SOAH DOCKET NO. 454-07-3261.P1
DWC NO. _____

SERVICE LLOYDS INSURANCE COMPANY, Petitioner	§	**BEFORE THE STATE OFFICE**
v.	§	**OF**
TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION, AND DANIEL J. BOYLE, D.O., Respondents	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Service Lloyds Insurance Company (Carrier) challenges a medical interlocutory order (MIO) issued by the Texas Department of Insurance, Division of Workers' Compensation (Division), requiring it to pay for certain office visits and medications provided over a ninety-day period to an injured worker (Claimant). The Administrative Law Judge (ALJ) finds that Carrier did not prove that the disputed care was medically unnecessary or that the compensable injury was not the cause of Claimant's symptoms. Therefore, Carrier should not be reimbursed for payments it made in compliance with the MIO.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The Division issued the MIO on May 25, 2007, under its Prospective Review of Medical Care rules at 28 TEX. ADMIN. CODE (TAC) § 133.650. Carrier filed a timely request for hearing. The hearing convened and closed on November 14, 2007, at the State Office of Administrative Hearings (SOAH), before the undersigned ALJ. Carrier and the Division were represented by counsel, who appeared in person. Daniel J. Boyle, D.O., participated *pro se*, by telephone.

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 suffered a compensable injury on _____, while employed as a _____, when he hurt his lower back while closing the gate to a car parking lot. He began treatment with Dr. Boyle in June 1998, who referred him for a surgical consultation. After receiving two opinions that surgery was indicated, Claimant underwent back surgery by Lloyd Youngblood, M.D., on January 18, 1999. The surgery was not successful, and Claimant has continued to experience significant pain. Physical therapy and spinal and muscle injections have not relieved his pain. He has undergone an IDET procedure and work hardening. He has seen several physicians. A designated doctor gave him a 22 percent impairment rating.

Since 2001, Claimant has been employed as a security guard. His job requires him to drive a car and walk. He believes his pain prevents him from performing his former job.

Dr. Boyle requested the following care for Claimant over a 90-day period: two office visits and the following medications (disputed care): Elavil, 75 mg, one at bedtime, 90 tablets; Norco 10 mg, every 4 to 6 hours, as needed, for breakthrough pain, 300 tablets; Trazadone, 100mg, two at bedtime, 180 tablets; Celebrex, 200 mg twice a day, 180 tablets; Neurontin, 300 mg, twice per day, 180 tablets; and Valium, 10 mg, three times per day, 270 tablets.

After Carrier denied the requested care, Dr. Boyle asked for a prospective review medical examination (PRME). PRME doctor Bruce G. Kinzy, M.D., found the care to be medically necessary and that the compensable injury is the producing cause of Claimant's pain.

Employees have a right to necessary health care under TEX. LABOR CODE ANN. (Labor Code) §§ 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."

The Carrier has the burden of proof in this proceeding.[1]

B. Analysis

1. Party Positions and Evidence

Carrier witness Marc T. Taylor, M.D., has independently examined Claimant on two occasions, in November 2004 and January 2007. He opined in very strong terms that the ongoing narcotics and other medications are unsupported by any treatment guidelines or medical literature and are contrary to the standard of care. He referred to the Official Disability Guidelines (ODG) recently adopted by the Texas Department of Insurance and asserted that no medical literature supports the use of opioids in the fashion requested or the use of narcotics on an ongoing basis when there is no evidence of organic pathology.[2] He said it would be best for Claimant to be referred to a substance abuse psychiatrist and to undergo neuropsychological testing and gradual detoxification. He testified that the medical literature indicates that when patients are maintained on heavy medications, it enables dependence, inhibits a normal existence, and causes hopelessness. He maintained narcotics are detrimental to physical and psychological well-being.

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

2 Neither the ODG, portions of the ODG, nor other guidelines were in evidence.

Dr. Taylor cited Claimant's statements to him that his physical activity is severely restricted, his self-esteem has declined, he is very dissatisfied with his life, and he is seriously depressed.[3] He testified that during his January 2007 exam, Claimant said the treatment has not helped and his condition has worsened.[4] The January report says Claimant feels his physical activity is severely restricted, he is very dissatisfied with his current situation, his self esteem has gone down seriously, his future is bleak and depressing, and he is isolated from friends and family.[5]

Dr. Taylor wrote that Claimant's pain complaints cannot be explained on an objective basis. He maintained Claimant's doctors are using a shotgun approach to treat him without knowing the cause of his pain.[6] He criticized the physician performing the electro diagnostic studies on Claimant and asserted that the studies are invalid because the results do not match Claimant's physical examinations. There has been no change in the nature of Claimant's complaints, the severity of his complaints, or results of his treatment. He said Claimant's pain diagrams would be a flimsy reason to justify his treatment, but even they show no improvement.

