hearing convened on September 18, 2007, at the State Office of Administrative Hearings, 300 W. 15th St., Austin, Texas. All parties participated in the hearing.
11. The Carrier did not show that the medications and the office visits necessary to monitor and regulate the medications were unnecessary to treat the Claimant because:

- A. The MS Contin and Roxicodone opioids are able to bring the Claimant's back pain level from a 9, on a scale of 1-10, to a 4.
- B. Dr. Haro appropriately prescribed Zonegran to treat Claimant's neuropathic pain.
- C. Dr. Haro appropriately prescribed to Claimant Zoloft for depression, Baclofen for her muscle spasms, and Sonata as a sleep aid. These medications were treating symptoms secondary to her underlying back pain.
- D. The three office visits to Dr. Haro were necessary to review/evaluate the Claimant's medications.

IV. 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, pursuant to TEX. LABOR 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 hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001.
4. The Carrier had the burden of proof in this proceeding by a preponderance of the evidence. TEX. LABOR CODE ANN. § 413.055 and 1 TAC § 155.41.
5. Under TEX. LABOR CODE ANN. § 408.021(a)(1), 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.
6. Based upon the foregoing Findings of Fact and Conclusions of Law, the Carrier did not meet its burden of proving that prescriptions for MS Contin and Roxicodone, Zoloft, Baclofen, Zonegran, and Sonata and associated office visits, were not medically necessary to treat the Claimant.
7. The Carrier is not entitled to reimbursement from the subsequent injury fund for payments it made for the prescriptions MS Contin and Roxicodone, Zoloft, Baclofen, Zonegran, and Sonata and associated office visits for the Claimant. 28 TEX. ADMIN. CODE §134.650.

ORDER

IT IS, THEREFORE, ORDERED that American Motorists Insurance Company is not due reimbursement from the subsequent injury fund for payments it made for the drugs MS Contin and Roxicodone, Zoloft, Baclofen, Zonegran, and Sonata and associated office visits, prescribed by Julian Lowell Haro, M.D. for the Claimant.

SIGNED October 31, 2007.

**BILL ZUKAUCKAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**