

**SOAH DOCKET NO. 453-04-4719.M5  
TWCC MDR NO. M5-04-0947-01**

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|--|---|--------------------------------|
| <b>VONO,</b><br><b>Petitioner</b>              | : | <b>BEFORE THE STATE OFFICE</b> |
|  | : |                                |
|  | : |                                |
| <b>V.</b>                                      | : | <b>OF</b>                      |
|  | : |                                |
| <b>DALLAS INDEPENDENT SCHOOL<br/>DISTRICT,</b> | : |                                |
| <b>Respondent</b>                              | : | <b>ADMINISTRATIVE HEARINGS</b> |

**DECISION AND ORDER**

This case is a dispute over whether Dallas Independent School District (Respondent) should reimburse VONO (Petitioner) the sum of \$1,114.98 for prescription medications provided to an injured worker (Claimant) from December 2, 2002, until May 21, 2003. The Administrative Law Judge (ALJ) concludes that Petitioner met its burden of proving the medications were medically necessary. Therefore, Respondent should reimburse Petitioner for the cost of the medications.

**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

ALJ Penny A. Wilkov conducted a hearing on September 8, 2004, at the State Office of Administrative Hearings (SOAH), William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas. Petitioner appeared through its designated representative, Nicky Otts. Respondent appeared through attorney Tommy W. Lueders, II. The record closed the day of the hearing. The parties did not contest notice or jurisdiction.

## II. DISCUSSION

### A. Background

Claimant, a teacher assistant with the Dallas Independent School District, sustained a work-related left hand, forearm, elbow, shoulder, and neck injury on \_\_\_\_, when she sat down on a classroom chair that collapsed and tried to use her arm to break her fall. Claimant has been diagnosed with chronic mechanical cervicothoracic pain syndrome, a 3-4 mm disc bulge at C5-C6 and C6-C7, left wrist compressive median neuropathy, and left ulnar compressive neuropathy at the elbow.<sup>1</sup> Claimant describes symptoms of significant persistent pain in the neck and upper back region with pain radiating into the left shoulder and arm area, and reports a subjective level of pain of eight on a scale of one to ten, with ten being highest level of pain. Claimant's history of treatments following her injury has included cervical epidural steroid injections, medications, physical therapy, and diagnostic tests.<sup>2</sup>

Respondent denied payment as medically unnecessary, based upon a peer review, for the following medications prescribed by Claimant's physician and filled by VONO, a pharmacy:<sup>3</sup>

| Date of Service  | Item         | Dosage     | Amount in Dispute |
|------------------|--------------|------------|-------------------|
| December 2, 2002 | Hydrocodone  | 40 tablets | \$29.74           |
| December 2, 2002 | Carisoprodol | 40 tablets | \$141.06          |
| January 6, 2003  | Hydrocodone  | 40 tablets | \$29.74           |
| January 6, 2003  | Carisoprodol | 40 tablets | \$141.06          |
| February 5, 2003 | Hydrocodone  | 60 tablets | \$42.61           |

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<sup>1</sup> Petitioner's Exhibit B, page 3, (February 18, 2003, Examination by Louis D. Zegarelli, D.O.).

<sup>2</sup> Respondent's Exhibit 1, pages 24-26.

<sup>3</sup> Based on Respondent's denial, Petitioner sought medical dispute resolution through the Texas Workers' Compensation Commission (Commission). The matter was referred to an Independent Review Organization (IRO) designated by the Commission for the review process. The IRO determined that the medications were not medically necessary treatment for Claimant's compensable injury.

|                  |              |            |                   |
|------------------|--------------|------------|-------------------|
| February 5, 2003 | Carisoprodol | 60 tablets | \$209.60          |
| March 19, 2003   | Hydrocodone  | 60 tablets | \$42.61           |
| March 19, 2003   | Carisoprodol | 60 tablets | \$209.60          |
| May 21, 2003     | Hydrocodone  | 40 tablets | \$29.74           |
| May 21, 2003     | Carisoprodol | 40 tablets | \$141.06          |
| May 21, 2003     | Celebrex     | 30 tablets | \$98.16           |
| <b>TOTAL</b>     |              |            | <b>\$1,114.98</b> |

## **B. Evidence and Argument**

### 1. Petitioner

Petitioner is the dispensing pharmacy of the medications in issue. Petitioner presented Claimant's medical records and called Rick Taylor, D.O. as a witness. Dr. Taylor practices primarily occupational medicine and pain management in Palestine, Texas. He is board certified by the American Board of Family Practice and is completing board certification by the American Academy of Pain Management.

After reviewing Claimant's records, Dr. Taylor testified that Claimant had suffered significant neck and back injuries, including a 3-4 mm disc bulge at C5-6 and C6-7, resulting in chronic pain and pain radiating down through the cervical spine, neck, and the lower extremities. During the time period of disputed services, December, 2002 through May, 2003, Claimant's treating physician, Louis Zegarelli, D.O., prescribed three medications: Hydrocodone for relief of moderate to severe pain, Carisoprodol for relief of muscle spasms, and Celebrex to alleviate pain and inflammation.<sup>4</sup>

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<sup>4</sup> Petitioner's Exhibit B, page 2.

