

**SOAH DOCKET NO. 453-05-4389.M5
TWCC MR. NO. M5-04-3356-01**

TRANSPORTATION	INSURANCE	§	BEFORE THE STATE OFFICE
COMPANY,		§	
 Petitioner		§	
		§	
V.		§	OF
		§	
—,		§	
 Respondent		§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

The Transportation Insurance Company (Carrier) challenged the decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC or Commission)¹ that granted reimbursement to Claimant for prescriptions of Vicodin that were dispensed to __ (Claimant) between August 24, 2003, and November 26, 2003 (disputed period).

Carrier contended that the medication was not necessary six years after the date of the injury to treat what it asserted was a soft-tissue injury that had healed well before the disputed period. On January 25, 2005, the Medical Review Division (MRD) of TWCC determined that the prescriptions were medically necessary based on the report of the Texas Medical Foundation, an independent review organization (IRO).

The Administrative Law Judge (ALJ) concludes that Provider met its burden of proof to demonstrate that Vicodin was not medically necessary to treat Claimant during the disputed period. Claimant's request to be reimbursed for her out-of-pocket costs for Vicodin is denied.

The hearing in this matter convened on February 6, 2006, in Austin, Texas, with ALJ Cassandra Church presiding. Claimant appeared on her own behalf, assisted by ____, ombudsman

¹ The Commission was abolished effective September 1, 2005, and the functions of the Commission assigned to the Texas Department of Insurance, Division of Workers' Compensation. Also, the Commission's ombudsman staff was transferred to the Office of Injured Employee Counsel (OIEC), effective September 1, 2005. The agency names as of the time of the claim are used here for clarity.

with the Commission. Carrier was represented by Shelley D. Gatlin, attorney. Notice was proper and jurisdiction was established in this case.

I. DISCUSSION

A. History of the Case and Evidence

On ____, Claimant slipped on a wet floor, injuring her back and left hip. Claimant's began reporting shoulder pain in ____, two months after the fall.² Claimant was initially diagnosed with a muscle strain.³

The dispute in this case was whether the Vicodin⁴ tablets prescribed for Claimant during the disputed period were necessary to treat lingering effects of the __ injury. Claimant paid \$361.76 for a total of 10 prescriptions of Vicodin during the disputed period. Carrier had reimbursed health care providers, or Claimant, for Vicodin before the disputed date. However, on June 18, 2004, Carrier denied payment for Vicodin, although agreed to reimburse Claimant for over-the-counter pain medications.⁵

By February 27, 1998, Claimant's diagnosis was refined to SI joint strain with subluxation. In February 1997, Claimant demonstrated normal motor skills and sensory capability. No diagnostic testing showed any permanent damage to Claimant's bones, muscles, or nerves resulting from the

² Carrier Exh. 1-4, p. 21.

³ Carrier Exh. 1, p. 3.

⁴ Vicodin is an opiate pain medication most commonly used in treatment of acute, short-term pain, and less frequently used for long-term management of muscular pain.

⁵ Claimant Exh. 1, p. 25. The June 18, 2004, letter does not state what months it covers. The ALJ is proceeding on the assumption that this letter covered all claims for the disputed period as Carrier did not argue that Claimant made untimely requests for reimbursement. Although Carrier's letter appears to concede that at least some portion of the pain Claimant was experiencing during the disputed period arose from the compensable injury, this statement was far less persuasive than the extensive medical evidence. As there are no issues regarding over-the-counter pain medications in this case, they will not be discussed further.

fall.⁶ Claimant was treated with chiropractic modalities, physical therapy, trigger point injections, and massage therapy.⁷

In 1990 Claimant had been diagnosed with a bulging disc. She continued to suffer some pain from that injury in 1997 notwithstanding the fact that she had undergone physical therapy and injections to treat the earlier condition.⁸

