

STATE OFFICE OF ADMINISTRATIVE HEARINGS  
300 West 15th Street, Suite 502  
Austin, Texas 78701

DOCKET NO. 453-03-2098.M5  
[MDR TRACKING NO. M5-02-2599-01]

HIGHPOINT PHARMACY,  
*Petitioner*

V.

SENTRY INSURANCE, A MUTUAL  
COMPANY  
*Respondent*

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**DECISION AND ORDER**

Petitioner Highpoint Pharmacy (Highpoint) seeks reimbursement of \$602.86 from Sentry Insurance, a Mutual Company (Carrier) for numerous medications provided to\_\_\_\_, an injured worker (Claimant). The Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) referred the matter to an Independent Review Organization (IRO) which denied reimbursement. MRD adopted the IRO's decision, which Highpoint then appealed. After considering the evidence presented, the Administrative Law Judge (ALJ) concludes that the prescribed medications were medically necessary and that Highpoint is entitled to reimbursement in the amount of \$602.86.

**I. Background Facts**

Claimant, a 38-year-old female, suffered a compensable, work-related injury to her lower back on\_\_\_\_\_. As a result of her injury, Claimant reports she has constant pain in her lower back region that radiates into her legs. Claimant primary physician is Dale White, D.C. She is also treated by Jacob Rosenstein, M.D., F.A.C.S., who prescribed pain and antidepressant medications to treat her lower back pain. Specifically, Dr. Rosenstein prescribed Celebrex, Skelaxin, Ultram, and Trazodone. Between August 6, 2001 and September 28, 2001, Highpoint filled these prescriptions for Claimant. Carrier refused to reimburse Highpoint for these medications maintaining that they were not medically necessary.

After Carrier denied reimbursement for some of the prescriptions, Highpoint requested medical dispute resolution. The Commission's MRD referred the matter to the IRO, which determined that the prescription Trazodone was medically necessary, but all other drugs were not medically necessary. Highpoint then appealed. On April 30, 2003, ALJ Catherine C. Egan convened a hearing on these issues. Nicky Otts appeared via telephone to represent Highpoint. Rebecca Strandwitz, attorney, represented Carrier. The Commission's staff did not appear nor participate. The hearing concluded and the record closed the same day.

**II. Analysis**

The sole issue in this case is whether the prescription drugs, Celebrex, Skelaxin, and Ultram, provided to Claimant from August 6 through September 28, 2001, were medically necessary to treat her work-related injury. Although both parties offered documentary evidence, Mr. Otts provided the only testimony at the hearing.

#### 1. Provider's Position

Mr. Otts testified that as a pharmacist he is familiar with the uses of Celebrex, Skelaxin, and Ultram and agrees with Dr. Rosenstein's letter of medical necessity. Dr. Rosenstein and the IRO agree that Claimant has chronic pain syndrome with depression, and agree that Trazodone is effective for treating sleep disturbances associated with depression.<sup>1</sup> In Mr. Otts' opinion the IRO and Dr. Rosenstein "simply have a difference of opinion of what medications are appropriate for chronic pain."<sup>2</sup>

Based on his experience as a pharmacist, Mr. Otts explained, Dr. Rosenstein is taking a very conservative approach in managing Claimant's pain because he has refrained from using narcotics. Instead, Dr. Rosenstein prescribed Celebrex, a drug recognized as being safe for long-term use. According to Mr. Otts, Celebrex is approved by the Food and Drug Administration for long-term use in treating arthritis because it is effective in reducing inflammation. Mr. Otts clarified that Ultram is a non-narcotic pain reliever that is effective in long-term pain relief and that Skelaxin is a muscle relaxant. Trazodone not only helps with sleep disturbance but also enhances pain relief medications. Mr. Otts further noted that the Carrier has not challenged Dr. Rosenstein's treatment plan for Claimant, just payment for these prescription drugs.