According to Dr. Taylor, the three medications prescribed were reasonable and necessary medical treatment for relief of Claimant's recurrent pain caused by the injury. First, he pointed out that the amounts prescribed, 40 to 60 tablets per month, are regarded as a small quantity given that the *Physicians' Desk Reference (PDR), 58<sup>th</sup> Edition*,<sup>5</sup> recommends that the medications should be taken once every four to six hours, depending on the level of pain. In this instance, based on the dosage prescribed, Dr. Taylor postulated that the medication was taken on an as needed basis with the medication providing occasional relief from pain, as necessary. Considering the nature of the injury and the amount of pain reported by Claimant, the three medications were prescribed in a suitable amount appropriate for occasional pain. Second, Dr. Taylor pointed out that it is not unusual to take these types of medications and at the level prescribed, one year after the injury. Based on the nature of the injury and the subjective level of pain level reported, at a level of eight out on a scale of one to ten, Dr. Taylor would offer comparable medical treatment with the medications prescribed to be taken as necessary. Third, according to Dr. Taylor, the medical records do not show any signs of addictive behavior, described as a psychiatric condition that is relatively rare, occurring in only five percent of patients prescribed narcotic medication. He noted that it is incumbent upon the physician to properly evaluate the patient for both physiological and physical factors initially and throughout the treatment. Although Dr. Taylor concedes that the prescribed medications could lead to dependence, he testified that it is a fair trade-off considering Claimant's symptoms, which included a significant pain-generator, the two bulging discs. However, he testified that he saw no signs of addictive behavior in the records.

Further, Petitioner relies on notes from her treating physician, Dr. Zegarelli, who stated that because Claimant suffered from chronic persistent pain, he prescribed the medications to relieve Claimant's pain, inflammation, and muscle spasms so she could resume her daily routine and become

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<sup>5</sup>The PDR is an annual compilation of manufacturers' prescribing information on prescription drugs, relied on by most physicians.

a productive part of her family's life. Dr. Zegarelli also noted that Claimant was unable to have her scheduled steroid injection treatments in December 2002, and January 2003, due to nausea and vomiting, and therefore the medications were necessary to control pain and symptoms.<sup>6</sup>

## **2. Respondent**

Respondent disputes that the services at issue were medically necessary because Claimant did not show any improvement attributable to the use of the medications. Respondent relies on a peer review conducted on November 16, 2002, by John E Barnett, M.D., a board certified specialist in internal medicine.<sup>7</sup> According to Dr. Barnett, the year-long use of narcotics were contraindicated and not medically necessary. He pointed out that the prescribed muscle relaxant, Carisoprodol, was of no proven value; the anti-inflammatory drug, Celebrex, was only useful for a brief time period; and the narcotic pain-reliever, Hydrocodone, encouraged dependence and dysfunction, and could have lead to addiction. He noted that there was no indication the prolonged treatment with these medications produced any evidence of healing or improvement. Rather, in Dr. Barnett's opinion, Claimant should have been briefly prescribed a mild analgesic, in combination with physical therapy instruction and a return to work as soon as possible. According to Dr. Barnett, recovery occurs naturally over time for contusions, sprains, and strains.

Respondent further argues that Dr. Zegarelli's examination notes are inadequate to establish the effectiveness of the medications. Instead of range of motion studies with objective findings, the only measure here is the subjective statements that Claimant was improving which presents insufficient reason to justify the prescription of narcotics for the prolonged length of time.

## **C. Applicable Law**

Under the workers' compensation system, an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury. The employee is

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<sup>6</sup> Petitioner's Exhibit B, pages 1-7.

<sup>7</sup> Respondent's Exhibit 1, pages 27-29.

specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment. TEX. LAB. CODE ANN. ' 408.021. "Health care" includes "all reasonable and necessary medical . . . services." TEX. LAB. CODE ANN. ' 401.011(19).

#### **D. Analysis and Conclusion**

The testimony and evidence established that the medications prescribed by Dr. Zegarelli, during the time period in issue, December 2, 2002, until May 21, 2003, were medically appropriate and necessary to relieve Claimant's pain, prevent muscle spasm, and reduce inflammation. The preponderant evidence established that Claimant had suffered significant neck and back injuries, including disc bulges and chronic radiating pain, rather than simply a strain or sprain. The severity of the pain generated by these conditions warranted stronger medications to relieve her symptoms so she could resume her daily activities and become functional in her family life. The medications were also necessary to alleviate her symptoms while she was unable to have scheduled cervical epidural steroid injections due to stomach illness. Further, Claimant's use of the medications was not excessive or disproportionate to the symptoms she was experiencing. The three medications in question were prescribed in relatively small quantities, 40-60 tablets per month, for occasional use instead of the recommended dosage of one tablet every four to six hours, requiring a prescription for 90-120 tablets per month. The intermittent use of these medications as prescribed supports the evidence that Claimant was able to ease the effects of her injury without developing an addictive need for escalating strength or amounts of medication.

Moreover, although objective measurements were not taken to gauge degrees of improvement in Claimant's movement, such as a Functional Capacity Exam, the preponderant evidence established that the medications improved Claimant's ability to relieve the serious aftereffects of her injury, thus, effectively increasing her ability to resume her daily activities and family life.

In conclusion, 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 prescribed

from December 2, 2002, until May 21, 2003, were medically necessary.

### **III. FINDINGS OF FACT**

1. Claimant, a teacher assistant with the Dallas Independent School District, sustained a work-related left hand, forearm, elbow, shoulder, and neck injury on \_\_\_\_, when she sat down on a classroom chair that collapsed and tried to use her arm to break her fall.
2. Claimant has been diagnosed with chronic mechanical cervicothoracic pain syndrome, a 3-4 mm disc bulge at C5-C6 and C6-C7, left wrist compressive median neuropathy, and left ulnar compressive neuropathy at the elbow.
3. Claimant describes symptoms of significant persistent pain in the neck and upper back region with pain radiating into the left shoulder and arm area, and reports a subjective level of pain of eight on a scale of one to ten, with ten being highest level of pain.
4. Claimant's history of treatments has included cervical epidural steroid injections, medications, physical therapy, and diagnostic tests
5. The medical records indicate that Claimant had been primarily under the care of Louis D. Zegarelli, D.O.
6. From December 2, 2002, through May 21, 2003, Dr. Zegarelli prescribed Hydrocodone for pain, Carisoprodol as a muscle relaxant, and Celebrex for inflammation.
7. VONO (Petitioner) filled Claimant's prescriptions from Dr. Zegarelli in December 2002, and in January, February, March, and May 2003. Petitioner then billed Dallas Independent School District (Respondent) \$1,114.98 for the medications.
8. Respondent declined to reimburse the medications, as medically unnecessary based upon a peer review.
9. Based on Respondent's denial, Petitioner sought medical dispute resolution through the Texas Workers' Compensation Commission (Commission). The matter was referred to an Independent Review Organization (IRO) designated by the Commission for the review process. The IRO determined that the medications were not medically necessary treatment for Claimant's compensable injury.
10. Petitioner then requested a hearing before the State Office of Administrative Hearings. The hearing convened on September 8, 2004, with Administrative Law Judge Penny A. Wilkov presiding. Petitioner appeared through its designated representative, Nicky Otts. Respondent appeared through attorney Tommy W. Lueders, II. The record closed the day of the hearing.
11. From December 2, 2002 until May 21, 2003, the medications prescribed in this case, Hydrocodone, Carisoprodol, and Celebrex, were medically reasonable and necessary to relieve Claimant's pain, prevent muscle spasm, and alleviate inflammation.

12. Claimant had suffered significant neck and back injuries, including disc bulges and chronic radiating pain, rather than simply a strain or sprain.
13. The severity of the pain generated by these conditions warranted stronger medications to relieve her symptoms so she could resume her daily activities and become functional in her family life.
14. The three medications were prescribed in relatively small monthly quantities indicative of occasional use for relief of pain, as needed, by Claimant.
15. The intermittent use of these medications as prescribed enabled Claimant to ease the effects of her injury without developing an addictive need for escalating strength or amounts of medication.
16. Claimant's use of the medications was not excessive or disproportionate to the symptoms she was experiencing.
17. The medications were also necessary to alleviate Claimant's symptoms while she was unable to have scheduled cervical epidural steroid injections due to stomach illness.
18. The medications improved Claimant's ability to relieve the serious aftereffects of her injury, and allowed her to resume her daily activities and family life.

#### **IV. CONCLUSIONS OF LAW**

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act, specifically TEX. LABOR CODE ANN. ' 413.031(k), and TEX. GOV'T CODE ANN. ch. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 28 TEX. ADMIN. CODE ch. 148.
3. The request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE ' 148.3.
4. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. ' ' 2001.051 and 2001.052.
5. Petitioner has the burden of proof in this matter. 28 TEX. ADMIN. CODE ' ' 148.21(h) and 133.308(w).
6. Petitioner established, by a preponderance of the evidence, that the disputed services were medically reasonable and necessary under TEX. LABOR CODE ANN. ' 408.021(a).

**ORDER**

**IT IS ORDERED** that Dallas Independent School District reimburse VONO the sum of \$1,114.98 plus applicable interest for the Hydrocodone, Carisoprodol, and Celebrex, provided to Claimant between December 2, 2002, and May 21, 2003.

**SIGNED November 1, 2004.**

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**PENNY A. WILKOV  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**