From the time of her injury in ____ through the end of the disputed period, Claimant reported low-back pain and also displayed tenderness, at various times, in muscles in her upper back, shoulders, and neck. Throughout this period her doctors continued to prescribe Vicodin and Flexeril, a muscle relaxant, as well as administering various conservative treatments such as heat, myofascial release, and manipulation.⁹

On April 9, 1998, Sherine Reno, M. D., Claimant's then treating doctor, concluded that Claimant's SI joint strain was stable and that her myofascial pain secondary to the SI strain was reasonably stable.¹⁰ In April 1998, Claimant declined to participate in a work hardening program.¹¹

On May 11, 1998, Wright W. Singleton, M. D., conducted a designated-doctor examination.¹² He concluded that Claimant had normal arm strength and sensation and also normal sensation, strength, and reflexes in her legs. He concluded that the left hip strain had resolved and that her hip and spine showed normal range of motion (ROM). She demonstrated a two per cent limitation on her left shoulder range of motion. Dr. Singleton found no impairment of her lower extremities or back.¹³

⁶ Claimant Exh. 1-4.

⁷ Carrier Exh. 1-4, pp. 174-193.

⁸ Claimant Exh. 1, p. 39, Carrier Exh. 1-4, p. 4.

⁹ Carrier Exh. 1, pp. 1-18.

¹⁰ Carrier Exh. 1, p. 89.

¹¹ Carrier Exh. 1, p. 89.

¹² Carrier Exh. 1, pp. 99-105.

¹³ Carrier Exh. 1, p. 105. Dr. Singleton also concluded that Claimant would qualify for a six per cent whole person impairment. This was based on a five per cent impairment based on the persistence for six months after the injury

In May 2001, Claimant went to work at the U.S. Postal Service as a ____, delivering mail.¹⁴ She reported back pain in 2001 and 2002, but there is nothing in the record stating that she suffered any additional falls or other injury during that time. The mail delivery job required lifting and repetitive motion.

Medical opinions on the severity of Claimant's condition begin to vary sharply in 2002 and 2003. In August 2002, K. L. Blanchette, M. D., and Robert F. Hall, M. D., an orthopedic surgeon, conducted a peer review. They found no physical mechanisms producing Claimant's pain and concluded that over-the-counter pain medications and strengthening exercises would allow Claimant to manage any lingering pain.¹⁵

On March 12, 2003, Phillip Osborne, M. D., conducted a required medical examination. He concluded that the cervicolumbar strain¹⁶ Claimant experienced in __ should have healed without too much difficulty and found only a few areas of her back with diffuse pain. He found Claimant's ROM to be, for the most part, normal.¹⁷ He also concluded that Claimant should be able to manage her pain with over-the-counter pain medication and that Claimant appeared to have developed a dependence or tolerance on Vicodin after using this medication for four years.

In contrast, by November 2002, her treating doctor, Nayan R. Patel, M. D., had concluded that Claimant had developed chronic pain syndrome that warranted continued use of prescription pain medication, including Vicodin.¹⁸ In a May 5, 2003, response to Dr. Osborne's report, Dr. Patel stated that Claimant had chronic SI joint dysfunction, as well as low-back pain.¹⁹ Dr. Patel also

of muscle spasms and rigidity, and a one per cent impairment based on a minimal decrease in range of motion in her left shoulder.

¹⁴ Carrier Exh. 1, p. 14.

¹⁵ Claimant Exh. 1, pp. 39-44.

¹⁶ Dr. Osborne's reference to a *cervicolumbar* strain was somewhat confusing given that the medical reports from the earlier period appear to be limited to a hip and back complaint. Nevertheless, his conclusions regarding Claimant's recovery are unambiguous.

¹⁷ Carrier Exh 1.

¹⁸ Carrier Exh. 1, p. 211.

¹⁹ Claimant Exh. 1, pp. 55-56.

stated a person can exhibit SI joint problems without any obvious spine abnormalities and that the repetitive motions Claimant performed on her job exacerbated her pain.

