CONSOLIDATED
SOAH DOCKET NO. 454-07-1292.P1 (DWC NO. 01231913-76) and
SOAH DOCKET NO. 454-06-1912.P1 (DWC NO. 01231913-75)

TRANSCONTINENTAL INSURANCE COMPANY, Petitioner	§	**BEFORE THE STATE OFFICE**
	§	**OF**
V.	§	
TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION, and JAMES F. HOLLEMAN, JR., D.O., Respondents	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Transcontinental Insurance Company (Transcontinental) challenges two medical interlocutory orders (MIOs) issued by the Texas Department of Insurance, Division of Workers' Compensation (Division), on March 14, 2006, and November 9, 2006, requiring Transcontinental to pay for the treatment of Claimant___., consisting of three doctor's office visits per two 90-day periods and three prescription medications: Vicodin, Flexeril, and Mobic. This decision finds that the MIOs are overruled.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The MIOs were issued pursuant to the Division's Prospective Review Medical Examination (PRME) rules at 28 Tex. Admin. Code (TAC) § 134.650. Transcontinental filed timely hearing requests. After proper and timely notice, the hearing convened and closed on May 24, 2007, at the offices of the State Office of Administrative Hearings (SOAH), with Administrative Law Judge (ALJ) Katherine L. Smith presiding. Transcontinental was represented by counsel, James Loughlin, and the Division was represented by counsel, Renee Crenshaw. James F. Holleman, D.O., and the Claimant participated by telephone *pro se*.

SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073(b) and 413.055 and TEX. GOV'T CODE ANN. ch. 2003.

II. DISCUSSION

A. Background

The Claimant was injured on___, while he was driving a loader-tractor for _____. The ground gave way underneath the left side of the tractor, causing it to turn over onto its left side. Claimant was tossed around inside the vehicle's cab. The accident caused pain in his left shoulder, neck, lower back, and sacroiliac area. Claimant has been in continuous pain and has not worked since the injury. Claimant was given an 18 percent impairment rating and allowed to return to work at light duty.

Dr. Holleman requested PRMEs so that he could prescribe medications for Claimant and monitor Claimant's progress with office visits. Mark Christopher Race, M.D., performed the PRMEs on February 10 and November 6, 2006, and found on February 15 and November 13, 2006, the services to be medically necessary. Both times he approved three office visits within a 90-day period and the prescription of three to four Vicodin ES daily for pain, three to four Flexeril (10mg) daily for muscle spasms, and one Mobic (7.5 mg) daily for inflammation.

The Carrier has the burden of proof.[1] The issue is whether the services were medically necessary to treat Claimant's compensable injury. Under TEX. LAB. CODE ANN. § 408.021(a), "An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment."[2]

B. Decision

1 TEX. LAB. CODE ANN. § 413.055, 28 TAC § 148.14(a).

2 "Health care reasonably required" is defined in § 401.011(22-a) of the Labor Code as "heath care that is clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with: (A) evidence-based medicine; or (B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community." "Evidence-based medicine" is defined in § 401.011(18-a) of the Labor Code as "the use of current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts, and treatment and practice guidelines in making decisions about the care of individual patients."

Dr. Holleman is board certified in family practice, is a member of the American Academy of Pain Management, and devotes his practice to pain management. Dr. Holleman has been treating Claimant since June 2001. He has prescribed Vicodin for Claimant since 2001, combining it with other drugs. At first he prescribed 5 mg of Vicodin, but has increased the dosage to Vicodin ES (extra strength) consisting of 7.5. mg. He prescribed Mobic, which is an anti-inflammatory, to keep the level of the Vicodin low. He testified that the use of the drugs has resulted in the control of Claimant's pain, which comes and goes depending upon Claimant's activity level. He testified that the medications are the only avenue available to the Claimant because Transcontinental will not approve the continual use of injections. He testified that his overall plan is to control Claimant's pain and muscle spasms that cause pain and to limit the use of narcotics. He stated that his treatment plan includes encouraging home exercises and re-examinations in four weeks.

Neal Blauzvern, D.O, who is board certified by the American Board of Anesthesiology and specializes in comprehensive pain management, testified on behalf of Transcontinental. He stated that the medicines in question were not medically necessary because there is no clear evidence in the medical record of their clinical efficacy to reduce Claimant's pain or to improve his level of functioning. He notes that the Vicodin has been prescribed for more than five years and the Flexeril and Mobic for more than four years. Yet the records indicate no significant change in Claimant's pain level, which has remained at a 6 or 7 out of 10, or functional improvement. Dr. Blauzvern also noted that the office notes fail to show any sort of treatment plan. He pointed out that the Texas Board of Medical Examiners recommends that physicians follow certain guidelines when prescribing opioid narcotics, such as Vicodin, especially long term, including having a written treatment plan that documents goals, progress, and objective evidence of functional improvement.

Dr. Blauzvern noted that progress can generally be measured by return to work, functional capacity evaluations, range of motion testing, or other documentation of effectiveness. Dr. Blauzvern did not see any medical records addressing such requirements or measures. Dr. nBlauzvern noted that, although the dosage of Vicodin was moderate, the long-term risk is physical dependency and psychological addiction because the medication becomes less effective with continual use. He also noted that acetimenophen, which is a component of Vicodin, can cause liver damage and that Mobic at 15 mg can cause the risk of gastritis, stomach upsets, ulcers, and gastrointestinal bleeding, especially in a person over 65 years old, as Claimant is. Dr. Blauzvern also testified that the continued use of Flexeril was questionable because the medication is a muscle relaxant for muscle spasms that are not documented in the record.

Dr. Blauzvern also relied on the Official Disability Guidelines (ODG), based upon published peer review studies of 1991 and 2006, that question the long-term efficacy of opioids. Although the Division argues that the ODG do not apply because they were not adopted until 2007, TEX. LAB. CODE ANN. § 401.011(22-a) has defined "health care reasonably required" since 2005 as that which is "clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with: (A) evidence-based medicine." When there are no guidelines, the parties may rely on evidence-based medicine such as peer review medical literature, which, as noted by Dr. Blauzvern, have found that the ongoing use of opioids leads to reinforcement of pain behavior and does not enhance the quality of life and improve functional capacity.

Although Dr. Holleman may have had a treatment plan, it is not in the medical records. Dr. Holleman's notes remain the same visit after visit. Staff Exs. F & G. Moreover, the treatment has not enabled Claimant to return to work, cured the effects of his compensable

injury, or promoted his recovery. Although TEX. LAB. CODE ANN. § 408.021(a)(1) allows for treatment that relieves the effects resulting from the compensable injury, that relief needs to be documented and there is no clear evidence that it is the compensable injury for which Claimant is being treated. Dr. Blauzvern testified, for example, that there is no indication of ongoing residual pathology from the injury, including an alleged failed surgery to repair a rotator cuff tear that was not found during the left shoulder surgery. Transcontinental Ex. 1 at 114-115. Dr. Blauzvern also noted that an MRI of Claimant's spine showed only minimal changes to Claimant's lumbar spine. *Id.* at 16.

The ALJ finds that Transcontinental has met its burden of proving that the office visits and medications were not reasonable and necessary for the treatment of Claimant's ___ compensable injury, and the MIO decisions are, therefore, overruled.

III. FINDINGS OF FACT

1. Claimant ___was injured on____, while he was driving a loader-tractor for ___. The ground gave way underneath the left side of the tractor, causing it to turn over onto its left side. Claimant was tossed around inside the vehicle's cab. The accident caused pain in his left shoulder, neck, lower back, and sacroiliac area.

2. Claimant was given an 18 percent impairment rating and allowed to return to work at light duty.

3. Since the injury Claimant has been in continual pain and has not worked, although he has submitted job applications.

4. The Claimant's treating doctor, James F. Holleman, Jr., D.O., requested Prospective Review Medical Examinations (PRMEs) so that he could prescribe medications for Claimant and monitor Claimant's progress on the medications with office visits.

5. Mark Christopher Race, M.D., performed the PRMEs on February 10 and November 6, 2006, and found on February 15 and November 13, 2006, the services to be medically necessary. Both times he approved three office visits within a 90-day period and the prescription of three to four Vicodin ES (7.5 mg) daily for pain, three to four Flexeril (10mg) daily for muscle spasms, and one Mobic (7.5 mg) daily for inflammation.

6. The Texas Department of Insurance, Division of Workers' Compensation, issued medical interlocutory orders (MIOs) on March 14, 2006, and November 9, 2006, requiring Transcontinental Insurance Company (Transcontinental) to pay for the Claimant's treatment consisting of three doctor's office visits per two 90-day periods and the three medications.

7. Transcontinental requested hearings not later than 20 days after receiving notice of the MIOs.

8. All parties received not less than 10 days' notice of the hearing that 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 sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

9. A consolidated hearing was held on May 24, 2007.

10 Claimant has been treated with Vicodin for more than five years and Flexeril and Mobic for more than four years.

11. The medical notes do not indicate a treatment plan documenting goal setting, progress, and objective evidence of functional improvement.

12. No functional capacity evaluations, range of motion testing, or other documentation are in the medical records indicating evidence of improvement in Claimant's level of functioning.

13 There has been no significant change in Claimant's level of pain, which has remained at a 6 or 7 out of 10, and no functional improvement.

14. The treatment has not enabled Claimant to return to work, cured the effects resulting from his compensable injury, or promoted his recovery.

15. The long term risks of Vicodin are physical dependency and psychological addiction because the medication becomes less effective with continual use. The ongoing use of opioids such as Vicodin can lead to reinforcement of pain behavior and does not enhance the quality of life or improve functional capacity.

16. Acetimenophen, which is a component of Vicodin, can cause liver damage.

17. Mobic can cause the risk of gastritis, stomach upsets, ulcers, and gastrointestinal bleeding, especially in a person over 65 years old, as Claimant is.

18. The continued need for Flexeril, a muscle relaxant for muscle spasms, is not documented in the record.

19. The Vicodin, Flexeril, and Mobic and, thus, the office visits to monitor their use were not medically necessary because there is no clear evidence in the medical record of their clinical efficacy to reduce Claimant's pain and improve his level of functioning.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073(b) and 413.055 and TEX. GOV'T CODE ANN. ch. 2003.

2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

3. Transcontinental has the burden of proof in this proceeding. TEX. LAB. CODE ANN. § 413.055; 28 TEX. ADMIN. CODE (TAC) § 148.14(a).

4. The use of Vicodin, Flexeril, and Mobic were not reasonably required to treat Claimant's compensable injury. TEX. LAB. CODE ANN. § 408.021.

ORDER

IT IS THEREFORE, ORDERED that the medical interlocutory orders of the the Texas

Department of Insurance, Division of Workers' Compensation are overruled.

SIGNED July 23, 2006.

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