Dr. Taylor said the oral medications Claimant is taking can be used for "breakthrough pain" in some cases, but in this case Claimant is taking them on a regular basis along with a morphine pump. He testified that a morphine pump can be appropriate on a long-term basis in rare situations, but oral narcotics on top of that are inappropriate. According to Dr. Taylor, Claimant's poor results from physical therapy, chiropractic treatment, steroid injections, surgery, and an IDET procedure, and his submaximal effort on his FCE support a conclusion that his pain lacks an organic basis.

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3 Ex. 1 at 2-6, 22-23.

4 The ALJ did not see these statements in the January 2007 report.

5 Ex. 1 at 5-6.

6 Dr. Boyle acknowledged not knowing the etiology of Claimant's pain.

Dr. Taylor testified that one must assume Claimant has pain, but the issue is what is causing the pain and what is the best course for Claimant and those around him. He added that pain complaints cannot always be cured.

Dr. Taylor believes Claimant returned to work primarily for financial reasons. He opined that the medications are not necessary for Claimant to work, but he is not sure whether Claimant said he could work without them. Carrier pointed out that Claimant was receiving medications both before and after he returned to work.[7]

Carrier cited a statement in a designated doctor examination by Leslie M. Bishop, M.D., that Claimant exhibited disproportionate verbalization, facial expression and pain behavior. Dr. Bishop also wrote that there is a lack of objective physiological findings or neurological deficits that would prevent gainful employment. There were observational inconsistencies, non-physiologic findings and no evidence of atrophy. She also reported symptom magnification.[8]

Dr. Taylor testified is not sure whether Claimant's medications could be abruptly stopped, but also said he needs to be weaned from his medications. He wrote that Claimant's medications could not be suddenly stopped.[9]

Dr. Boyle pointed out that Carrier initially approved Claimant's medications but later denied them. He said Claimant lost a lot of time at work after the first denial, and lost his job after the second. He testified that the disputed medications make it possible for Claimant to work.

7 Dr. Taylor wrote that the lumbar condition related to Claimant's at-work injury has resolved. Ex. 1, at 23.

8 Ex. 1 at 33.

9 Ex. 1 at 23.

In response to Dr. Taylor's testimony that the ODG recommends against long-term opioid use, Dr. Boyle acknowledged that in general, the ODG does not recommend opiates for long-term use, but said chronic pain and enabling a worker to return to work are exceptions.

Dr. Boyle agreed with Dr. Taylor that Claimant has shown little improvement, but he said that after trying various types of care the best he has been able to do is to enable Claimant to go back to work with medications. Dr. Boyle agreed that Claimant is not happy with his life but said he is happy being able to work. His main goal at this point is to try to keep Claimant functional. He cited Claimant's 22 percent impairment rating as demonstrating a serious permanent injury.

Dr. Boyle acknowledged seeing Dr. Bishop's designated-doctor examination report of disproportionate verbalization, facial expression, and pain behavior, but said he has not seen any evidence of medication abuse by Claimant.

Dr. Boyle testified he has no objection to Claimant undergoing psychological testing or to a reduction in his medications provided he is able to remain at work. Dr. Taylor testified that Claimant had negative signs for Waddell testing. Positive Waddell signs are non-organic indications that a patient's statements are inappropriate in relation to his or her physical symptoms.

Testimony from Dr. Boyle and Dr. Taylor indicated the following: Trazadone helps restore normal sleep; Celebrex is for inflation and swelling; Elavil is an anti-depressant that is also used to suppress nerve pain; Lyrica is a non-invasive pain medication; Norco is for breakthrough pain when Claimant's morphine pump is insufficient; Valium relieves anxiety related to going back to work and Claimant's other losses; and Neurontin is an anti-epilepsy medication also used for neuropathic pain.

Dr. Boyle testified that both he and Dr. Kinzy believe Claimant's compensable back injury is the cause of his pain.

In support of its position, the Division cited documentary evidence from several doctors in addition to Dr. Boyle and Dr. Kinzy. Arthur S. Hernandez, M.D., wrote on October 28, 1999, that Claimant has a lumbar root injury, post lumbar laminectomy, with the primary goal to control Claimant's pain with medications.[10] Thimios D. Partalas, D.C. wrote on February 29, 2000, that Claimant had lower-back pain, lower-extremity numbness and pain, positive discogram showings at L5/S1, abnormal motor examination of the lower extremities, and lower extremity muscle atrophy.[11] Fernando T. Avila, M.D., recommended on July 17, 2000, that Claimant continue his current pain medications.[12] On August 11, 2003, Michael J. Murphy, M.D., recommended oral narcotics for breakthrough pain in addition to the morphine pump.[13] Wilburn C. Avant, Jr., M.D., wrote on February 3, 2005, that there is an indication of acute and chronic radiculopathy in Claimant's L3 through S1 motor roots.[14]

2. Analysis

Despite reservations, the ALJ concludes Carrier's appeal should be denied. Although Dr. Taylor's testimony throws significant doubt on the efficacy of using opioids and the other disputed medications indefinitely, evidence from Dr. Boyle that Claimant is able to work with the medications, but is unable to work or misses work without them, was persuasive. Statutory law expressly states that health care that "enhances the ability of the employee to return to or retain employment" is a prime factor for determining medical necessity.[15]

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10 Ex. 2 at 64.

