

Smith represented Carrier and attorney Timothy White represented the Division. Chaula J. Rana, M.D., 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 injured employee (Claimant) injured her right ankle and leg in a work-related accident or. Since the accident, she has complained of chronic pain and reflex sympathetic dystrophy (RSD) symptoms in her right leg and ankle. Claimant first saw Dr. Rana on March 27, 1997, and Dr. Rana has since remained her primary treating physician. Dr. Rana has primarily treated Claimant's chronic pain and RSD with medications. But Carrier contends that the medications Topamax and Lexapro, prescribed by Dr. Rana, were not medically reasonable and necessary to treat Claimant's compensable injury. Initially, Carrier also challenged the need for one office visit each 90 days, but Carrier no longer contests the medical necessity of those office visits.

Dr. Rana submitted a Prospective Review of Medical Examination (PRME) request, after Carrier denied the following care over a 90-day period: one office visit; Topamax, 50 mg., three at bedtime, total 270 tablets; and Lexapro, 20 mg., 1 tablet daily, total 90 tablets. A PRME doctor found the care to be medically necessary to treat Claimant. After Carrier continued to dispute

reimbursement, the Commission issued the MIO and Carrier requested a hearing before SOAH. Carrier has the burden of proof in this proceeding.¹

Employees have a right to necessary health care under TEX. LABOR CODE ANN. §§ 408.021 and 401.011. Section 408.021(a) provides: "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." Section 401.011(19) of the Labor Code provides that health care includes "all reasonable and necessary medical . . . services."

B. Evidence

1. Carrier's Evidence

Carrier called Dr. Ronald Buczek as its witness and offered certain documents into evidence. Dr. Buczek agreed that one office visit per 90 days was reasonable for Claimant. However, he stated that neither Topamax nor Lexapro are medically necessary to treat Claimant's compensable injury. Dr. Buczek testified that Topamax is prescribed for appetite control and weight loss. Its use for neuropathic pain, which is not an objective symptom, would be considered an off-label use not approved by the Federal Drug Administration (FDA). Also, Dr. Buczek stated, Lexapro is used to treat depression, which is also not an objective symptom. Based on his review of the records, Dr. Buczek believed Claimant's depression predated her compensable injury. If the depression pre-existed the compensable injury, Dr. Buczek concluded the Lexapro was not medically necessary to

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

treat the compensable injury. Therefore, in Dr. Buczek's opinion, neither the Topamax nor the Lexapro were medically reasonable or necessary.

On cross-examination, Dr. Buczek acknowledged that he based his opinion on a review of the records and had not examined the Claimant. He also agreed that virtually all doctors do some treatment through off-label use of prescription medications. However, he stated that an appropriate protocol for treating RSD would be to start with non-prescription anti-inflammatory medications, then progress to prescription anti-inflammatory medications, and gradually move to stronger drugs until a successful medication regimen was found. Dr. Buczek added that the records showed Claimant was more than 100 lbs. overweight, and he believed the Topamax was being used for weight loss instead of RSD.

Carrier also introduced into evidence various records, including a Retrospective Peer Review prepared by Dr. Buczek on September 12, 2004. In that peer review, Dr. Buczek reported that Claimant had persistent lower extremity RSD, lower extremity lymphedema, and morbid obesity. He also noted that Claimant had pre-existing insomnia, depression, and excessive weight. Although Dr. Buczek believed Claimant had reached maximum medical improvement (MMI), he agreed that she would continue to require supportive care on a long-term basis for her persistent RSD symptoms. Dr. Buczek's peer review also stated that the medications Claimant was taking were related to her compensable injury, although it is unclear what medications were prescribed at that time.

2. Division's Evidence

The Division also introduced documents into evidence and called Dr. Rana as a witness. Dr. Rana explained that o Claimant sustained an injury while working as an when someone on a ladder slid into her right ankle. Claimant has not had surgery to her

ankle. Dr. Rana first saw Claimant on March 25, 1997, and has managed her conservatively since that time. She testified that she followed a medication protocol as described by Dr. Buczek—that is, she started Claimant with non-prescription anti-inflammatory medications and gradually progressed to narcotics. Dr. Rana then weaned Claimant off the narcotics and found that the current medications have worked best for Claimant. Dr. Rana testified that the chronic pain suffered by Claimant causes mood order and depression. And while Claimant had depression when Dr. Rana first saw her nine months after the injury, Claimant did not report a history of depression predating her compensable injury.

After trying many different medications, Dr. Rana found that Topamax provided reasonable relief for Claimant's RSD. She added that it is common in pain management to use medications for off-label purposes. Dr. Rana stated that she requested review by a PRME doctor after the carrier denied all treatment. She noted that the PRME doctor (Robert Charles Lowry, M.D.) agreed that one office visit each 90 days and the Topamax and Lexapro prescriptions were medically necessary to treat Claimant.

