

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

Claimant was injured on _____, after falling off a fifteen-foot scaffold. He landed on the heels of his feet and hit the back of his neck against a two-inch pipe. Two days after the accident, Claimant sought medical treatment and was diagnosed with cervical and lumbar sprains, and a left wrist sprain. Claimant has been treated by numerous doctors during the past thirteen years as his complaints of pain continued. He underwent a four-level fusion on his cervical spine in September 2001. He was designated at maximum medical improvement in 1994 with a whole person impairment rating of 10-11%.¹

In August 2005, he began treatment with Dr. Randhawa and was last seen by him in October 2006. Dr. Randhawa, has prescribed Vicodin and Flexeril to treat Claimant's chronic pain resulting from the injury and monthly office visits for medication management. Throughout the time period since his injury, Claimant has been prescribed various medications by his treating physicians. Carrier has denied the treatment as being medically not necessary.

Employees have a right to necessary health care under TEX. LAB. CODE ANN. §§ 408.021 and 401.011. Section 408.021(a) provides: "An employee who sustains a compensable injury is entitled

¹ The medical records also indicate that Claimant was given a whole person impairment rating of 7-8% in 1993 and a 14% impairment rating in 1996. Carrier's Ex. 2.

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." Section 401.011(19) of the Labor Code provides that health care includes "all reasonable and necessary medical . . . services."

The Carrier has the burden of proof in this proceeding. TEX. LAB. CODE ANN. § 413.055, 28 TEX. ADMIN. CODE (TAC) § 148.14(a).

B. Evidence and Analysis

1. Carrier

Carrier contends that the office visits and medications are not necessary to treat the compensable injury that occurred thirteen years ago. According to Carrier, Claimant's medical records do not contain objective evidence of ongoing problems related to the injury. Carrier asserts that Claimant has become psychologically dependent upon medications that are primarily intended for short-term use.² Carrier relies on the medical reviews by other doctors as its evidence that the treatment is not medically necessary.

Claimant's medical and treatment history is extensively set forth in the reviews of Dr. John Sklar and Dr. David Vanderweide.³ Dr. John Sklar, a physical medicine and rehabilitation specialist, reviewed Claimant's medical records at the request of Carrier in December 2004 to assess whether Claimant required ongoing medical care for his compensable injuries. Dr. Sklar

² Vicodin is a pain opiod and Flexaril is a muscle relaxer.

³ Carrier's Exhibits 1 and 2.

noted that there were no findings of any significant traumatic injury as a result of Claimant's fall and that Claimant had experienced some initial improvement in his condition. Additionally, Dr. Sklar observed that, subsequent to the fall, Claimant continued to work on full duty, which Dr. Sklar believed demonstrated the relatively mild nature of his injuries. Citing to evidence of significant degenerative changes to Claimant's left wrist, Dr. Sklar concluded that Claimant's claims of wrist pain were related to the degenerative changes that pre-dated the compensable injury. Dr. Sklar also noted that Claimant showed signs of other injuries and degenerative changes that could cause Claimant's ongoing complaints of pain.

Dr. Sklar was critical of the treatment provided to Claimant by Dr. Jeffery Charnov in 1994. Dr. Charnov diagnosed Claimant with bilateral lumbar radiculopathy and administered epidural steroid injections to Claimant. Dr. Sklar did not believe that radiculopathy was clearly demonstrated in Claimant's physical examination. Although Dr. Charnov indicated that Claimant's neck symptoms were increasing, Dr. Sklar believes those symptoms were unrelated to the compensable injury. Additionally, Dr. Charnov continued to prescribe medications such as Naprosyn, Soma, Elavil, and Ultram as part of Claimant's treatment.

In 2000, Dr. Vandeweide, an orthopedic surgeon, reviewed the medical necessity of a multilevel cervical decompressive laminectomy and fusion. As he noted, Claimant had participated in "considerable physical therapy and pain management endeavors, including epidural steroid injections into the neck and back. He has had podiatry assessments. He has had myelograms, post myelograms. CT scans, and MRI's [sic]. He has had a nerve study. . . ."⁴ Dr. Vandeweide concluded that there was no operative indication for the proposed spine surgery and opined that if the surgery was performed, it would fail. Dr. Vandeweide noted that he and

⁴ Carrier's Ex. 2, p. 11.

other orthopedic surgeons who had reviewed Claimant's records had not found any documented pathology that would substantiate Claimant's reports of pain.