Dr. Rosenstein reported that he was treating Claimant for (1) left lumbar radiculopathy with neurogenic and/or myofascial pain in back, groin and lower extremities; (2) lumbar facet syndrome; and (3) L1-2, L5-S1 disc bulge.<sup>3</sup> As a result, Claimant suffers with chronic pain. This was supported by the MRI of Claimant's lumbar spine taken on November 10, 2000. The study was referenced as an "extended study".<sup>4</sup> According to this MRI, Claimant has "an exaggerated lumbar lordosis" and "mild annular bulge of the disc at L1-2 without herniation. Desiccation at multiple levels, secondary to degenerative change at L1-2, L3-4, L4-5 and L5-S1. Mild annular bulge at L5-S1, but with no herniation."<sup>5</sup>

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<sup>1</sup>Ex. 1 at 5.

<sup>2</sup>Mr. Otts' testimony.

<sup>3</sup>Ex. 2 at 1.

<sup>4</sup>Ex. 3 at 40.

<sup>5</sup>Ex. 3 at 40.

Dr. Rosenstein explained the medical necessity for each drug prescribed for Claimant as noted below.

**Celebrex** a non-steroidal anti-inflammatory which effectively manages short-term inflammatory complications and minimizes the potential for more serious complications such as osteoarthritis, tendonitis, bursitis, myositis, or neuritis.

**Skelaxin** a muscle relaxant that may be used as “adjunctive therapy” in the management of chronic pain. The “[a]ddition of a skeletal muscle relaxant to the medication regimen reduces motor activity of tonic somatic origins influencing both alpha and gamma motor neurons and thus allows the muscles and other involved tissues to heal.”<sup>6</sup>

**Ultram** an atypical opioid which produces a synergistic analgesic action.

Dr. Rosenstein argues that “current treatment standards demand at least that attendant pain be appropriately managed, an effort that in this case must unfortunately be perpetual.”<sup>7</sup> Explaining that adequate pain management requires some experimentation because of the varied responses different patients have to the drug regimen, Dr. Rosenstein opined that the regimen may continue to evolve. Dr. Rosenstein cautioned that delaying or interrupting treatment for chronic pain could exacerbate Claimant’s condition.<sup>8</sup>

## 2. Carrier’s Position

The Carrier maintains that Claimant has reach maximum medical improvement (MMI) and that the medications are not medically necessary. Claimant had a normal MRI on December 14, 2000.<sup>9</sup> On March 8, 2001, Claimant was examined by a designated doctor appointed by the Commission, Timothy B. Stansbury, D.C.<sup>10</sup> Dr. Stansbury found that Claimant had a five percent whole body impairment rating. Claimant reported to Dr. Stansbury that she is in constant pain and that sitting, sleeping, bowel movements, bending and stooping make it worse. Dr. Stansbury opined

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Ex. 2 at 1.

<sup>7</sup>Ex. 2 at 3.

<sup>8</sup>*Id.*

<sup>9</sup>Ex. 3 at 39.

<sup>10</sup>Ex. 3 at 41-47.

that it is likely Claimant would experience pain and discomfort for another three to four weeks, and that she had signs of symptom magnification.<sup>11</sup>

At the Carrier's request, on January 18, 2001, William E. Blair, Jr., M.D. also examined Claimant.<sup>12</sup> Dr. Blair reported that Claimant exhibited 8 out of 8 Waddell signs and concluded that she was exaggerating her symptoms. According to Dr. Blair, Claimant's injuries were minimal and that she will not benefit from "ongoing scheduled medical care, chiropractic care or alternative medical therapies."<sup>13</sup> In Dr. Blair's opinion, Claimant has no medical reason for not returning to work.<sup>14</sup>

At her treating physician's request, Robert G. Ranelle, D.O. examined Claimant on February 25, 2001. According to Dr. Ranelle, Claimant's pain emanates from the left sacroiliac joint, and he recommended that Claimant engage in "real/active/intensive physical therapy for her back. . . ." <sup>15</sup> Dr. Ranelle opined that Claimant did not need shots, injections or narcotics.

All this supports, Carrier argues, that the ongoing prescribed medications were not medically necessary and should not be approved for reimbursement.

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<sup>11</sup>Ex. 3 at 45.

