

SOAH DOCKET NO. 453-04-2055M5R

VONO,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
vs.	§	OF
	§	
ATLANTIC INSURANCE COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This case is a dispute over whether Atlantic Insurance Company (Carrier) should reimburse VONO (Petitioner) \$813.95 for prescription medications. The medical necessity of the medications is the only issue to be resolved. The Administrative Law Judge (ALJ) concludes that Petitioner met its burden of proving the medications were medically necessary. Therefore, Carrier should reimburse Petitioner for the cost of the medications.

I. JURISDICTION, NOTICE, AND VENUE

There were no contested issues of jurisdiction, notice or venue. Those issues are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

II. STATEMENT OF THE CASE

Administrative Law Judge Suzanne Formby Marshall convened a hearing in this case on April 5, 2004, at the State Office of Administrative Hearings (SOAH), William Clements State Office Building, Austin, Texas. Carrier appeared through its attorney, Robert Graves. Petitioner appeared through Nicky Otts, pharmacist. The record closed the same day.

III. DISCUSSION

1. Introduction

Claimant sustained a work-related injury on ____, injuring her shoulder and cervical spine as a result of lifting a patient. She received a 6% whole-person impairment rating in December 1995. Her treating physician, Louis Zegarelli, D.O., prescribed Diazepam, Hydrocodone, Vidocin ES and Valium from October 14, 2002, through January 21, 2003.¹ Carrier denied reimbursement of the medications on the basis that they were not medically necessary eight years post-injury. Carrier

¹ The dates of service are October 14 and 21, 2002; November 20, 2002; and January 21 2003. Claimant has been using these medications since at least 1995.

relied on two peer reviews for its determination.

Petitioner filed a timely Request for Medical Dispute Resolution. The Independent Review Organization (IRO) agreed with Carrier that the treatments were not medically necessary. On December 5, 2003, the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC) issued its Findings and Decision, which ruled that Petitioner was not entitled to reimbursement for the medications. On December 10, 2003, Petitioner filed a timely request for a hearing before SOAH.

2. Evidence and Arguments

1. Petitioner

Petitioner is the dispensing pharmacy of the medications in issue. Petitioner submitted medical records as Petitioner's Exhibits 1 and 2, which were admitted into evidence. Additionally, Petitioner called Rick Taylor, D.O., as a witness.

Petitioner relied upon the notes of Claimant's physician, Dr. Zegarrelli to support medical necessity for the medications. On March 28, 2003, Dr. Zegarrelli submitted a letter of medical necessity in which he described Claimant's condition, diagnoses, and prescriptions. Dr. Zegarrelli has diagnosed Claimant with: (1) chronic mechanical cervicothoracic pain/sprain syndrome; (2) right upper extremity peripheral neuropathy; (3) chronic mechanical right shoulder/arm pain; and (4) chronic anxiety associated with pain. Dr. Zegarrelli prescribed Valium for severe muscle spasms and Vicodin ES for mild to moderate pain. Petitioner's Ex. 1, p. 1.

Dr. Zegarrelli's records noted that Claimant was having trouble getting approval from the Carrier to pay for the medications and observes that without the medications, Claimant "will deteriorate quickly." Petitioner's Ex. 1, p. 4. Dr. Zegarrelli notes that Claimant has asthma and cannot take non-steroidal medications without experiencing asthma difficulties.

Dr. Taylor practices occupational medicine and pain management in Palestine, Texas. He has been licensed since 1992 and is board-certified by the American Board of Family Practitioners and is board-eligible for the American Academy of Pain Management. He reviewed the medical records in this case, including the peer reviews of Drs. Benjamin Agana and Peter Foux. He did not review Claimant's medical records from 1994 or 1995.

According to Dr. Taylor, Dr. Zegarrelli's record-keeping and follow-up was adequate. It appeared to Dr. Taylor that Dr. Zegarrelli was medically managing Claimant's pain appropriately, and documenting her range of motion in her neck and her pain control fairly well. In Dr. Taylor's opinion, the treating physician is not over-prescribing the medications in issue.

Dr. Taylor discussed the peer review of Benjamin Agana, M.D., dated October 8, 2002. He noted that Dr. Agana referred to another peer review dated September 14, 2001, which indicated that

there was a relationship between the current services and that the services were appropriate.² Dr. Agana's review reported that he believed the medications "are probably related," but not reasonable or necessary because long-term use of narcotics and muscle relaxants is not prudent due to their high addictive profile and failure to offer benefits for a chronic pain condition. Dr. Taylor observed that the Claimant has a herniated disk in her neck and because of co-existing problems, i.e., the number of disks that are degenerative, it is medically reasonable and necessary to relieve her symptoms with appropriate medications.

Dr. Taylor noted that Valium is a muscle relaxer and said that Claimant's doctor prescribed it for use as an anti-spasmodic. Although Dr. Taylor agreed that it had an anti-spasmodic effect, he said that he did not prescribe Valium for this purpose. Dr. Taylor said that he thought this was a poor choice for treating Claimant's muscle spasms, although it was not necessarily a wrong choice.

