

INSURANCE COMPANY OF THE	§	BEFORE THE STATE OFFICE
STATE OF PENNSYLVANIA,	§	
PETITIONER	§	
	§	
VS.	§	OF
	§	
—,	§	
RESPONDENT	§	ADMINISTRATIVE HEARINGS

### **DECISION AND ORDER**

The Insurance Company of the State of Pennsylvania (ICSP) denied \_\_\_ reimbursement of \$370.95 for four prescription drugs he purchased between July - December 2003. The drugs were Promethazine, Alprazolam, Sonata, and Hydrocodone. \_\_\_ appealed the denial to the Texas Workers' Compensation Commission (TWCC), which referred the matter to an Independent Review Organization (IRO). The IRO decided that the Hydrocodone and Sonata were medically reasonable and necessary but that the Promethazine and Alprazolam were not. Both parties requested a review of the IRO decision. This Decision and Order finds that all four drugs were medically reasonable and necessary and that ICSP should reimburse \_\_\_ \$370.95.

#### **I. PROCEDURAL HISTORY**

There were no contested issues of jurisdiction, notice, or venue, and those issues are addressed in the Findings of Fact and Conclusions of Law without further discussion here. Administrative Law Judge (ALJ) Thomas H. Walston convened a hearing in this case on March 1, 2005, at the State Office of Administrative Hearings (SOAH) in Austin, Texas. \_\_\_ appeared by telephone and was assisted by TWCC Ombudsman Luz Loza. Attorney Steve Tipton appeared on behalf of the Insurance Company of the State of Pennsylvania. The hearing concluded and the record closed the same day.

#### **II. DISCUSSION**

##### **A. Background**

\_\_\_ injured his lower back on \_\_\_, in the course of his employment at \_\_\_. After unsuccessful conservative treatment, \_\_\_ had a discectomy and fusion at L4-5 and L5-S1 on July 10, 1997. Since the surgery, \_\_\_ has been treated by Daniel Theesfeld, M.D., with conservative treatment and medication. He was eventually released to return to work with restrictions and he continues to work for \_\_\_ at the present time. However, he still suffers from failed spine surgery syndrome and chronic pain syndrome.

In July 2001, \_\_\_ was involved in a motor vehicle accident that produced a temporary but significant flare-up of his symptoms, but an MRI performed after the accident showed no changes to the structural anatomy of the spine.

In March 2003, ICSP had Dr. Charles Crane perform a review of \_\_\_'s medical records. Dr. Crane stated that \_\_\_'s problems were related to the 2001 motor vehicle accident rather than to \_\_\_'s on-the-job injury, so ICSP discontinued paying for \_\_\_'s prescription medications at that time.

Between March and December 2003, \_\_\_ purchased medications prescribed by Dr. Theesfeld, including Promethazine (Phenergan), Alprazolam (Xanax), Sonata, and Hydrocodone (Lorcet). He spent \$370.95 on these medications, for which he seeks reimbursement in this case. The Hydrocodone was taken as needed for pain; Promethazine relieved nausea caused by the Hydrocodone; Sonata was a sleep aid for insomnia; and the Alprazolam was taken for global anxiety disorder.

The IRO reviewing physician decided that the Sonata and Hydrocodone were medically reasonable and necessary, but that the Promethazine and Alprazolam were not. The IRO physician stated her rationale as follows:

The reviewer states that the long-term use of Promethazine and Alprazolam are not reasonable or medically necessary. Baseline management with episodic use of sleep aids such as Sonata and occasional narcotic use (Hydrocodone) for flare-ups of failed surgery back syndrome have been reasonable and medically necessary throughout the course of treatment. Continued use of Sonata and Hydrocodone long-term will require periodic follow-up and supervision with a pain management specialist and should only be used as a last resort if no other treatment or modalities or surgery is indicated. This regimen is supported by current standard of care pain management protocols.

Both parties requested a contested case hearing to challenge the IRO's decision.