The medical records indicated that Claimant had evidence of a fracture of L1, as well as previous fractures of the left elbow and left ankle.⁵ However, reviewing doctors were unable to find evidence of significant spinal injury with radiculopathy. During 1996, Claimant was psychologically evaluated and it was recommended that he receive psychotherapeutic intervention.⁶ Additionally, Claimant has been prescribed numerous medications through the years by all his treating physicians.

Dr. Sklar was critical of the continued need for the medications as they did not appear to change Claimant's function in any way. Further, Dr. Sklar noted that Claimant was exposed to the side effects of medications that he did not need. Dr. Sklar specifically mentioned Flexeril in his comments. He did not discuss whether Vicodin was medically necessary, although he stated that Darvocet was an unnecessary medication to treat the compensable injury.

2. Evidence from Claimant and Provider

Claimant testified that he sought medical care on the day after the injury. He continued to work until his job was finished, but said that he was not called back to work after that job was completed. He has worked sporadically, according to his pain level, as a self-employed welder since the injury. According to Claimant, the medications allow him to sleep, work occasionally, and tolerate his chronic and debilitating pain. Claimant testified that he tries to take the

⁵ Carrier's Ex. 1, p. 2.

⁶ It appears that this recommendation was not approved by Carrier.

medications only when he really needs them. Claimant stated that the medications provide pain relief to him, allowing him "to function."

Office notes from Dr. Charnov in 1998 indicate that Claimant reported that he received pain relief from the medications and did not believe he could manage without them.⁷ Dr. Ghadially, an orthopedic surgeon and treating physician, noted that the medications of Flexeril, Elavil, Serax and Lortab were prescribed to Claimant for his pain and secondary depressive features and anxiety.⁸

Dr. Randhawa, a pain management specialist, testified that he saw Claimant on August 30, 2005, after Claimant was referred to him by a local orthopedic surgeon. He last saw Claimant on October 9, 2006. Dr. Randhawa testified that he had given Claimant steroid injections on at least two occasions and they seemed to provide good relief to Claimant. A third injection was not as effective, however.

Because Claimant's pain persisted, Dr. Randhawa attempted other treatment methods. In particular, he attempted to find a combination of medications that relieved Claimant's pain and allowed him to perform activities of daily living. Dr. Randhawa testified that he had initially prescribed non-narcotic medications, but they did not provide relief to Claimant.

Dr. Randhawa testified that Vicodin was prescribed as a pain reliever and that he discussed the use of such a narcotic with Claimant. Additionally, he secured an agreement from Claimant not to obtain narcotics from anyone else while under Dr. Randhawa's care.

⁷ Carrier's Ex. 5, p. 25; Ex. 6, p. 26.

⁸ Carrier's Ex. 8, p. 34.

While agreeing that the evaluation of pain has a subjective component, based upon Claimant's reports, Dr. Randhawa said that he performed a physical examination of Claimant in order to substantiate Claimant's pain complaints. He noted tenderness in Claimant's back. Dr. Randhawa prescribed Flexaril (which also is an anti-depressant) to treat Claimant's radicular pain and to assist him with sleeping. He expressed frustration with Carrier's denial of various other treatment recommendations that he believed would benefit Claimant. Dr. Randhawa stated that Claimant requires the medications in order to perform most activities.⁹

3. Analysis

Carrier's main argument was that Claimant's subjective complaints of pain outweighed any objective findings. Additionally, Carrier argued that Claimant's pain level had not changed significantly and were of a generalized nature indicating that the medications (and office visits) were not medically necessary. However, the ALJ believes Claimant's ongoing treatment, including the three-month period in question, relieves the effects of his compensable injury. The ALJ finds the medications are medically necessary to treat Claimant's chronic pain resulting from the injury and his back fusion. The medications also enhance Claimant's ability to return to or retain employment, one of the goals of workers' compensation. Further, it appeared that recommendations for other treatment modalities, such as chronic pain management programs and psychological treatment, have been denied by Claimant, leaving the treating physician little option besides medications in the way of pain management.