<sup>12</sup>Ex. 3 at 51-68.

<sup>13</sup>Ex. 3 at 55.

<sup>14</sup>Ex. 3 at 61.

<sup>15</sup>Ex. 3 at 50.

### 3. IRO's opinion

The IRO did not examine Claimant, but did review the medical records submitted by the parties. The independent review was conducted by \_\_\_\_, a physician reviewer board certified in neurosurgery.<sup>16</sup> \_\_\_\_ noted that the injury "did not manifest acute structural or objective abnormality of the spine or it's neurologic or supporting structure."<sup>17</sup> \_\_\_\_ agrees that Claimant exhibits behavior patterns indicative of chronic pain syndrome. However, he disagrees with the use of Celebrex, Skelaxin, and Ultram. Explaining that Celebrex is used for acute pain, but not for the treatment of chronic pain because of the potential for serious side effects from long term use, \_\_\_\_ found its use was not medically necessary. Likewise, he argued, Skelaxin, a muscle relaxant, is used in the treatment of acute muscular injury, not chronic pain. Finally, he opines, Ultram is indicated in the short-term management of acute pain, but not for chronic pain.

### 4. ALJ's Conclusion

Petitioner has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE (TAC) §§ 148.21(h) and (i); 1 TAC § 155.41. Pursuant to the Act, an employee who has sustained 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 cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LAB. CODE ANN. § 408.021(a). Health care includes all reasonable and necessary medical services including a medical appliance or supply. TEX. LAB. CODE ANN. § 401.011(19)(A).

A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. § 401.011(31). Section 408.028 regarding pharmaceutical services provides that "a physician providing care to an employee . . . shall prescribe for the employee any necessary prescription drugs, and order over-the-counter alternatives to prescription medications as clinically appropriate and applicable . . . ."

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<sup>16</sup>Ex. 1 at 4.

<sup>17</sup>Ex. 1 at 5.

The Carrier denied reimbursement for the prescriptions on the basis that the drugs were medically unnecessary. The ALJ finds that just because Claimant has reached MMI does not mean she is no longer eligible to reasonable health care. Claimant's chronic pain must be medically managed. While Drs. Stansbury, Blair and Roselle may believe at the time they examined Claimant that she no longer needed treatment, they examined Claimant months before the prescriptions were filled. Dr. Rosenstein is a Diplomate of the American Board of Neurological Surgery. None of the doctors above opined that Dr. Rosenstein treatment of Claimant was improper.

\_\_\_\_, the IRO, did not physically examine Claimant, however, he did review the material submitted to the IRO, which included Dr. Rosenstein's letter as represented in the affidavit attached to Exhibit 2. \_\_\_\_ appears to agree that Claimant suffers with chronic pain syndrome, but disagrees with Dr. Rosenstein's drug regimen. He opined that Celebrex, Skelaxin and Ultram were not appropriate for chronic pain management due to the potential for side effects. \_\_\_\_ however did not opine as to what should be used to treat Claimant's chronic pain.

Claimant is entitled to reasonable medical care to relieve the symptoms caused by her chronic pain syndrome. Nothing suggests that Claimant is habitable user of any of these drugs. Moreover, the use of the conservative medications to treat Claimant's chronic pain appears warranted. Dr. Rosenstein, who is treating the Claimant, maintains that she must receive some relief from her pain to prevent the exacerbation of her condition. Dr. Rosenstein filed a letter of medical necessity explaining the reason he chose the drug regimen he prescribed to Claimant. While \_\_\_\_ did not agree, he did not suggest that nothing should be done to manage Claimant's pain. Mr. Otts, a pharmacist, testified that while doctors differed on drug regimens used to manage chronic pain, the medications prescribed by Dr. Rosenstein were frequently used for that purpose. Therefore, the ALJ finds that Petitioner proved by a preponderance of the evidence that the prescribed medications were medically necessary to treat Claimant's chronic pain due to her work-related injury. Carrier is liable to reimburse Highpoint the sum of \$602.86 for the Celebrex, Skelaxin, and Ultram provided to Claimant by Petitioner between August 6, 2001 and September 28, 2001.

