

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder.

ISSUE

A contested case hearing was held on March 17, 2008, to decide the following disputed issue:

1. Whether the preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO) that 20 days (160 hours) of chronic pain management program is not reasonable and necessary health care services for the compensable injury of ___?

PARTIES PRESENT

Claimant appeared and was assisted by an (Ombudsman). Health Care Provider appeared and was represented by Dr. W. Carrier appeared and was represented by an (Attorney). Dr. W was present as the only witness.

BACKGROUND INFORMATION

On ___, Claimant injured his right shoulder, neck, and back in a lifting incident at work. Claimant's treating doctor, Dr. Y, referred him to Dr. N for evaluation to determine the appropriateness of treatment in an interdisciplinary pain management program. On September 12, 2007, a Behavioral Health Screening Assessment was conducted by Dr. KW. Claimant's treatment history was noted as including rest, numerous medications, active and passive physical therapy, chiropractic treatment, and the use of a TENS unit. Past medical history was noted as positive for appendectomy. Psychiatric history was negative. Current medications were noted to be 1.) Vicodin 7.5 (7 per day), and 2.) Soma 350 mg (1 per day). Claimant's "Functional Status" was reported with severe functional restrictions in many activities due to pain. A review of various activities of daily living indicated pain interference in numerous areas including the ability to perform household duties, sleep, work, personal care, and participate in recreational activities. Claimant described his pain as both a sharp and aching type of pain. He reported his typical pain intensity varying from a low of "5" or "6" to a high of "10" on a "1 to 10" scale. Dr. W's Diagnostic Impressions were as follows:

- Axis I Adjustment Disorder, depressed/anxious secondary to CPS;
- Axis II Deferred;
- Axis III Chronic Pain syndrome, secondary to low back, neck and shoulder pain;
- Axis IV Occupational Problems, Chronic Pain; and
- Axis V 55

Dr W 's "Summary and Recommendations" were as follows:

The current evaluation reveals an individual who sustained a work injury and continues to experience persistent pain from this injury. Significant pain related disability is indicated. Results are suggestive of adjustment difficulties which are likely to include periods of depression and anxiety. Mr. M's overall psychological profile indicates a strong probability that traditional medical treatment alone may have unsatisfactory results in addressing his pain complaints.

Mr. M appears to be an appropriate candidate for interdisciplinary pain management focused on functional restoration. Treatment will need to address Mr. M's emotional distress in concert with physical rehabilitation efforts. It will be critical to engage Mr. M as an active participant in the treatment process.

On November 1, 2007, Dr. N requested preauthorization of a chronic pain management program for Claimant. On November 6, 2007, Carrier denied the preauthorization request for chronic pain management. On November 19, 2007, Dr. N requested reconsideration of the denial of preauthorization for a chronic pain management program for Claimant. Carrier submitted the request for reconsideration to a qualified physician advisor, not involved in the original review determination, and the physician advisor upheld the original non-certification determination.

On December 14, 2007, Dr. N requested a review by an Independent Review Organization (IRO). On December 26, 2007, the IRO determination was issued by (Company), Independent Review Organization. The case was reviewed by a (Company) Physician Reviewer. The date of the review was on December 18, 2007. The IRO upheld the previous adverse determination. In the IRO decision, the following information was listed as having been provided for review:

1. Non-Certification Letters dated 11-06-07 and 11-28-07;
2. MRI of the right shoulder Exam Date 06-11-07;
3. MRI of the Cervical Spine Exam Date 07-16-07;
4. Nerve Conduction Studies 07-30-07;
5. S.O.A.P. notes 08-08-07;
6. Initial Examination report 08-03-07;
7. Preauthorization Request 11-01-07;
8. Reconsideration Request 11-19-07;
9. Behavioral Health Screening Assessment 09-12-07;
10. Consultation Report 09-12-07;
11. Physical Rehabilitation Evaluation 09-12-07;
12. Case Summary dated 11-01-07; and
13. Letter of Referral and Medical Necessity 09-04-07

The IRO noted the "Patient Clinical History" to be as follows:

This 19-year-old claimant suffered a work related injury on _____. Prior treatment included conservative care and medications. It was noted on the report of 11-01-07, that the claimant had 6 individual therapy and biofeedback/relaxation sessions with marginal success. The report of 09-12-07 documented that the claimant's pain was focused on the neck, back and shoulder and it was noted that pain was not in accordance with his pathology. His motivations to change and his ability to deal with negative predictors were not elaborated upon. The request for CPMP was 6 months after the injury.