The office visits were not expressly addressed at the hearing, except to note that the MIO authorized 3 office visits within a ninety day time-frame. Dr. Randhawa's office notes indicate

⁹ Carrier's Ex. 9.

that Claimant was seen on a monthly follow-up basis in order to refill the medication.¹⁰ There was no showing by Carrier that this was not medically indicated. Given the fact that Claimant is taking narcotic medications, it is important for Dr. Randhawa to monitor Claimant's use and continued need for the medications. Thus, the office visits are determined to be medically necessary.

Overall, the ALJ concludes, under the particular facts of this case, that the opinions of Claimant's treating doctor and the PMRE doctor, along with Claimant's testimony, are the most convincing. The ALJ concludes that the medications and the office visits were medically necessary to treat the Claimant's chronic pain as a result of his compensable injury

III. FINDINGS OF FACT

1. Claimant was injured on _____, after falling from a fifteen-foot scaffold.
2. Claimant has been treated by several physicians since sustaining his injury.
3. As part of his treatment, Claimant has been prescribed medications and underwent a four-level fusion on his cervical spine in September 2001.
4. Since his injury, Claimant has suffered from chronic and debilitating pain. The pain has persisted even after the back fusion.
5. Claimant works sporadically as a _____ when his medical condition will allow him to do so.
6. In 2005, Claimant began treatment with Dr. Manjit Randhawa, a pain management specialist.
7. Dr. Randhawa has treated Claimant with various pain medications as he attempted to find a combination of medications that provided relief to Claimant.

¹⁰ Carrier's Ex. 9.

8. In October 2006, Dr. Randhawa recommended continued medications and office visits for medication management. He also requested approval for epidural injections.
9. The Claimant suffers from back pain with radiculopathy.
10. The disputed services include three office visits and prescriptions for Vicodin and Flexaril.
11. The Claimant's employer's workers' compensation insurance carrier, Insurance Company of North America, denied Dr. Randhawa's request to provide the disputed services.
12. Dr. Randhawa submitted a Request for Prospective Review of Medical Care Not Requiring Preauthorization, asking that the Texas Workers' Compensation Commission (Commission) order the disputed services to be provided.
13. The Commission appointed Nestor Cruz, M.D., as the Prospective Review of Medical Examination (PRME) doctor.
14. On April 19, 2006, Dr. Cruz opined that the requested services were medically necessary.
15. On April 26, 2006, the Texas Department of Insurance, Division of Workers' Compensation, issued a medical interlocutory order (MIO) directing the Carrier to pay for the disputed services.
16. The Carrier requested a hearing not more than 20 days after receiving notice of the MIO.
17. 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.
18. The Claimant has chronic pain as a residual effect of his injury and surgery.
19. Vicodin is a medication that relieves pain.
20. Vicodin has helped relieve the Claimant's pain and allows him to perform activities of daily living.
21. Vicodin is reasonably required by the Claimant's chronic pain that resulted from his injury.
22. Flexaril, a muscle relaxer, is useful in treating radiculopathy.

23. Flexaril is reasonably required in treating the Claimant's radiculopathy that is associated with his chronic pain from his injury.
24. Vicodin and Flexeril also allow Claimant pain relief in order to work as a self-employed welder.
25. Office visits are necessary to monitor a patient's use of medications.
26. The office visits requested were needed to determine whether to refill prescriptions and monitor the Claimant's use of narcotic medications.

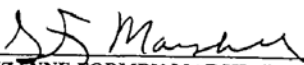
IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings 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. The Carrier has the burden of proof in this proceeding. TEX. LAB. CODE ANN. §413.055, 28 TEX. ADMIN. CODE (TAC) § 148.14(a).
4. The Flexeril, Vicodin, and office visits are medically necessary to treat the Claimant's compensable injury. TEX. LAB. CODE ANN. § 408.021.

ORDER

IT IS THEREFORE, ORDERED that Vicodin and Flexaril, and one office visit a month for three months were medically necessary to treat the Claimant's compensable injury and that Insurance Company of North America is ineligible for reimbursement for payments for those treatments and services.

SIGNED April 2, 2007



SUZANNE FORMBY MARSHALL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS