

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**  
**300 West 15<sup>th</sup> Street, Ste. 502**  
**Austin, TX 78701**

**SOAH DOCKET NO. 453-02-3672.M2**  
**MDR Tracking No. M2-02-0618-01**

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| <b>NEUROMUSCULAR INSTITUTE OF</b>    | ‘ | <b>BEFORE THE STATE OFFICE</b> |
| <b>TEXAS,</b>                        | ‘ |                                |
| <b>PETITIONER</b>                    | ‘ |                                |
| <b>V.</b>                            | ‘ |                                |
|                                      | ‘ | <b>OF</b>                      |
| <b>TEXAS WORKERS’ COMPENSATION</b>   | ‘ |                                |
| <b>COMMISSION AND LIBERTY MUTUAL</b> | ‘ |                                |
| <b>FIRE INSURANCE COMPANY,</b>       | ‘ |                                |
| <b>RESPONDENTS</b>                   | ‘ | <b>ADMINISTRATIVE HEARINGS</b> |

**DECISION AND ORDER**

Neuromuscular Institute of Texas (Petitioner) appealed the decision of the Texas Workers’ Compensation Commission’s (Commission) designee, an independent review organization (IRO), which denied preauthorization for a chronic pain management (CPM) program for a workers’ compensation claimant (Claimant). The Petitioner’s request for the CPM had been denied by Liberty Mutual Fire Insurance Company (Carrier) as not being medically necessary healthcare. This decision finds preauthorization for the CPM should be granted.

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

There were no contested issues of jurisdiction, notice or venue. Therefore, those issues are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing in this matter convened December 3, 2002, at the State Office of Administrative Hearings, 300 W. 15<sup>th</sup> Street, Austin, Texas, with Administrative Law Judge (ALJ) Kerry D. Sullivan presiding. The Petitioner was represented by its attorney, Hector Q. Martinez. The Carrier was represented by its attorney, Shannon P. Butterworth. The Commission chose not to participate in the hearing. The record closed at the conclusion of the hearing on December 3, 2002.

**II. DISCUSSION**

**A. Legal Standards**

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 Texas Workers’ Compensation 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). The decision of an IRO is to be given presumptive weight. 28 TAC §133.308(v).

Certain types of healthcare, including chronic pain management programs require preauthorization from the carrier. 28 TAC § 134.600(h).

## **B. CPM Criteria**

The Petitioner requested preauthorization for the CPM in January 2002, days after the repeal of the Commission's 1996 Medical Fee Guideline (MFG), effective January 1, 2002. Nevertheless, the parties referred to the guideline as if it remained an appropriate source for guidance pertaining to appropriate considerations for admission to a chronic pain management program. Additionally, the Commission's former Mental Health Guideline (MHG) supplemented the MFG with specific referral criteria for a CPM program. *See* 28 TAC § 134.1000(i)(3)(B) (West 2002)(repealed by statute effective January 1, 2002). As addressed in the discussion below, the ALJ found the Commission's former MFG and MHG criteria relevant to this case.

Under the 1996 MFG, chronic pain syndrome was defined as “any set of verbal or nonverbal behaviors that involves the complaint of enduring pain; differs significantly from the injured worker’s premorbid status; has not responded to previous appropriate medical, surgical, and/or injection treatments; and interferes with the injured worker's physical, psychological, social, and/or vocational functioning” The MFG provided that the admission criteria for a CPM program must allow participation by persons who have chronic pain syndrome who are likely to benefit from the program and who are not prohibited from participation by medical, psychological, or other conditions. The MHG required consideration of the patient's global assessment of function (under 90 with any psycho-social stressor); failure to respond to outpatient physical therapy or mental health treatment; pain behavior that disrupts daily living activities; threat of significant and permanent loss of functioning requiring major readjustments; pain well beyond expected tissue healing time; and risk of development of an excessively disabled lifestyle, including inability to work.

## **C. Claimant’s Medical History and Summary of Evidence**

The Claimant was injured on \_\_\_\_\_, with a repetitive or cumulative trauma disorder while working for \_\_\_\_\_. She was evaluated by a chiropractor. A conservative therapy program was implemented followed by a series of five surgical interventions including bilateral carpal tunnel surgery and bilateral cubital surgery. The Claimant, however, continued to experience pain.

Further conservative therapy treatments were applied on the Claimant’s neck, upper back, arms, and shoulders. These treatments included injections, a series of ten weekly biofeedback and personal counselling sessions, and post surgical exercise and work conditioning.

On December 19, 2001, the Claimant underwent a psychological evaluation by Lin Sutton, Ph.D., L.P.C., to determine the appropriateness of a Chronic Pain Management Program. Dr. Sutton concluded the Claimant “constantly has a high complaint of pain that has persisted longer than the typical time of healing and has felt minimal, brief relief from pain with customary treatment.” Dr. Sutton concluded the Claimant met the criteria for chronic pain syndrome and that she “would greatly benefit from both individual and group psychotherapy portions of” a chronic pain management program. In particular, Dr. Sutton stated that the Claimant would likely benefit from group psychotherapy portions of the program that would allow her to express her feelings of frustration; that she would benefit from stress management techniques and psycho-education

sessions to educate her on her injury, prevention techniques, proper ergonomics, and wellness; that biofeedback sessions would allow her to regulate her physiological changes in times of increased pain levels and stressful events; that the physical exercises would improve her overall health and her cardiovascular system, which is vital to recovery; and the occupational therapy would also aid in increasing the Claimant's functional level and decreasing her pain level. Dr. Sutton found the Claimant to be focussed, motivated, and an excellent candidate for the program. Finally, Dr. Sutton gave the Claimant a general assessment of function (GAF) score of 61.

The Carrier relies on the peer reviews performed by David Bowman, MD, and Kevin Tomsic, MD, both of whom are also chiropractors, as well as the IRO decision. Based on his review of the medical documentation, Dr. Bowman found the requested program was not medically necessary. To the contrary, he observed that the Claimant had undergone extensive chiropractic and physical therapy care. He saw no indication that the requested chronic pain management program would provide any additional benefits beyond that which similar previous treatments had already provided.

Dr. Tomsic likewise observed that the Claimant had already undergone individual treatments of biofeedback, psychotherapy, and physical therapy, which are essentially the elements of a chronic pain management program. He believed the Claimant had adequate opportunity to learn pain-coping techniques and should transition to a home program and utilize the skills she had already learned.

The IRO decision similarly relied on the Claimant's previous treatments in concluding the requested CPM program was duplicative and medically unnecessary.

#### **D. Analysis**

The ALJ joins the parties in continuing to utilize the MFG and MHG for guidance, although they can no longer provide mandatory criteria and procedures.<sup>1</sup> The Guidelines appear to provide a generally accepted definition and set of criteria for CPMs which, in the absence of a replacement guideline, continue to offer helpful guidance in terms of assessing the scope and suitability of a CPM under specific circumstances.

Based on the definitions and criteria found in the Commission's former MFG and MHG, it is apparent that CPM programs are intended for patients whose pain is chronic, debilitating, fails to respond to traditional medical interventions, and extends beyond the usual healing time. It is a

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<sup>1</sup> The Petitioner expressly relied upon these guidelines in presenting its arguments. The Carrier, though disagreeing with the Petitioner's conclusions, did not argue that these guidelines can no longer provide any guidance. The ALJ's approach is also consistent with the decision rendered in SOAH Docket No. 453-03-0076.M2.

multi-disciplinary intervention intended to be used after other approaches have failed.

The ALJ concludes that the preponderance of the credible evidence supports Dr. Sutton's conclusion that the Claimant is a suitable candidate for a CPM program. The Claimant's conditions squarely meet the definitions and criteria set out in the former MFG and MHG. The Claimant's pain has persisted past the usual healing time, has no corresponding pathology to explain it, prevents her from working, and has failed to respond to previous interventions. Her global assessment of function score is also consistent with a medical need for the program. The assessments of Dr. Bowman, Dr. Tomsic, and the IRO to the contrary do not adequately account for the fact that prior failure to respond to outpatient physical therapy or mental health treatment is more appropriately viewed as a prerequisite to Bas opposed to a disqualification from Beligibility for a CPM program.

The Claimant suffers from chronic, debilitating pain that has not responded to multiple types of interventions applied individually. The ALJ finds that the Petitioner met its burden to show that a CPM program is medically necessary healthcare for the Claimant.

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

1. The Claimant was injured on \_\_\_\_\_, with a repetitive or cumulative trauma disorder compensable under the Texas Workers' Compensation Act (Act).
2. At the time of the compensable injury, Liberty Mutual Fire Insurance Company (Carrier) was responsible for the Claimant's workers' compensation insurance coverage.
3. In January 2002, the Claimant's treating doctor referred the Claimant to Neuromuscular Institute of Texas (Petitioner) for a chronic pain management (CPM) program.
4. The Carrier denied the Petitioner's request to preauthorize the Claimant's participation in the CPM program.
5. After the Carrier denied preauthorization as medically unnecessary, the Petitioner requested medical dispute resolution from the Commission. Pursuant to 28 TEX. ADMIN. CODE (TAC) ' 133.308, an IRO selected by the Commission rendered a decision on the medical review dispute.
6. The IRO upheld the Carrier's denial of preauthorization as duplicative of earlier treatment and medically unnecessary.
7. Petitioner timely appealed the IRO decision.
8. Pursuant to a notice of hearing sent by Commission staff, the Petitioner and the Respondent appeared and were represented at the hearing held in this matter on December 3, 2002. The Commission chose not to participate in the hearing.
9. The Claimant suffers from chronic pain, which has no corresponding pathology that would explain the level of pain she reports, and which prevents her from working.

10. The Claimant has undergone a series of five surgical interventions including bilateral carpal tunnel surgery and bilateral cubital surgery. The Claimant, however, continued to experience pain.
11. In addition to the surgical interventions, conservative therapy treatments were applied on the neck, upper back, arms, and shoulders. These included injections, a series of ten weekly biofeedback and personal counselling sessions, and post surgical exercise and work conditioning.
12. The Claimant's pain has persisted longer than the typical time of healing.
13. The Claimant has felt only short-term relief from pain with customary treatment.
14. At the time of the Petitioner's request, the Claimant's global assessment of function score was 61, which is consistent with a need for a CPM program.
15. CPM programs are intended for patients whose pain is chronic, debilitating, unresponsive to outpatient physical therapy or mental health treatment, and without a corresponding physical pathology. A CPM program uses numerous types of interventions in concert to reeducate the patient and permit the acquisition of skills needed to manage chronic pain to the extent necessary to engage in normal activities of daily living.
16. The fact that therapies that are used jointly in a CPM program have not provided complete relief when administered separately is not by itself a disqualification for a CPM program.
17. The Claimant is a suitable candidate for a CPM program.

#### **IV. CONCLUSIONS OF LAW**

18. The Texas Workers' Compensation Commission (Commission) has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (Act), TEX. LABOR CODE ANN. §413.031.
19. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to ' 413.031(d) of the Act and TEX. GOVT CODE ANN. ch. 2003.
20. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOVT CODE ANN. ch. 2001 and the Commission's rules, 28 TEX. ADMIN. CODE (TAC) §133.305(g) and 133.308.
21. Adequate and timely notice of the hearing was provided in accordance with TEX. GOVT CODE ANN. §§2001.051 and 2001.052.
22. Petitioner had the burden of proof in this proceeding. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41.
23. 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).

24. 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).
25. For a carrier to be liable for reimbursement, it must preauthorize a claimant's participation in a chronic pain management program. 28 TAC § 134.600(h).
26. The Petitioner met its burden of proof to show that a chronic pain management program is reasonable and medically necessary healthcare for Claimant.
27. The Petitioner's request for preauthorization for Claimant to participate in its chronic pain management program should be preauthorized.

### **ORDER**

It is ORDERED that Neuromuscular Institute of Texas' request for preauthorization of a chronic pain management program for Claimant is granted.

**SIGNED this 11<sup>th</sup> day of December 2002.**

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**KERRY D. SULLIVAN**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**