### **III. Findings of Fact**

1. On \_\_\_\_\_, \_\_\_\_ (Claimant) suffered a compensable, work-related injury. At the time that she suffered her injury, Sentry Insurance, a Mutual Company (Carrier) was the provider of workers' compensation insurance covering Claimant.
2. As a result of her injury, Claimant suffers with lower back pain that radiates into her legs.
3. Jacob Rosenstein, M.D. treats Claimant for her work-related injury.
4. In August and September 2001, Dr. Rosenstein prescribed Celebrex, Skelaxin, Ultram, and Trazadone for Claimant, and Highpoint Pharmacy (Highpoint) filled the prescriptions for Claimant.

5. Between August 6, 2001 and September 28, 2001, Highpoint billed Carrier \$741.26 for the Celebrex, Skelaxin, Ultram, and Trazadone provided to Claimant.
6. Carrier declined to reimburse Highpoint for the medications provided between August 6 and September 28, 2001, asserting that the medications were not medically necessary.
7. Highpoint requested medical dispute resolution with the Medical Review Division (MRD) of the Texas Workers' Compensation Commission, and MRD referred the matter to an Independent Review Organization (IRO).
8. IRO issued a decision on July 18, 2002, finding that the prescriptions Celebrex, Skelaxin, and Ultram were not medically necessary to treat Claimant's condition, but that the prescription for Trazodone was medically necessary.
9. MRD adopted the IRO decision and issued an order on September 17, 2002, denying reimbursement for the Celebrex, Skelaxin and Ultram and ordering payment for the Trazodone(\$138.40) in accordance with the IRO determination.
10. On September 25, 2002, Highpoint appealed the decision regarding the medications Celebrex, Skelaxin, and Ultram and requested a hearing before the State Office of Administrative Hearings.
11. Notice of the hearing in this case was mailed to the parties on February 14, 2003. 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. In the notice, the Commission's staff indicated that it would not participate in the hearing.
12. The medications Celebrex, Skelaxin, and Ultram were prescribed to manage Claimant's lower back pain.
13. It was appropriate, and medically necessary, to treat Claimant's work-related injury with the medications Celebrex, Skelaxin, Ultram, and Trazadone.
14. Highpoint is entitled to reimbursement for the medications Celebrex, Skelaxin, and Ultram provided to Claimant between August 6, 2001, and September 28, 2001, in the amount of \$602.86.
15. On April 30, 2003, ALJ Catherine C. Egan convened the hearing in this docket. Highpoint appeared and was represented by Nicky Otts, via telephone. Carrier was represented by
16. Rebecca Strandwitz, attorney. The Commission's staff did not appear nor participate. The hearing concluded and the record closed the same day.

#### **IV. Conclusions of Law**

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act (the Act), TEX. LABOR CODE ANN. § 413.031.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031 of the Act and TEX. GOV'T CODE ANN. ch. 2003.
3. Highpoint timely filed its request for a hearing pursuant to 28 TEX. ADMIN. CODE § 148.3.
4. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE § 2001.052 and 28 TEX. ADMIN. CODE § 148.4.
5. Highpoint has the burden of proof in this matter by a preponderance of the evidence, pursuant to TEX. LAB. CODE ANN. § 413.031 and 28 TEX. ADMIN. CODE § 148.21(h).
6. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.
7. Highpoint established, by a preponderance of the evidence, that the dispensed drugs Celebrex, Skelaxin, and Ultram were medically necessary for the treatment of Claimant's work-related injury.
8. Highpoint's request for reimbursement should be granted as to the prescriptions in issue.

#### **ORDER**

**IT IS ORDERED** that Sentry Insurance, a Mutual Company reimburse Highpoint Pharmacy the sum of \$602.86 plus interest for the medications Celebrex, Skelaxin, and Ultram dispensed to Claimant between August 6, 2001, and September 28, 2001.

**Signed this 30<sup>th</sup> day of June 2003.**

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**CATHERINE C. EGAN**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**