

**SOAH DOCKET NO. 453-04-5201.M5
TWCC NO. M5-04-1037-01**

_____, <i>Petitioner</i>	 	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
v. CITY OF LONGVIEW, <i>Respondent</i>		

DECISION AND ORDER

I. PROCEDURAL HISTORY

____ (Claimant) appealed the decision of the Medical Review of Texas, an independent review organization certified by the Texas Department of Insurance, in Texas Workers' Compensation Commission (TWCC) Medical Review Division tracking number M5-04-1037-01 denying reimbursement for the prescription drug hydrocodone¹ in the amount of \$61.69.

The Administrative Law Judge convened a hearing August 25, 2004. Claimant appeared *pro se* via telephone and was assisted by Luz Loza, a TWCC ombudsman. The City of Longview (Carrier) was represented by Steven M. Tipton, attorney. At the conclusion of the hearing, the record was closed.

II. EVIDENCE AND BASIS FOR DECISION

The documentary record in this case consisted of 44 pages of records submitted by Claimant (Petitioner's Exh. 1), and 29 pages of records submitted by Carrier (Respondent's Exh. 1). Additionally, Claimant testified telephonically at the hearing.

The issue presented is whether Carrier should reimburse Claimant \$61.69 for the prescription drug hydrocodone. Carrier denied payment on the basis of a peer review and that the documents submitted for review did not establish medical necessity for the prescription.

¹ Hydrocodone is a semisynthetic narcotic derivative of codeine having sedative and analgesic effects more powerful than those of codeine. *Dorlands Medical Dictionary* 28th edition, 1994.

Claimant suffered a compensable injury to his feet on _____, when he tripped and after falling about four feet, landing on both heels. Claimant's diagnoses was plantar fasciitis and heel spurs. He has received extensive treatment, including three operations, steroid injections every 60 days, and a chronic pain management program. The hydrocodone was prescribed four years post-injury. Claimant asserted that he needs the narcotic because it relieves his pain. In support of his claim, Claimant indicated that Bert Sharp, D.P.M., Timothy Beck, M.D., Lynn Brown, M.D., and Sam Fino, M.D., all agreed that the narcotics are a necessity. Claimant's assertions are not persuasive. Dr. Sharp and Dr. Beck prescribed narcotics immediately after his three operations. Dr. Sharp has not seen Claimant since 2000. Dr. Beck has not seen Claimant since 2001, and he denied Claimant further narcotic prescriptions. Dr. Fino did not examine Claimant.²

Carrier presented reports from three physicians, who all indicated that the use of narcotics four years post-injury was contra-indicated. On July 24, 2004, G. Peter Fox, M.D., performed a Required Medical Exam on Claimant. Dr. Fox concluded that the use of narcotics is contra-indicated. On October 29, 2003, John P. Obermiller, M.D., concluded that the documentation did not justify utilizing narcotic pain medication for planters fasciitis four years after the injury. Dr. Obermiller's report also indicated that narcotic medications are absolutely inappropriate and unnecessary treatment for chronic planters fasciitis. In his September 4, 2003, report, Phillip Osborne, M.D., opined that Claimant should only take an over-the-counter analgesic because the injury occurred four years earlier.

Based on the evidence, the ALJ concludes that Claimant's appeal should be denied because he did not prove by a preponderance of evidence that the drug was medically necessary for treatment of the compensable injury. In fact the evidence strongly suggests the opposite: that hydrocodone should not be prescribed four years after an injury and that over-the-counter medications should provide satisfactory relief.

² The records did not include a report by Dr. Brown.

III. FINDINGS OF FACT

1. On _____, _____ (Claimant) suffered a compensable injury to his feet while working unloading a back-hoe.
2. Claimant's injury is covered by worker's compensation insurance provided by the City of Longview (Carrier).
3. Claimant has received extensive treatment, including three operations, steroid injections every 60 days, and a chronic pain management program.
4. Claimant has continued to experience difficulties, including pain.
5. Claimant's treating physician prescribed hydrodone, a narcotic to treat his compensable injury.
6. The prescription for hydrocodone was four years post-injury.
7. Claimant's treating physician did not document that Claimant needed a narcotic.
8. Pain persisting for four years post-injury constitutes chronic pain.
9. Non-narcotic analgesics are recommended for long-term use for chronic pain because of the potential long-term side effects and addictive properties of narcotics such as hydrocodone.
10. Claimant timely requested dispute resolution by the Medical Review Division of the Texas Workers' Compensation Commission (TWCC).
11. On March 18, 2004, the TWCC's Medical Review Division issued its order denying reimbursement following review of the decision of the independent review organization.
12. The Commission sent notice of the hearing to the parties on May 12, 2004. The hearing notice informed the parties of the matter to be determined, the right to appear and be represented by counsel, the time and place of the hearing, and the statutes and rules involved.
13. The hearing was held on August 25, 2004, and all parties appeared and participated.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (TWCC) has jurisdiction to decide the issues presented pursuant to TEX. LAB. CODE ANN. ' 413.031.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a Decision and Order, pursuant to TEX. LAB. CODE ANN. ' 413.031 and TEX. GOV ' T CODE ANN. ch. 2003.
3. The Notice of Hearing issued by TWCC conformed to the requirements of TEX. GOV ' T CODE ANN. ' 2001.052 in that it 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 section of the statutes and rules involved; and a short plain statement of the matters asserted.
4. Claimant has the burden of proving by a preponderance of the evidence that it should prevail in this matter. TEX. LAB. CODE ANN. ' 413.031.
5. Hydrocodone was not medically necessary four years post-injury, and Carrier is not required to reimburse Claimant.

ORDER

IT IS, THEREFORE, ORDERED that the City of Longview is not required to reimburse ___ (Claimant) for the amount claimed.

SIGNED October 22, 2004.

**STEPHEN J. PACEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**