11 *Id.* at 57-58.

12 *Id.* at 54.

13 *Id.* at 48.

14 *Id.* at 46.

15 This case involved disputed medications that have already been prescribed and taken. Therefore, the decision is limited to the medical necessity and compensability of past, not future care.

The witnesses' testimony concerning the ODG and other guidelines conflicted. Dr. Boyle testified the ODG sanctions long-term use of opioids for chronic pain and to enable an employee to return to work. Again, neither the ODG nor relevant portions of the ODG were in evidence. The evidence on this issue did not preponderate either way.

The ALJ found little or no evidence that the disputed medical care was unrelated to the compensable injury. The preponderant evidence is that Claimant had back surgery for a compensable injury, which Carrier covered as compensable, and has continued to have pain at least partly as a result of the failed surgery.

III. FINDINGS OF FACT

1. A worker (Claimant) suffered a compensable injury on _____, while employed as a _____, when he hurt his lower back while closing the gate to a car parking lot.

2. Claimant began treatment with Daniel J. Boyle, D.O., in June 1998, who referred him for a surgical consultation.

3. After receiving two opinions that surgery was indicated, Claimant underwent back surgery by Lloyd Youngblood, M.D., on January 18, 1999.

4. The surgery was not successful, and Claimant has continued to experience significant pain.

5. Physical therapy and spinal and muscle injections have not relieved Claimant's pain.

6. Claimant has undergone an IDET procedure and work hardening.

7. Claimant has seen several physicians.

8. A designated doctor gave Claimant a 22 percent impairment rating.

9. Since 2001, Claimant has been employed as a security guard, where his job requires him to drive a car and walk.

10. Claimant's pain prevents him from performing his former job.

11. Claimant's employer's workers' compensation insurance carrier at the time of the injury was Service Lloyds Insurance Company (Carrier).

12. Dr. Boyle requested the following care for Claimant over a 90-day period: two office visits and the following medications (disputed care): Elavil, 75 mg, one at bedtime, 90 tablets; Norco 10 mg, every 4 to 6 hours, as needed, for breakthrough pain, 300 tablets; Trazadone, 100mg, two at bedtime, 180 tablets; Celebrex, 200 mg twice a day, 180 tablets; Neurontin, 300 mg, twice per day, 180 tablets; and Valium, 10 mg, three times per day, 270 tablets.

13. After Carrier denied the requested care, Dr. Boyle asked for a prospective review medical examination (PRME).

14. PRME doctor Bruce G. Kinzy, M.D., found the care to be medically necessary and that the compensable injury is the producing cause of Claimant's pain.

15. The Texas Department of Insurance, Division of Workers' Compensation, issued a medical interlocutory order (MIO) on May 25, 2007, requiring Claimant to pay for the requested care.

16. Not more than 20 days after receiving notice of the MIO, Carrier requested a hearing before the State Office of Administrative Hearings.

17. All parties received not less than 10 days' notice of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

18. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.

19. Initially Carrier approved Claimant's medications, but later denied them.

20. Claimant lost a lot of time at work after Carrier's first denial, and lost his job after the second denial.

21. Claimant has shown little improvement, but he has been able to continue to work with the disputed medications.

22. Although he is not happy with his life, Claimant is happy being able to work.

23. Trazadone helps restore normal sleep.

24. Celebrex is for inflation and swelling.

25. Elavil is an anti-depressant that is also used to suppress nerve pain.

26. Lyrica is a non-invasive pain medication.

27. Norco is for breakthrough pain when Claimant's morphine pump is insufficient.

28. Valium relieves anxiety related to his going back to work and other life losses.

29. Neurontin is an anti-epilepsy medication also used for neuropathic pain.

30. The disputed care is reasonably required by the nature of Claimant's 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, under 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 evidence did not show that the disputed medications are not reasonably required by the nature of Claimant's compensable injury. TEX. LAB. CODE ANN. §§ 401.011(18-a) and (22-a) and 408.021.

5. Carrier's appeal should be denied. TEX. LAB. CODE ANN. § 408.021.

ORDER

IT IS ORDERED that Service Lloyds Insurance Company appeal, under 28 TEX. ADMIN. CODE § 134.650, of the medical necessity of two office visits and Elavil, Norco, Trazadone, Celebrex, Neurontin, and Valium be, and the same is hereby, denied.

SIGNED December 12, 2007.

JAMES W. NORMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS