

MEDICAL CONTESTED CASE HEARING NO. 09042
M6-08-13122-01

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.

ISSUES

A contested case hearing was held on October 09, 2008, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that the claimant is not entitled to six sessions of individual psychotherapy for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was represented by JC, attorney. Respondent/Carrier appeared and was represented by SG, attorney.

BACKGROUND INFORMATION

Claimant suffered a significant injury primarily to his low back. He has undergone six surgeries including a discectomy, a fusion, and a morphine pump implant. He has undergone physical therapy, work hardening, a chronic pain management program, injections and several medication regimens. Of significance to this hearing, he underwent a chronic pain management program that included fourteen individual psychotherapy sessions, then a hernia surgery and then the morphine pump implant. Claimant's doctors have requested six individual sessions of psychotherapy. Both URA doctors and the IRO doctor opine the treatment is not necessary and denied the requests.

The first URA opines, "It is noted the patient has had minimal benefit from a previous chronic pain management program. There is no reason to expect that the patient will now benefit from a much lower level of care. Moreover, patient is displaying such extreme symptoms that the basis of those symptoms now has to be questionable which are not accounted for in any respect to any treatment planning." The second URA doctor indicates the Official Disability Guidelines are silent on the duration of chronic pain management programs and they typically last 20 sessions citing the Sanders 2005 study. There are no studies to suggest that repeating a lower level of behavioral treatment would be potentially effective after a more intensive program has been tried and failed. The request was then sent to the IRO.

The IRO agreed with the denial and opined the request for the six sessions of psychotherapy was not necessary. He stated the following:

The reviewer states that the provided medical records indicate that the patient reports high levels of depression and anxiety. However, there were no records indicating that he has shown a positive response to psychotherapy during the

chronic pain management program which includes a counseling component. Therefore, there is no previous behavior indicating his desire and ability to make constructive therapeutic changes in his life.

The 2007 Official Disability Guidelines recommends outpatient therapy for 0-7 visits as an effective treatment for 298.2 Major depressive disorder, single episode.

Under the Pain Chapter of the Official Disability Guidelines, behavioral intervention discusses the following:

Behavioral intervention is a recommended treatment for chronic pain. The identification and reinforcement of coping skills is often more useful in the treatment of pain than ongoing medication or therapy, which could lead to psychological or physical dependence. See the Low Back Chapter, "Behavioral treatment", and the Stress/Mental Chapter. See also Multi-disciplinary pain programs.

Official Disability Guidelines Psychotherapy Guidelines:

- Initial trial of 6 visits over 6 weeks
- With evidence of objective functional improvement, total of up to 13-20 visits over 13-20 weeks (individual sessions)

Extremely severe cases of combined depression and PTSD may require more sessions if documented that CBT is being done and progress is being made. Psychotherapy lasting for at least a year, or 50 sessions, is more effective than shorter-term psychotherapy for patients with complex mental disorders, according to a meta-analysis of 23 trials. Although short-term psychotherapy is effective for most individuals experiencing acute distress, short-term treatments are insufficient for many patients with multiple or chronic mental disorders or personality disorders. (Leichsenring, 2008)

There are no studies under this area or under the other areas addressing psychotherapy under the Pain Chapter or the Low Back Chronic Pain Chapter for the need of follow-up individualized psychotherapy session as a kind of "refresher course" as requested by Claimant's doctors. This is the one of the bases for the denial by Carrier's second URA doctor, HH PhD., Psychology, implying the fact the Official Disability Guidelines would not be applicable.

Dr. NM, PhD, a clinical health psychologist specializing in pain management, requested the six sessions of individual psychotherapy and opined that such psychotherapy is a manner of maintenance therapy to help reinforce the pain management techniques Claimant learned in his previous chronic pain management program. It would not be a full-scale pain management program. She provided testimony that Claimant had undergone an extensive pain management course through (Health Care Provider) and did show signs of improvement during those sessions, which included the individualized psychotherapy sessions. A letter from PB, OTR, RN, CSCS, was provided that attested to the fact that "It is rare for an individual in a chronic pain management program to be able to decrease his level of pain from a 10 to a 1 or 0 in a matter of 30 visits, though (Claimant) was able to achieve this difficult task." See Claimant Exhibit 24, page 151. In her letter PB noted that Claimant needs continued follow-up care.

Dr. NM opined that since Claimant has now undergone two additional surgeries, i.e. a compensable hernia repair and a morphine pump insertion, he is now in need of these six sessions in order to relearn the pain coping skills he learned during the first program. She testified the patient showed progress through behavioral treatment so this would warrant further treatment. The Official Disability Guidelines recommend further treatment in cases that are more severe. She additionally testified the National Guideline Clearing House provides an additional resource for evidence-based clinical practice guidelines to support the requested aftercare. She testified those guidelines state chronic pain management patients should be followed up at least three months after a chronic pain management program and allowed a minimum of at least two treatments to secure applications of techniques offered in that program. The primary goal of aftercare was to help patients transition from after-treatment, patient-control applications to treatment protocols leading to independence of treatment. Dr. NM indicated that Claimant is optimistic about future treatments to encourage positive thoughts, distraction techniques, and reduce catastrophizing.

The Official Disability Guideline recommends behavioral treatment for chronic pain. It does not give standards or recommendations for follow-up maintenance care for behavioral treatment of chronic pain based upon the opinion of the second URA doctor. However, Dr. NM only globally referenced the National Guideline Clearinghouse as her authority without providing specific references to the studies or literature upon which those references were based. The foundation of her opinion could not be adequately assessed to determine whether the reference complied with the statutory definition of evidence based medicine sufficient to contradict the determination of the IRO.

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.
 - D. The Independent Review Organization determined Claimant should not have six sessions of psychotherapy.
2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. Six session of individual psychotherapy is not health care reasonably required 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. The preponderance of the evidence is not contrary to the decision of the IRO that six sessions of individual psychotherapy is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to six sessions of individual psychotherapy for the compensable injury of _____.

ORDER

Carrier is not liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

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

**CT CORPORATION SYSTEM
350 N. ST. PAUL STREET
DALLAS, TX 75201.**

Signed this 15th day of October, 2008.

KEN WROBEL
Hearing Officer