In his response, Dr. Patel also disputed Dr. Osborne's conclusion that Claimant had become dependent on Vicodin, stating that Claimant had not shown drug-seeking behavior such as "losing" her prescription or requesting early refills. He stated that Claimant required Vicodin in order to remain functional and at work so he would continue to prescribe the medication for her.

At the hearing, Carrier presented the testimony of Samuel Bierner, M. D. As had the peer reviewers, Dr. Bierner concluded that in 2003 Claimant did not show symptoms arising from the 1997 fall that needed to be treated by administering Vicodin. He did not dispute that Claimant was experiencing pain, but concluded that her medical history since 1997 did not support a conclusion that pain she was experiencing in 2003 arose out of the 1997 injury. Dr. Bierner also noted that there were other elements in Claimant's medical history, including her life conditions, a high body mass index, and diabetes, that could also lead to chronic pain.

B. Analysis

Much of the evidence in this case involved the issue of whether Claimant had become dependent on or tolerant of Vicodin.²⁰ However, this is not the first question to be asked. Rather, the first inquiry is whether the pain experienced by Claimant during the disputed period was an effect or result of the 1997 injury. The ALJ concluded that Carrier met its burden of proof to show that Claimant's back pain in 2003 was not an effect of the compensable injury. Since it was not, no reimbursement for Vicodin during the disputed period is warranted.

The ALJ found most credible the evidence from doctors reviewing Claimant's case, either through records or by examination, who concluded that the high levels of pain experienced by Claimant during the disputed period could not have arisen from a back and hip muscle strain that has resolved by at least 2001, if not earlier. As had other doctors who had reviewed the matter, Dr. Bierner emphasized that the ___ injury had been to soft tissue, not to nerves or bone. As early as

²⁰ Dr. Bierner defined dependency as being a condition of needing more of a given medication to achieve the same response or benefits as had been obtained previously by lower doses.

April 1998, Dr. Reno concluded that Claimant's condition had stabilized. The record is devoid of objective test results showing that the ___ injury caused permanent structural damage to any part of Claimant's body.

Dr. Patel's conclusion that a patient can exhibit SI joint problems without any obvious spine abnormalities does not lead inevitably to the conclusion that the ___ injury caused any SI joint problem that Claimant was experiencing in 2003.²¹ Nor does his diagnosis of chronic pain syndrome lead inevitably to the conclusion that the ___ injury produced a condition of chronic pain, particularly when Claimant had been diagnosed with bulging spinal disk in 1990, which never resolved, and when she undertook employment requiring repetitive lifting.

In short, credible medical evidence from the period two to three years after Claimant's ___ injury supports the conclusion that her muscle injury had healed to the point that Claimant would thereafter experience only transitory symptoms so was not the source of Claimant's ongoing, apparently severe, pain in 2003. To qualify for continued payment under the workers' compensation system, a treatment or medication must address the effects of or promote recovery from the compensable injury.²²

As the ALJ has concluded that Carrier met its burden of proof to show that Vicodin was not necessary to treat or relieve the effects of the ___ injury, this decision need not reach the issue of whether Claimant developed a tolerance of or dependence on that medication.

C. Summary

Based on the facts and analysis above, the ALJ concluded that Provider met its burden of proof to show that Vicodin was not medically necessary to treat Claimant's compensable injury during the disputed period. Claimant's request for reimbursement for all prescriptions of Vicodin during that period is denied.

²² Claimant asserted that the Carrier had paid for prescriptions of Vicodin after the disputed period. The ALJ does not dispute the accuracy of Claimant's statement. However, as there is no issue regarding any other period of time in this case, what the Carrier did in other months is not relevant to this case.

II. FINDINGS OF FACT

1. On ____ (Claimant) slipped on a wet floor, injuring her left hip and low back.
2. Transportation Insurance Company (Carrier) was the responsible insurer.
3. The initial diagnosis for Claimant's injury on ____, was muscle strain.
4. Claimant was prescribed chiropractic modalities, physical therapy, trigger point injections, and massage therapy to treat the ____, injury.
5. Claimant continued to experience muscle spasms and muscle rigidity in her low back through early 1998.
6. In February 27, 1998, Claimant's diagnosis was amended to SI joint strain with subluxation.
7. Claimant did not suffer any permanent injury to her bones, joints, or nerves as a result of the ____, injury.
8. In April 1998, Claimant's SI joint strain and myofascial pain secondary to the SI joint strain were stable.
9. In April 1998, Claimant declined to participate in a work hardening program.
10. By May 1998, Claimant's left hip strain had resolved, her hip and spine showed normal range of motion, her arms showed normal arm strength and sensation, and her legs showed normal strength, sensation, and reflexes.
11. In 1990 Claimant had been diagnosed with a bulging disc and she continued to suffer some pain from that injury in ____ notwithstanding the fact that she had undergone physical therapy and injections to treat that condition.
12. From ____ through the end of the disputed period, Claimant reported persistent low-back pain.
13. Between August 24, 2003, and November 26, 2003 (disputed period), Nayan R. Patel, M. D., Claimant's treating doctor, prescribed Vicodin for relief of Claimant's persistent low-back pain.
14. Beginning in October 1997, Claimant also displayed tenderness in the muscles of her upper back, shoulder, and neck at various times.
15. In May 2001, Claimant went to work as a ____ for the U.S. Postal Service, delivering mail; the delivery job involved repetitive motion and lifting.
16. During the disputed period, Claimant had life conditions which could contribute to or cause chronic pain, including a high body mass index and diabetes.

17. By May 1998, Claimant had recovered from the injury that occurred on ____.
18. Claimant's severe low-back pain during the disputed period was not an effect of and did not arise out of Claimant's compensable injury of ____.
19. Vicodin had been prescribed for Claimant beginning in ___ and Claimant continued to use that medication on a daily basis throughout the disputed period.
20. Vicodin is an opiate pain medication most commonly used in treatment of acute, short-term pain, and less frequently used for long-term management of muscular pain.
21. Claimant paid out-of-pocket for prescriptions for Vicodin during the disputed period.
22. On June 18, 2004, Carrier denied reimbursement to Claimant for those expenditures.
23. Claimant sought review by the MRD of the Texas Workers' Compensation Commission (TWCC or Commission) of Carrier's denial of payment.
24. On January 25, 2005, the Medical Review Division (MRD) of TWCC determined that the prescriptions of Vicodin were medically necessary, based on the report of the Texas Medical Foundation, an independent review organization (IRO).
25. On February 11, 2005, Provider requested a hearing on the MRD Decision.
26. On March 9, 2005, the Commission issued a notice of hearing that included the date, time, and location of the hearing, the applicable statutes under which the hearing would be conducted, and a short, plain statement of matters asserted.
27. In 2005, the parties sought and were granted several continuances of the hearing on the merits.
28. Administrative Law Judge Cassandra Church conducted a hearing on the merits on February 6, 2006, and the record closed that day.

III. CONCLUSIONS OF LAW

1. 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(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. Carrier timely requested a hearing, as specified in 28 TEX. ADMIN. CODE §148.3.
3. Proper and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

4. Carrier, as the petitioning party, has the burden of proof in this proceeding pursuant to TEX. LAB. CODE ANN. § 413.031, 1 TEX ADMIN. CODE §155.41(b), and 28 TEX. ADMIN. CODE §148.14(a).
5. Carrier met its burden of proof to show that Vicodin was not medically necessary during the disputed period to treat or reasonably required to relieve the effects of or promote recovery from a compensable injury suffered by Claimant, within the meaning of TEX. LABOR CODE ANN. §§ 408.021 and 401.011(9).

ORDER

IT IS ORDERED that all requests by Claimant for reimbursement from the Transportation Insurance Company for prescriptions of Vicodin paid for by Claimant between August 24, 2003, and November 26, 2003, are hereby denied.

SIGNED April 5, 2006.

**CASSANDRA J. CHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**