## 2. \_\_\_'s Evidence and Argument

\_\_\_ testified that he began working at \_\_\_ in 1992. He felt a sharp pain and injured his back in \_\_\_ as he pitched trolling motors to another employee while unloading a truck. As a result of the injury, \_\_\_ had surgery in 1997 to remove two disks and fuse the vertebrae at L4-5 and L5-S1. After a period of follow-up conservative treatment, \_\_\_ returned to work at \_\_\_ in 1999 on light duty, but he continued to take medications for pain and discomfort as prescribed by Dr. Theesfeld, his treating physician. Generally, \_\_\_ took four Hydrocodone per day for pain; Promethazine for nausea caused by the Hydrocodone; one Sonata per day as a sleep aid; and Xanax as needed for anxiety. In 2003, ICSP stopped paying for his medications, so \_\_\_ bought them himself between July and December 2003. These purchases totaled \$370.95. \_\_\_ stopped buying the prescription medications about eight months ago because he cannot afford them. He continues to have pain but now takes Ibuprophen, Motrin, and Aleve. However, he complained that these are not as effective as the prescription medications. \_\_\_ added that he has difficulty sleeping without the Sonata, but he has not used any non-prescription sleep aids. Finally, \_\_\_ stated that he is aware that some people become addicted to Hydrocodone. He stated that he was not addicted, but he thought that ICSP acted improperly by suddenly stopping his prescription without weaning him off the Hydrocodone.

\_\_\_ also offered medical reports from Dr. Theesfeld into evidence. These recounted \_\_\_'s medical history and treatment and noted that \_\_\_ has periodic flare-ups with increased low back pain, muscle spasms, and pain and numbness radiating down into his legs. Dr. Theesfeld stated that \_\_\_ got past these flare-ups with structured home physical therapy, reduced activity, and his prescribed medication regimen. He added that the medications were medically reasonable and necessary and that \_\_\_ had been on the medication regimen for four years "without acclimation and with ongoing improvement." Dr. Theesfeld also disagreed with Dr. Crane's contention that \_\_\_'s problems were related to the 2001 automobile accident rather than to his compensable injury. Dr. Theesfeld agreed that the accident caused a temporary flare-up of symptoms, but he emphasized that the MRI taken after the accident showed no lumbar anatomical changes. In Dr. Theesfeld's view, \_\_\_ continued to have problems as a result of his compensable injury, including failed spine surgery syndrome, facet joint syndrome, myofascial pain syndrome, chronic pain syndrome, and episodic neuralgia of the left leg.

\_\_\_'s evidence also included a report from Dr. John Obermiller, who performed a required medical examination in September 2003. That report summarized \_\_\_'s history and treatment and Dr. Obermiller's examination. Dr. Obermiller found that \_\_\_'s continued problems were caused by his \_\_\_ compensable injury and surgery. He also stated that continued anti-inflammatory medications were appropriate but that \_\_\_ should be weaned off the narcotic medications.

Based on this testimony and documentary evidence, \_\_\_ argues that the medications he purchased were medically reasonable and necessary and that ICSP should reimburse him for his medication purchases.

### 3. ICSP's Evidence and Argument

ICSP offered into evidence a medical record review by Dr. Charles Crane and the required medical examination report by Dr. Obermiller, mentioned above. As noted previously, Dr. Crane stated that \_\_\_'s continued problems in early 2003 were related to the 2001 motor vehicle accident rather than to \_\_\_'s on-the-job injury. In contrast, Dr. Obermiller's report in September 2003 stated that \_\_\_'s pain was related to his compensable injury and that there had been no essential change in \_\_\_'s condition since his surgery in 1997.

ICSP's counsel argued that \_\_\_ took the medications more often than prescribed and noted that Dr. Obermiller indicated that \_\_\_ should be weaned off the narcotic medications. He also argued that the medications were more appropriate for acute conditions than chronic pain.

### **D. ALJ's Analysis and Decision**

The ALJ finds that ICSP should reimburse \_\_\_ \$370.95 for all four medications he purchased in 2003. The evidence shows that ICSP stopped paying for \_\_\_'s medications in 2003 after Dr. Crane issued a report stating that \_\_\_'s pain and problems were related to an automobile accident rather than to his compensable injury. However, Dr. Obermiller determined in September 2003 that \_\_\_'s continued problems were related to his \_\_\_ compensable injury, and ICSP no longer contests this. Further, even Dr. Crane agreed that the medications were medically reasonable and necessary for his treatment, although he contended \_\_\_'s complaints did not result from his compensable injury. Dr. Crane stated: "These medications are all medically reasonable and necessary, but considered unrelated to the \_\_\_ date of injury . . . ." Likewise, Dr. Obermiller found that the medications were reasonable and necessary, although he thought \_\_\_ should be

weaned off the narcotic medications. In the ALJ's view, the opinions of Dr. Crane, Dr. Obermiller, and Dr. Theesfeld establish that all four medications taken by \_\_\_ during 2003 were medically reasonable and necessary at that time. Therefore, the ALJ finds that ICSP should reimburse \_\_\_ \$370.95 for his purchases of these medicines between March and December 2003. The ALJ emphasizes, however, that he makes no finding on whether these medications are medically reasonable and necessary at the present time. That question was not an appropriate issue for the present case.

### III. FINDINGS OF FACT

1. Claimant \_\_\_ suffered a compensable injury on \_\_\_.
2. After unsuccessful conservative treatment, \_\_\_ had a diskectomy and fusion at L4-5 and L5-S1 on July 10, 1997. Since the surgery, \_\_\_ has been treated by Daniel Theesfeld, M.D., with conservative treatment and medication.
3. The Insurance Company of the State of Pennsylvania (Carrier) was the workers' compensation insurance carrier for Claimant's injury. Carrier stopped paying for \_\_\_'s prescription medications in early 2003.
4. Between March and December 2003, \_\_\_ continued to purchase the medications prescribed by Dr. Theesfeld, including Promethazine, Alprazolam, Sonata, and Hydrocodone. He spent \$370.95 on these medications, for which he seeks reimbursement in this case.
5. Carrier denied \_\_\_ reimbursement for the medications he purchased between March and December 2003.
6. \_\_\_ appealed the Carrier's denial of reimbursement to the Texas Workers' Compensation Commission, which referred the matter to an Independent Review Organization (IRO) for decision.
7. The IRO reviewing physician decided that the Sonata and Hydrocodone were medically reasonable and necessary, but that the Promethazine and Alprazolam were not.
8. Both Carrier and \_\_\_ requested a hearing before the State Office of Administrative Hearings (SOAH), seeking to partially reverse the IRO's decision.
9. A hearing was conducted at SOAH on March 1, 2005. The hearing concluded and the record closed the same day.
10. \_\_\_ and Carrier participated at the hearing.
11. All parties received not less than ten days notice of the time, place, and nature of the hearing; 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. All parties were allowed to respond and present evidence and argument on each issue involved in the case.

13. In 2003, \_\_\_ had failed back surgery syndrome and continued to suffer from low back pain as a result of his compensable injury and back surgery.
14. Between March and December 2003, Promethazine, Alprazolam, Sonata, and Hydrocodone were medically reasonable and necessary medications to relieve the effects of \_\_\_'s compensable injury.

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

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing, including the authority to issue a decision and order. TEX. LABOR CODE ANN. § 413.031(k).
2. All parties received proper and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. Carrier and \_\_\_ both have the burden of proof by a preponderance of the evidence on their respective claims.
4. \_\_\_ is entitled reimbursement in the amount of \$370.95.

#### **ORDER**

**IT IS, THEREFORE, ORDERED** that the appeal of the Insurance Company of the State of Pennsylvania is denied; \_\_\_'s appeal is granted; and \_\_\_ shall have and recover from Insurance Company of the State of Pennsylvania the sum of \$370.95.

**SIGNED April 5, 2005.**

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**THOMAS H. WALSTON**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**