

**HARRIS COUNTY HOSPITAL  
DISTRICT,  
Petitioner**

**V.**

**DR. GLENN J. BRICKEN,  
Respondent**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Petitioner, Harris County Hospital District (HCHD) seeks reversal of an order requiring payment of \$20,000 for a chronic pain management program conducted by Respondent, Dr. Glenn J. Bricken, Psy. D., for Claimant \_\_\_\_\_. The Administrative Law Judge (ALJ) finds HCHD did not prove that the program was not medically necessary to treat the Claimant’s compensable injury. Therefore, HCHD is ordered to reimburse Dr. Bricken.

**I. JURISDICTION, PROCEDURAL HISTORY, AND NOTICE**

SOAH has jurisdiction over 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.

The Claimant suffered a compensable back injury on \_\_\_\_\_, when she was in an elevator that dropped abruptly, then jolted to a stop. She complained of cervical pain, which was attributed at various times to a cervical strain/sprain, herniated discs at the C3-4, C4-5, and C5-6 levels, and, more recently, brachial neuritis resulting from the injury. HCHD contested the extent of the injury, contending that the Claimant had suffered nothing more than a cervical strain/sprain that should have resolved. On August 30, 2005, a Texas Department of Insurance (TDI) Division of Workers’ Compensation (DWC) Hearing Officer determined that the compensable injury did not extend to the disc herniations. That decision was upheld by the DWC Appeals Panel. That Decision and Order did not address the other alleged causes of the Claimant’s back pain.

After back fusion surgery was requested but denied, and other conservative treatments were ineffectual, the Claimant underwent a chronic pain treatment program from July 17, 2006, through August 18, 2006. HCHD agrees the program was medically necessary, but contends the Claimant's condition that required the program was caused by the non-compensable disc herniations or another non-compensable condition. Therefore, HCHD denied reimbursement.

Dr. Bricken filed a request for medical dispute resolution with the DWC Medical Review Division (MDR). Dr. Bricken cited brachial neuritis and a chronic pain condition as the rationales for reimbursement. The MDR, on May 29, 2008, stated that HCHD had disputed only benefits related to the disc herniations. The MDR found that the neck sprain/strain and brachial neuritis were related to the compensable injury and ordered reimbursement for the chronic pain management program. HCHD filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).

The SOAH hearing was held July 29, 2008, before the undersigned ALJ. Both parties appeared through representatives. After testimony and argument, the hearing was adjourned and the record closed the same day.

## **II. DISCUSSION**

The evidence is inconclusive regarding the cause of the Claimant's chronic back pain. As HCHD pointed out, the Claimant complained of neck and low back pain in \_\_\_\_, after a separate accident. An MRI conducted after that accident showed bulging of the C4-5 and C5-6 discs. The Claimant was assigned a range-of-motion impairment rating of 11 percent in 1998 and after five months was cleared to return to work. After the 2004 accident at issue here, an MRI discovered disc herniations at C3-4, C4-5, and C5-6.

In January 2004, the Claimant's treating chiropractor, Michael C. Thompson, D.C., diagnosed her injury as cervical sprain/strain and cervical radiculitis. In an examination conducted about a month after the 2004 accident, Christian Fras, M.D., diagnosed the Claimant's condition as severe cervical sprain, similar to a whiplash injury. In April of 2004, Joel Nachimson, M.D., diagnosed the Claimant's problem as cervical sprain with disk herniation at C3-4, C4-5, and C5-6. Another examining physician, E. Floyd Robinson, M.D., in May 2004,

described the Claimant's MRI as "unremarkable." He found no evidence of cord impingement from the small disc protrusions shown on the MRI. His impression was that the Claimant was suffering from a cervical strain superimposed on some very mild cervical spondylosis. In September of 2004, David E. Tomaszek, M.D., expressed the opinion that the disc protrusion interpretation at C3-4 had been "overread" by the radiologist. At C4-5 and C5-6, however, he found the small disc protrusions did press slightly on the spinal cord. In a follow-up visit in April 2005, Dr. Robinson found the Claimant's cervical strain had resolved.

A much later repeat MRI, conducted in February 2007, found no cervical disc protrusions.

Samuel J. Alianell, M.D., testified for Dr. Bricken. Dr. Alianell testified he was not certain of the pain generator in the Claimant's care. He agreed that strains usually recover within four to six weeks. In his opinion, a sprain, however, could be more difficult and could in some cases lead to chronic pain.

