

**SOAH DOCKET NO. 453-05-9363.M5  
TDI DWC MR NO. M5-05-2700-01**

___,	<b>Petitioner</b>	§	<b>BEFORE THE STATE OFFICE</b>
		§	
V.		§	
		§	<b>OF</b>
<b>HEALTHSOUTH CORPORATION,</b>		§	
<b>Respondent</b>	<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Claimant \_\_\_ disputes a decision of an independent review organization on behalf of the Medical Review Division of the Texas Workers' Compensation Commission<sup>1</sup> that the medications that Claimant purchased were not medically necessary. This decision finds that Claimant is due reimbursement for Vicodin purchased on August 2, 2004, but not for the purchase of AndroGel from September 13, 2004, to March 3, 2005.

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

There were no contested issues of jurisdiction or notice. Those issues are set out in the Findings of Fact and Conclusions of Law.

The hearing in this matter convened on May 18, 2006, before State Office of Administrative Hearings Administrative Law Judge Bill Zukauckas. Claimant represented himself. Michael Portele, an attorney, represented HealthSouth Corporation. The case was reassigned to Administrative Law Judge Katherine L. Smith, who reviewed the entire record before writing this decision as set out below.

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<sup>1</sup> Effective September 1, 2005, the functions of the Texas Workers' Compensation Commission were transferred to the newly created Division of Workers' Compensation of the Department of Insurance.

## II. FINDINGS OF FACT

1. Claimant\_\_\_, a licensed vocational nurse employed by HealthSouth Corporation (HealthSouth) sustained a work-related injury to his lower back on\_\_\_, when he assisted a falling patient.
2. HealthSouth provides reimbursement for Claimant's medical care caused by the injury.
3. An MRI revealed an extruded disc at the L4-5 vertebrae, which was subsequently treated with surgery in December 1998.
4. After the surgery, the low back pain returned and radiated down Claimant's left leg.
5. Claimant sought reimbursement from HealthSouth for the following medications.

<b>Medication</b>	<b>Dates of Purchase</b>	<b>Amounts in Dispute</b>
Vicodin	8/02/04	\$214.46
AndroGel	9/13/04	\$189.36
AndroGel	10/04/04	\$182.94
AndroGel	11/10/04	\$182.94
AndroGel	12/03/04	\$182.94
AndroGel	1/15/05	\$182.94
AndroGel	2/10/05	\$182.94
AndroGel	3/03/05	\$208.08

6. Vicodin, which is hydrocodone and acetaminophen, is used to treat pain and AndroGel treats low testosterone.
7. HealthSouth denied the request for reimbursement based on lack of medical necessity.
8. Claimant filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (Commission).
9. Claimant is now taking Oxycontin for his pain.
10. The Commission assigned the dispute to an Independent Review Organization (IRO), which reviewed the medical dispute and found that Claimant's complaint of hypogonadism is not related to chronic narcotic usage and that additional use of Vicodin would not be indicated if

he is taking Oxycontin.

11. Based on the IRO's findings, the Commission's Medical Review Division determined that Claimant is not entitled to reimbursement for the medications at issue in this dispute
12. Claimant requested a contested-case hearing at the State Office of Administrative Hearings (SOAH).
13. The case was referred to SOAH for a hearing prior to September 1, 2005.
14. On November 3, 2005, the Division of Workers' Compensation of the Texas Department of Insurance issued a notice of hearing stating the date, time, and location of the hearing and citing to the statutes and rules involved, along with providing a short, plain statement of the factual matters involved.
15. The contested-case hearing was held on May 18, 2006 at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas.
16. The Claimant appeared at the hearing.
17. HealthSouth appeared at the hearing through its attorney, Michael Portele.
18. Claimant's treating doctor, Donald Lamoureaux, D.O. wrote a letter on March 4, 2003, on Claimant's behalf.
19. Dr. Lamoureaux stated that Claimant has been treated being treated with hydrocodone with acetaminophen and Oxycontin, which provide him with relief.
20. Kenneth M. Rosenzweig, M.D. performed an independent medical examination (IME) of Claimant for the Commission on February 11, 2005.
21. Dr. Rosenzweig wrote that narcotics are not in Claimant's long-term interest.
22. Although Dr. Rosenzweig noted in his IME report that Dr. Lamoureaux recommended testosterone replacement using an androgen gel for Claimant's low testosterone level, Dr. Lamoureaux's letter did not address Claimant's use of or need for AndroGel and only addressed Claimant's need for Viagra.
23. Dr. Rosenzweig also wrote that Claimant's low testosterone level may or may not be related to Claimant's injury and the use of narcotics for the injury.

### III. 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. (Labor Code) §§ 402.073(b) and 413.031(k) (West 2005), TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2005), and Acts 2005, 79th Leg., ch. 265, § 8.013, eff. Sept. 1, 2005.
2. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
3. Claimant has the burden of proof in this case. Gov't Code § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) § 155.41(b) (2005), and 28 TAC § 148.14 (2005).
4. Based upon Finding of Fact No. 14, Claimant met his burden of proving by a preponderance of the credible evidence that the use of Vicodin was medically necessary health care reasonably required by the nature of the injury to relieve the effects naturally resulting from the compensable injury and to promote recovery within the meaning of Labor Code § 408.021(a).
5. Based upon Finding of Fact Nos. 15 and 16, Claimant did not meet his burden of proving by a preponderance of the credible evidence that the use of AndroGel was medically necessary health care reasonably required by the nature of the injury to relieve the effects naturally resulting from the compensable injury and to promote recovery within the meaning of Labor Code § 408.021(a).
6. Based on the foregoing, the HealthSouth is not required to reimburse Claimant for the AndroGel that he purchased between September 13, 2004, to March 3, 2005, but is required to reimburse Claimant for the Vicodin that he purchased on August 2, 2004.

### ORDER

**IT IS THEREFORE, ORDERED** that HealthSouth reimburse Claimant \$214.46 for the Vicodin purchased on August 2, 2004.

**Signed July 14, 2006**

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**KATHERINE L. SMITH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**