Dr. Taylor testified that for chronic pain patients, issues related to prescription medications are common, especially for disorders of the spine. He observed that the Board of Medical Examiners had adopted a written position stating that it was appropriate to manage certain types of chronic pain with certain opioids, so he concluded that this type of medication treatment is not inappropriate *per se*. In this case, Claimant had elected not to have surgery for her condition; however, she suffers from spasms and pain which are relieved by the medications.

Dr. Taylor testified that there was no indication that Claimant was addicted to the medications, nor was there any indication of an escalation of usage or dosage. According to Dr. Taylor, a small percentage of patients develop addiction to opioids and the medical records in this case do not support a conclusion that Claimant is addicted to the medications. Dr. Taylor described the difference between a patient's addition to medication versus a dependence upon medication. He said that addiction is a psychological diagnosis; dependence occurs when the medication is necessary to relieve pain, but is not otherwise abused.

2. Carrier

Carrier introduced Carrier's Exhibit 1, containing 44 pages of medical records which was introduced into evidence. Carrier also relied on two peer reviews in this case. The first, dated October 8, 2002, was performed by Dr. Agana, who concluded that "the medications are probably related, but I do not feel that they are reasonable or necessary." Carrier's Ex. 1, p. 41.

The second peer review was prepared by Peter Foox, M.D., in July of 2003. Carrier's Ex. 1, pp. 38-39. Dr. Foox concluded that continued treatment of a soft-tissue injury nine years post-injury was excessive. He suggested that the continued need for treatment may be due to an underlying condition unrelated to the injury. Dr. Foox observed that Valium should be used on a short-term

² The peer review was performed by a Dr. LeCompte; no other identifying information about Dr. LeCompte is given.

basis only and opined that Claimant needed to be weaned off the addictive medications, acknowledging that to do so would require several weeks. According to Dr. Foox, Claimant has likely developed chronic pain syndrome. However, he concluded that continued use of the medications in issue were not appropriate.

The IRO physician agreed that the medications were not medically reasonable and necessary and were not in compliance with the standard of care. The reviewing physician was critical of the long-term use of short-acting drugs for pain control and suggested that a referral to a pain specialist “for conversion to long acting drugs for a more definitive treatment course” would be appropriate.

C. Analysis and Conclusion

Having considered the evidence in this case, the ALJ finds that the medications are reasonable and necessary to relieve Claimant’s symptoms of pain and muscle spasms resulting from her injury. The ALJ finds the testimony of Dr. Taylor to be persuasive, particularly since he considered the issue of addiction and found that Claimant showed no signs of medication addiction. Although the course of treatment is not one which any reviewing physician agrees with, Dr. Taylor said that he could not say that it was wrong, just that there were better alternatives.

The ALJ is mindful of the fact that several reviewing physicians have disapproved the use of short-acting narcotics for a long-term chronic pain condition. There is no indication that other treatments have been pursued by Dr. Zegarelli and, given the reviewers’ opinions in this case, he may want to consider other alternatives such as referring Claimant for chronic pain management as suggested by the peer reviewers and weaning Claimant from the narcotics upon which she has become dependent. However, there is evidence that the medications have relieved Claimant’s symptoms and, consequently, the ALJ finds that Petitioner met its burden of proof that the medications were medically reasonable and necessary.

IV. FINDINGS OF FACT

1. Claimant reported a work-related injury to her right shoulder/arm and cervical spine while lifting a patient on ____.
2. Claimant suffers from a herniated disk in her neck and disk bulges in her cervical spine. She has elected not to have surgery.
3. Claimant’s treating physician prescribed Valium, Hydrocodone, Vicodin, and Diazepam to relieve Claimant’s symptoms of chronic pain and muscle spasms in October and November 2002, and January 2003.
4. Provider has continued to prescribe these medications since 1995.

5. Carrier declined to reimburse Provider for the medications in dispute because it considered the medications not to have been medically necessary pursuant to a peer review.
6. Provider filed a timely Request for Medical Dispute Resolution.
7. The IRO agreed with Carrier, finding that the medications were not medically necessary.
8. On December 5, 2003, the MRD issued its Findings and Decision, which ruled that Provider was not entitled to reimbursement for the disputed services.
9. On December 10, 2003, Provider filed a timely request for a hearing before SOAH.
10. Notice of the hearing was sent to all parties on January 26, 2004.
11. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
12. The hearing was held May 5, 2004. Provider and Carrier participated in the hearing, which was adjourned the same day.
13. Claimant has become dependent upon the medications in issue, but there is no evidence that she is addicted to them.
14. The medications relieve Claimant's symptoms of chronic pain and muscle spasms.

V. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(k) 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. § 2001.052.
3. Under 28 TEX. ADMIN. CODE § 148.21(h), Provider has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. § 413.031.
4. The disputed services were medically reasonable and necessary under TEX. LAB. CODE ANN. § 408.021(a).
5. Carrier should reimburse Petitioner for the medications in dispute.

ORDER

Atlantic Insurance Company is required to reimburse VONO for the medications provided to Claimant in October and November 2002, and January 2003.

SIGNED June 3, 2004.

**SUZANNE FORMBY MARSHALL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**