It is clear in this case that the Claimant suffered from chronic pain. Although she had suffered a previous injury, in \_\_\_\_\_, she eventually was able to return to work. It is not clear what generated the Claimant's chronic pain that is the subject of this proceeding; the examining physicians did not agree on whether the disc protrusions shown on the MRI impinged on her spinal cord. Although those herniations, which are not compensable, are one possible source of her pain, the evidence does not establish that as the case.

The MRD ruled that Dr. Bricken should be compensated for the chronic pain management program. Under 28 TEX. ADMIN. CODE (TAC) § 148.14(a), HCHD had the burden of proving the program was not compensable. The evidence was not adequate to meet that burden of showing that the Claimant's chronic pain was from a noncompensable source. Therefore, HCHD should be required to reimburse Dr. Bricken for the cost of the chronic pain management program.

### **III. FINDINGS OF FACT**

1. The Claimant, \_\_\_\_\_, suffered a compensable back injury on \_\_\_\_\_, when she was in an elevator that dropped abruptly, then jolted to a stop.

2. The Claimant complained of cervical pain, which was attributed at various times to a cervical strain/sprain, herniated discs at the C3-4, C4-5, and C5-6 levels, and, more recently, brachial neuritis resulting from the injury.
3. Harris County Hospital District (HCHD) contested the extent of the injury, contending that the Claimant had suffered nothing more than a cervical strain/sprain that should have resolved.
4. On August 30, 2005, a Texas Department of Insurance (TDI) Division of Workers' Compensation (DWC) Hearing Officer determined that the compensable injury did not extend to the disc herniations. That decision was upheld by the DWC Appeals Panel.
5. The DWC Decision and Order did not address the other alleged causes of the Claimant's back pain.
6. After back fusion surgery was requested but denied, and other conservative treatments were ineffectual, the Claimant underwent a chronic pain treatment program from July 17, 2006, through August 18, 2006.
7. The chronic pain management program was medically necessary.
8. HCHD contends the Claimant's condition that required the program was caused by the non-compensable disc herniations or another non-compensable condition. Therefore, HCHD denied reimbursement.
9. Glenn Bricken, Psy. D. filed a request for medical dispute resolution with the DWC Medical Review Division (MDR). Dr. Bricken cited brachial neuritis and a chronic pain condition as the rationales for reimbursement.
10. The MDR, on May 29, 2008, stated that HCHD had disputed only benefits related to the disc herniations. The MDR found that the neck sprain/strain and brachial neuritis were related to the compensable injury and ordered reimbursement for the chronic pain management program.
11. HCHD filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).
12. Notice of the SOAH hearing was sent to the parties July 14, 2008.
13. The notice 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.
14. The SOAH hearing was held July 29, 2008, before the undersigned Administrative Law Judge. Both parties appeared through representatives. After testimony and argument, the hearing was adjourned and the record closed the same day.
15. The Claimant complained of neck and low back pain in \_\_\_\_, after a separate accident.

16. An MRI conducted after the 1997 accident showed bulging of the C4-5 and C5-6 discs. The Claimant was assigned a range-of-motion impairment rating of 11 percent in 1998 and after five months was cleared to return to work.
17. After the \_\_\_ accident, an MRI discovered disc herniations at C3-4, C4-5, and C5-6.
18. The various examining physicians did not agree on what generated the Claimant's chronic pain or whether the disc protrusions shown on the 2004 MRI impinged on her spinal cord.
19. Although disc herniations at the C3-4, C4-5, and C5-6 levels are one possible source of the Claimant's chronic pain, the evidence does not establish that as the case.
20. The evidence is inconclusive regarding the cause of the Claimant's chronic back pain.

#### **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. §413.031(k) 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. Under 28 TEX. ADMIN. CODE (TAC) § 148.14(a), HCHD had the burden of proving the chronic pain management program was not compensable.
4. The evidence was not adequate to meet that burden of showing that the Claimant's chronic pain was from a noncompensable source.
5. HCHD should be required to reimburse Dr. Bricken for the cost of the chronic pain management program.

#### **ORDER**

It is, therefore, ordered that Harris County Hospital District shall reimburse Dr. Glenn J. Bricken for the cost of the chronic pain management program at issue in this proceeding.

**SIGNED September 24, 2008.**

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**HENRY D. CARD  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**