The IRO gave the following "ANALYSIS AND EXPLANATION OF THE DECISION INCLUDING CLINICAL BASIS, FINDINGS AND CONCLUSIONS USED TO SUPPORT THE DECISION:"

The Reviewer commented that ODG Guidelines cites the following criteria for CPMP: 1) adequate and thorough evaluation; 2) previous methods of treating chronic pain have been unsuccessful and there is absence of other options likely to result in clinical improvement; 3) significant loss of ability to function related to the chronic pain; 4) not a candidate for surgery or other treatment; 5) exhibits motivation to change and willing to forgo secondary gains; and 6) negative predictors have been addressed.

The Reviewer noted that these criteria do not appear to have been met. Additionally, the place for interdisciplinary treatment progress appears to be a period of not later than 3-6 months after the disabling injury (ODG, 2007). Negative predictors of efficacy for CPMP are high levels of psychosocial distress, duration of pre-referral disability time and prevalence of opioid use (ODG, 2007).

There appears to be little scientific evidence for the effectiveness of multidisciplinary biopsychosocial rehabilitation compared with other rehab facilities for neck and back pain (Karjalainen, 2003).

In the opinion of the Reviewer, the request for chronic pain management of 160 hours is not medically necessary for this claimant. (See P-G, Pg. 6).

Under the Official Disability Guidelines in reference to Chronic Pain Programs, the following recommendation is made:

Criteria for the general use of multidisciplinary pain management programs:
Outpatient pain rehabilitation programs may be considered medically necessary when all of the following criteria are met:

(1) An adequate and thorough evaluation has been made, including baseline functional testing so follow-up with the same test can note functional improvement; (2) Previous methods of treating the chronic pain have been unsuccessful and there is absence of other options likely to result in significant clinical improvement; (3) The patient has a significant loss of ability to function independently resulting from the chronic pain; (4) The patient is not a candidate where surgery or other treatments would clearly be warranted; (5) The patient exhibits motivation to change, and is willing to forgo secondary gains, including disability payments to effect this change; & (6) Negative predictors of success have been addressed.

Dr. W was the only witness at the March 17, 2008, CCH. He is a licensed psychologist and has been the Clinical Director at (medical center) for the last 16 years. He is intimately involved in the assessment process. Dr. W testified that when Claimant was referred for the chronic pain program, a comprehensive assessment that takes a good half a day to complete at the clinic was accomplished, and that he performed a psychological screening assessment, the medical director performed a medical evaluation, and the physical therapist performed a physical rehabilitation evaluation.

In his testimony Dr W addressed the ODG criteria, and explained why he believed that the IRO reviewer erred. The IRO, in its ANALYSIS AND EXPLANATION OF THE DECISION INCLUDING CLINICAL BASIS, FINDINGS AND CONCLUSIONS USED TO SUPPORT THE DECISION stated:

"The Reviewer noted that these criteria do not appear to be met. Additionally, the place for interdisciplinary treatment progress appears to be a period of no later than 3-6 months after the disabling injury (ODG, 2007). Negative predictors of efficacy for CPMP are high levels of psychosocial distress, duration of pre-referral disability time and prevalence of opioid use (ODG, 2007).

There appears to be little scientific evidence for the effectiveness of multidisciplinary biopsychosocial rehabilitation compared with other rehab facilities for neck and back pain (Karjalainen, 2003).

In the opinion of the Reviewer, the request for chronic pain management of 160 hours is not medically necessary for this claimant."