On cross examination, Dr. Rana acknowledged that she does not have all of Claimant's prior medical records and she agreed that the medications she has prescribed for Claimant have varied over time. She denied that she prescribed the Topamax as a placebo or for weight loss but stated that weight loss is an added benefit. Dr. Rana also testified that she previously prescribed a spinal stimulator, but that request was denied and the denial was upheld on appeal. She also agreed that the PRME doctor did not expressly state that the current medications were related to Claimant's compensable injury.

C. Argument

Carrier argues that the medications at issue are not medically necessary for Claimant's compensable injury. It stresses that the PRME doctor was not asked whether the conditions for which the medications were prescribed were related to the compensable injury. Carrier also emphasizes that the Topamax is being used for an off-label purpose and there is no scientific evidence that it is appropriate for Claimant's RSD.

The Division argues that Dr. Rana has treated Claimant for more than ten years and is most knowledgeable about her condition. In contrast, Dr. Buczek has never examined the Claimant and based his opinion solely on a review of the records. The Division also reiterates that the Carrier has the burden of proof in this case.

D. ALJ's Analysis and Decision

The ALJ finds that Carrier did not establish that the medications in question were not medically reasonable and necessary for the treatment of Claimant's compensable injury. Although Topamax was prescribed for an off-label use, both Dr. Rana and Dr. Buczek testified that it is common practice to use medications for off-label purposes. Dr. Rana explained that she tried numerous other medications to treat Claimant's RSD and found that Topamax was the most effective. Further, Dr. Buczek agreed in his peer review that Claimant would continue to require supportive care on a long-term basis for her persistent RSD symptoms. Likewise, Dr. Lowry, the PRME physician, found that Topamax was medically necessary to treat Claimant.

There is no dispute that Lexapro is an appropriate medication for treating Claimant's depression. However, Dr. Buczek stated that his review of the records indicated that Claimant had depression prior to her compensable injury. In contrast, Dr. Rana testified that chronic pain is well

known to cause depression. Further, although Claimant had depression when Dr. Rana first saw her nine months after the injury, Claimant did not report a history of depression predating her compensable injury. As Dr. Rana has been treating Claimant for over ten years, she is much more familiar with Claimant's condition and the ALJ accepts her testimony that Claimant's current depression results from the chronic pain caused by her compensable injury.

Finally, Carrier no longer disputes that one office visit per 90 days is medically reasonable and necessary. Therefore, the ALJ concludes that Carrier failed to prove by a preponderance of the evidence that the disputed services and medication were not medically necessary to treat Claimant's compensable injury.

III. FINDINGS OF FACT

1. The injured employee (Claimant) injured her right leg and ankle in a work-related accident or
2. As a result of her injury, Claimant has suffered from chronic pain, reflex sympathetic dystrophy (RSD) symptoms, and depression.
3. Claimant first saw Dr. Chaula Jayant Rana, M.D., on March 27, 1997, and Dr. Rana has since remained Claimant's primary treating physician.
4. Dr. Rana submitted a prospective review of medical necessity request, after Carrier denied the following care over a 90-day period: one office visit; Topamax, 50 mg., three at bedtime, total 270 tablets; and Lexapro, 20 mg., one tablet daily, total 90 tablets.
5. Dr. Rana prescribed the Topamax for Claimant's RSD and the Lexapro for Claimant's depression.
6. A prospective review medical examination (PRME) doctor found the disputed care to be medically necessary to treat Claimant.
7. After Carrier continued to deny payment for the disputed care, the Commission issued a medical interlocutory order (MIO) directing Carrier to pay for the care.

8. Carrier requested a hearing before SOAH.
9. Treating RSD with Topamax is an off-label use for the medication.
10. It is common for physicians to prescribe medications for off-label uses.
11. Dr. Rana tried numerous medications to treat Claimant's RSD, and Topamax provided the best result.
12. Chronic pain frequently causes depression.
13. Lexapro is an appropriate medication to treat depression.
14. Claimant's current depression is caused by her compensable injury.
15. The disputed medications helped relieve the effects naturally resulting from Claimant's compensable injury.
16. Carrier no longer disputes that one office visit with Dr. Rana per 90 days is medically reasonable and necessary to treat Claimant's compensable injury.

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 §148.14(a).
4. Carrier failed to prove that the disputed care was not medically necessary. TEX. LAB. CODE ANN. §408.021.

ORDER

IT IS THEREFORE, ORDERED that Camden Fire Insurance Associates' request, under 28 TEX. ADMIN. CODE § 134.650, to be reimbursed for the disputed care and medications is **DENIED**. **IT IS ORDERED FURTHER** that Camden Fire Insurance Associates failed to prove by a preponderance of the evidence that the disputed care was not medically necessary to treat Claimant's compensable injury.

SIGNED March 9, 2007.



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