

**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 January 8, 2009 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO decision that the Claimant is not entitled to 80 hours of interdisciplinary chronic pain management program for the compensable injury of \_\_\_\_\_?

**PARTIES PRESENT**

Petitioner/Claimant appeared and was represented by KM, attorney.  
Respondent/Carrier appeared and was represented by EC, attorney.

**BACKGROUND INFORMATION**

Claimant sustained a compensable injury to his lumbar spine on \_\_\_\_\_ while working as a school band director. The injury resulted in an aggravation of the Claimant's pre-existing lumbar spine and psychological conditions. A lumbar MRI revealed a 6 mm disc fragment at L5 pressing on the right S1 nerve root. Claimant has undergone chiropractic manipulations, trigger point injections and one epidural steroid injection. Claimant was recommended to undergo surgery but his dramatic weight gain since the date of the injury prevents him from being a surgical candidate. Claimant's treating doctor has recommended 80 hours of interdisciplinary chronic pain management which was denied by the Carrier and referred to an IRO who determined that the recommended treatment was not medically necessary.

The IRO reviewer concluded:

Specifically, the injured worker has too many negative predictors of success suggesting a high chance of failure in the program regarding the work related injury symptomology. The patient has had psychiatric evaluation in the past which has revealed high levels of preexisting non work related psychosocial distress with high levels of pretreatment and preinjury depression. This includes a personality disorder schizoid in nature, long standing since childhood (Per Dr. B 9/14/06). Secondly, the injured worker has had an extremely long pre-referral disability time of 6 years of not working since the injury in 2002 (Per Dr. H note 8/6/07). Additionally, the injured worker has significant obesity and heart disease which are not work related and again suggest a poor chance of success for the program in making meaningful change in the work related condition (Dr. K 6/19/07 and Dr. G-V 1/20/05). At this time, the chronic pain management program is considered not medically necessary and therefore the previous denial is upheld.

Texas Labor Code Section 408.021 provides that 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. Section 401.011(22-a) defines health care reasonably required as “health care that is clinically appropriate and considered effective for the injured employee’s injury and provided in accordance with best practices consistent with: (A) evidence based medicine; or (B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community.” “Evidence based medicine” is further defined, by Section 401.011(18-a) as the use of the 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.

In accordance with the above statutory guidance, the Division of Workers' Compensation has adopted treatment guidelines by Division Rule 137.100. This rule directs health care providers to provide treatment in accordance with the current edition of the *ODG*, and such treatment is presumed to be health care reasonably required as defined in the Texas Labor Code. Thus, the focus of any health care dispute starts with the health care set out in the *ODG*.

**The ODG criteria for the general use of multidisciplinary pain management programs are as follows:**

Outpatient pain rehabilitation programs may be considered medically necessary when all of the following criteria are met:

- (1) Patient with a chronic pain syndrome, with pain that persists beyond three months including three or more of the following: (a) Use of prescription drugs beyond the recommended duration and/or abuse of or dependence on prescription drugs or other substances; (b) Excessive dependence on health-care providers, spouse, or family; (c) Secondary physical deconditioning due to disuse and/or fear-avoidance of physical activity due to pain; (d) Withdrawal from social knowhow, including work, recreation, or other social contacts; (e) Failure to restore preinjury function after a period of disability such that the physical capacity is insufficient to pursue work, family, or recreational needs; (f) Development of psychosocial sequelae after the initial incident, including anxiety, fear-avoidance, depression or nonorganic illness behaviors; (g) The diagnosis is not primarily a personality disorder or psychological condition without a physical component;
- (2) The patient has a significant loss of ability to function independently resulting from the chronic pain;
- (3) Previous methods of treating the chronic pain have been unsuccessful and there is an absence of other options likely to result in significant clinical improvement;
- (4) The patient is not a candidate for further diagnostic, injection(s) or other invasive or surgical procedure, or other treatments that would be warranted;
- (5) An adequate and thorough multidisciplinary evaluation has been made, including pertinent diagnostic testing to rule out treatable physical conditions, baseline functional and psychological testing so follow-up with the same test can note functional and psychological improvement;
- (6) The patient exhibits motivation to change, and is willing to decrease opiate dependence and forgo secondary gains, including disability payments to effect this change;

(7) Negative predictors of success above have been addressed;

The IRO reviewer concluded that the Claimant did not meet the criteria as outlined in the *ODG* for the pain management program recommended. Dr. M, a licensed clinical psychologist, evaluated the Claimant specifically to determine if he was a candidate for pain management. She testified that the Claimant did meet the criteria for psychological and physical rehabilitation through the pain management program and that the Claimant would benefit from the recommended course of treatment. Dr. M addressed each of the criteria as set out in the *ODG* when making her assessment. The IRO reviewer expressed concerns with regard to the Claimant's psychological condition and noted Dr. B's (the RME doctor) diagnosis of "personality disorder schizoid in nature, long standing since childhood." Claimant's depression/psychological conditions have been found to be part of the compensable injury and no other doctor has made such a diagnosis as Dr. B. The Claimant is significantly obese but he testified that he does not suffer from heart disease as noted by the IRO. The IRO reviewer concluded that the Claimant did not meet the *ODG* criteria, however, Dr. M testified that the Claimant did meet the *ODG* criteria, she explained how the Claimant met each criterion and she relied on evidence-based medicine as provided in the *ODG* for the basis of her opinion that the pain management program was medically necessary to treat the Claimant's compensable injury. Dr. M's testimony was credible and it does not appear that the IRO reviewer relied on particularly credible medical records when rendering the adverse decision. Under the Act, treatment provided pursuant to the *ODG* is presumed to be health care reasonably required as mandated by the above-referenced sections of the Texas Labor Code. The preponderance of the credible medical evidence is contrary to the IRO decision. Claimant has met the *ODG* criteria for interdisciplinary pain management.

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. Claimant sustained a compensable injury on \_\_\_\_\_.
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. The Claimant does meet the criteria outlined in the *ODG* for participation in an interdisciplinary chronic pain management program.
4. The requested 80 hours of interdisciplinary chronic pain management program is 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 contrary to the decision of the IRO that the Claimant is not entitled to 80 hours of interdisciplinary chronic pain management program for the compensable injury of \_\_\_\_\_.

## DECISION

Claimant is entitled to 80 hours of interdisciplinary chronic pain management program 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. Accrued but unpaid income benefits, if any, shall be paid in a lump sum together with interest as provided by law.

The true corporate name of the insurance carrier is **WC SOLUTIONS** and the name and address of its registered agent for service of process is

**JERRY EDWARDS  
1004 MARBLE HEIGHT DR.  
MARBLE FALLS, TX 78654**

Signed this 8th day of January, 2009.

Carol A. Fougerat  
Hearing Officer