Dr. W explained that the Reviewer's statement that, "Additionally, the place for Interdisciplinary treatment progress appears to be a period of no later than 3-6 months after the disabling injury (ODG, 2007)," means that the Reviewer did not understand the ODG because most reviewers won't consider a chronic pain management program until you get to at least 3 to 6 months after the disabling injury. To support his testimony Dr. W- specifically pointed to the ODG (See P-I, page 2), and correctly pointed out that the Reviewer was not referencing ODG criteria when he made this statement, but was actually referring to a section noted in the ODG to be "Under study." What the statement actually says is, "It is now being suggested that there is a place for interdisciplinary programs at a stage in treatment prior to the development of permanent disability, and this **may** be a period of no later than 3 to 6 months after the disabling injury."

Dr. W also pointed out that the Reviewer in his Analysis incorrectly referenced a Karjalainen study of 2003, as it related to neck and shoulder pain, and did not take into account back pain, yet the Reviewer erred when he stated that the study incorporated the back. As proof, Dr. W offered the Karjalainen study (See P-H). It is evident that the 2003 study references "**Multidisciplinary biopsychosocial rehabilitation for neck and shoulder pain among working age adults.**" Dr. W also pointed out that when the Reviewer stated in his rationale, "There appears to be little scientific evidence for the effectiveness of multidisciplinary biopsychosocial rehabilitation compared with other rehab facilities...", that he seemed to be confusing the biopsychosocial program with a chronic pain program. He went on to explain that a biopsychosocial program does not even meet the standard for any accredited pain program.

In his testimony Dr. W specifically referenced each of the ODG criteria to be considered and provided substantively detailed testimony. With regard to the ODG criteria, Dr. W explained as follows:

Criterion (1) An adequate and thorough evaluation has been made, including functional testing so follow-up with the same test can note functional improvement:

Dr. W addressed this criterion by testifying that an adequate and thorough evaluation was completed and pointed to the September 12, 2007, "Behavioral Health Screening Assessment," completed by him. (See P-B, p. 5) The evaluation procedure consisted of:

- 1) Clinical Interview;
- 2) Review of Records;
- 3) Brief Behavioral Health Inventory 2;
- 4) Beck Depression Inventory;
- 5) Beck Anxiety Inventory; and
- 6) Dallas Pain Questionnaire.

During this process Dr. W reviewed the following: 1) Background Information; 2) Treatment History; 3) Past Medical and Psychiatric History; 4) Current Medications; 5) Functional Status; 6) Psychological/Emotional Status; 7) Test Results (Brief Battery for Health Improvement 2 Responses); Beck Depression Inventory (Score of 32); Beck Anxiety Inventory (Score of 21); and Responses to Dallas Pain Questionnaire; 8) Alcohol/Drug Use (NONE); 9) Family/Social Issues; 10) Educational Level (11th grade); and 11) Vocational Status.

Dr. W provided diagnostic impressions for Axis I through Axis V, and also opined that the current evaluation revealed an individual who sustained a work injury and continued to experience persistent pain from this injury. Significant pain-related disability was indicated, and results were suggestive of adjustment difficulties which are likely to include periods of depression and anxiety. He further opined, "Mr. M's overall psychological profile indicates a strong probability that traditional medical treatment alone may have unsatisfactory results in addressing his pain complaints." He also found that Mr. M appeared to be an appropriate candidate for interdisciplinary pain management focused on functional restoration. "Treatment will be needed to address Claimant's emotional distress in concert with physical rehabilitation efforts, and it will be critical to engage Claimant as an active participant in the treatment process."

Dr. W added in his testimony that in accordance with ODG criterion 1, that Claimant had undergone a thorough evaluation and baseline functions on physical parameters, and psychological screening evaluations had been performed.

With respect to ODG criterion 2, which is: Previous methods of treating the chronic pain have been unsuccessful and there is absence of other options likely to result in significant clinical improvement, Dr. W testified that previous methods of treating the Claimant's chronic pain had been unsuccessful; Claimant had completed all other treatment; that earlier on epidural steroid injections had been recommended, but Carrier denied them; and that Claimant was not a surgical candidate.

With regard to criterion 3 of the ODG, which is: The patient has a significant loss of ability to function independently resulting from the chronic pain, Dr. W explained that Claimant had considerable physical limitations due to chronic pain, and that his activities of daily living/functioning were considerably limited. Dr. W explained that a thorough medical evaluation and functional evaluation were completed at the time of the initial evaluation and Claimant had considerable functional limitations noted by the physical therapist with objective physical findings, i.e., lifting.

With regard to criterion 4 of the ODG, which is: The patient is not a candidate where surgery or other treatments would clearly be warranted, Dr W again explained how Claimant is not a surgical candidate and that there are no other treatments warranted for treatment of Claimant's chronic pain.

Criterion 5 provides: The patient exhibits motivation to change, and is willing to forgo secondary gains, including disability payments to effect his change. Dr. W testified that based upon his clinical evaluation that motivation assessment is part of what is done in individual counseling prior to putting or recommending someone for the program. Dr W testified that he explained to Claimant what was required of him in the program and there was no question in his mind or any of the other evaluators' minds that Claimant is very motivated and understands that the chronic pain program is difficult, and that we are not curing the pain, but trying to teach him to cope and increase his functional level even though he still may hurt.

Criterion 6 provides: Negative predictors of success have been addressed. Dr W testified that he certainly addressed negative/psychological factors and he noted that during the functional evaluation that Claimant was limited due to pain guarding which meant that Claimant had significant pain limitations because he was hurting and in pain. Dr W stated that Claimant understood that the chronic pain program would not necessarily cure the pain, but would enable him to cope and function in spite of the pain. Dr W adamantly testified that throughout the evaluation Claimant was cooperative and completed the evaluation. He testified that a clinician does not just take any one test such as the Beck Depression Inventory test and pronounce that this is what the person scored, but one has to use clinical judgment in evaluating the overall picture, which is what he did, after reviewing all of the testing. He further explained psychological factors do play a role in recovery effort and he indicated that in his report.

Dr W provided an analysis of how evidence-based medicine clearly rebutted the Reviewer's cursory review, and explained how he addressed all of the ODG criteria to be considered for admission into a chronic pain program. "Evidence-based medicine: means the use of current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts, and **treatment and practice guidelines** in making decisions about the care of individual patients."

Rule 133.308 is silent concerning the quantum of evidence necessary to overcome the presumptive weight accorded the IRO decision and the Preamble for Adoption of this rule is similarly silent on this matter. See 26 Tex. Reg. 100934 (December 28, 2001). Once rebutted the IRO is given no additional weight and the case is decided based on the preponderance of the evidence. In the instant case, evidence-based medicine has overcome the presumptive weight of the IRO decision. Therefore, the case has been decided based on the preponderance of the evidence, and the preponderance of the evidence is against the IRO determination.

Even though all the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

FINDINGS OF FACT

1. The parties stipulated to the following facts:

- A. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - B. On ____, Claimant was the employee of (Employer).
 - C. On ____, Claimant sustained a compensable injury.
2. The preponderance of the evidence is contrary to the decision of the Independent Review Organization (IRO) that 20 days (160) hours of chronic pain management is not reasonable and necessary health care services for the compensable injury of ____.

CONCLUSIONS OF LAW

- 1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
- 2. Venue is proper in the (City) Field Office.
- 3. 20 days (160) hours of chronic pain management program is reasonable and necessary health care services for the compensable injury of ____.

DECISION

20 days (160) hours of chronic pain management program is reasonable and necessary health care services for the compensable injury of ____.

ORDER

Carrier is ordered to pay benefits in accordance with this decision, the Texas Workers' Compensation Act, and the Commissioner's Rules.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE INSURANCE COMPANY**, and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS SUITE 1050
AUSTIN, TX 78701**

Signed this 21st day of March 2008.

Cheryl Dean
Hearing Officer