STATE OFFICE OF ADMINISTRATIVE HEARINGS
300 West 15th Street, Ste. 502
Austin, TX 78701

SOAH DOCKET NO. 453-03-0076.M2
MDR# M2-02-0590-01

POSITIVE PAIN MANAGEMENT, PETITIONER	§	**BEFORE THE STATE OFFICE**
V.	§	**OF**
TEXAS WORKERS' COMPENSATION COMMISSION AND AMERICAN HOME ASSURANCE COMPANY, RESPONDENTS	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Positive Pain Management (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).[1] Petitioner's request for the CPM had been denied by the American Home Assurance Company (Respondent) 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 October 7, 2002, at the State Office of Administrative Hearings, 300 W. 15th Street, Austin, Texas, with Administrative Law Judge (ALJ) Ann Landeros presiding. Petitioner was represented by its attorney, Peter Rogers. Respondent was represented by its attorney Dan Kelley. The Commission chose not to participate in the hearing. By agreement of the parties, the record was left open for submission of written evidence and argument. After receipt of the written submissions, all the parties' exhibits were admitted into the record, which closed October 11, 2002.

II. DISCUSSION

A. Background Facts

In_____, Claimant fell and injured her shoulder, back, and neck, injuries which were compensable under the Texas Workers' Compensation Act (Act). At the time of the compensable injuries, Respondent was responsible for Claimant's workers' compensation insurance coverage.

[1] The MDR docket number was M2-02-0590-01.

Claimant has not returned to work since the injury.

In January 2002, Claimant's treating doctor, Paul Wright, D.C., referred her to Petitioner's CPM program and requested Respondent preauthorize that service. After Respondent denied preauthorization as medically unnecessary, Petitioner requested medical dispute resolution from the Commission. Pursuant to 28 TEX. ADMIN. CODE (TAC) § 133.308, the request was handled by an IRO selected by the Commission. The IRO reviewer, a chiropractor, upheld Respondent's denial of preauthorization, stating:

> The medical record documentation reveals that the patient has undergone an extensive course of treatment that has included manipulation, physical therapy, bursae injections, trigger point injections medications, neuromuscular stimulator, cryo unit, and 29 work hardening program visits. The patient's work hardening program included elements of a chronic pain management program including group counseling and biofeedback.
>
> Entrance criteria for a chronic pain management program includes whether the patient will benefit from the program. According to TWCC 1996 Medical Fee Guidelines, p. 40, entrance criteria includes "persons who are likely to benefit from the program design." In light of the patient's history of treatments related to the ___ work-related injury and his [sic] lack of response to care, it is not likely that the patient will benefit from a program of chronic pain management.

Petitioner timely appealed the IRO decision.

B. Legal Standards

Petitioner has the burden of proof in this proceeding. 28 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). 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).

C. Claimant's Medical History

According to the summary submitted to the IRO by Petitioner, Claimant had the following diagnostic tests:

Test	Date

X-ray	06/07/01
MRI-cervical	07/24/01
EMG/NCV	07/26/01
EMB/NCV	11/15/01
CT scan-head	02/08/01

The summary further stated Claimant had: 45 physical therapy sessions, ending in March 2002; 29 work hardening visits, ending October 2001; and four injections of different types (bursae, nerve block, and trigger point), in July and October 2001. Claimant also used a neuro-muscular stimulator and a water circulation pump in connection with unspecified treatments. (Exh. 1, pp. 3-4). She is not a candidate for surgery.

In September 2001, Claimant underwent a functional capacity evaluation, which showed she was functioning at a sedentary physical demand level, could only meet 55% of her work classification requirements, and could not safely lift objects over 5 pounds. (Exh. 1, p. 62). In November 2001, after noting Claimant's conservative care consisted of passive modalities, active therapies, therapeutic exercise, and work hardening, Dr. Wright wrote:

> This patient has been off work for an extended period of time and reports feeling frustrated and depressed because her condition has filed to respond favorably. . .It is my professional opinion that [Claimant] should undergo psychological evaluation and be considered for a multidisciplinary pain management program in order to help her more fully recover from her injuries, reach maximum medical improvement (MMI) and return to work as a healthy, productive employee. . . .(Exh. 2, p. 19).[2]

According to her psychological evaluation report by Petitioner's psychologist, Julie Duncan, Ph.D., Claimant had biofeedback and group therapy as part of the work hardening program. (Exh. 1, p. 87). In that report, dated January 15, 2002, Claimant reported persistent severe pain that was adversely affecting her activities of daily living, her marriage, and her finances. Her activity level was estimated at 63% of her pre-injury level. She has used Skelaxin, Zanaflex, Naproxen, Esgic-Plus, Anergic, and Celebrex medications. Due to her pain, she sought medical treatment at the emergency room three or four times within the preceding year, as well as having four to seven offices visits with her physician or chiropractor in the preceding six months. According to Dr. Duncan's report, Claimant's husband seemed to be both reinforcing her "pain behavior" by showing extra concern when she reported pain. At the same time, her husband criticized her because her pain has made their life difficult. Claimant reported feeling guilty about not controlling her pain and fearing reinjury. The evaluation found Claimant to be moderately depressed with a global assessment of function (GAF) of 50. (Exh. 1, p. 90-91). Dr. Duncan concluded:

[2] Petitioner's Submission of Additional Documents was admitted into the record as Exhibit 2.

> This patient is having obvious difficulties in coping. She complains of severe pain that is chronic. She has poor coping skills and there is emotionality that is secondary to her physical pain complaints. It is apparent in this case that she is going to need to be exposed to and participate in an intensive treatment experience. Attempts at individual modalities utilized singly will not be effective. (Exh. 1, p. 90).

In January 2002, Alan Meril, M.D., examined Claimant and diagnosed her with chronic neck and lumbar radicular syndrome. (Exh.1, p. 93).

At the hearing, Petitioner's director of physical rehabilitation, Arash Sarabi, D.C., testified that Claimant's perceived pain appeared to be, in large part, psychological in origin and that all appropriate physical therapies had already been tried without success. Dr. Sarabi agreed with Dr. Wright that Claimant's physical condition, based on objective findings, did not explain the degree of pain she reported. Claimant's GAF of 50 indicated to Dr. Sarabi that she needed intensive care. He opined that the biofeedback and group therapy administered in the work hardening program were ineffective because work hardening programs do not emphasize coping with psychological pain, and Claimant's problem is largely psychological. Because her pain has lasted well beyond the normal healing time, has not responded to multiple types of therapy, lacks a corollary physical manifestation, and has disrupted Claimant's activities of daily living and kept her from returning to work, Dr. Sarabi believed Claimant needed a CPM program.

D. The Parties' Arguments

Respondent relied on the findings of its utilization reviewer and the IRO reviewer that a CPM program was not medically necessary for Claimant because there was insufficient reason to believe she would benefit from such a program based on her failure to benefit from the biofeedback and group therapy counseling she received in the work hardening program.

Petitioner argued that the IRO reviewer, a chiropractor, was unqualified to render an opinion in this matter. According to Petitioner, only an orthopedic surgeon or a pain management specialist would be qualified to determine whether a CPM program was medically necessary for Claimant. Petitioner emphasized that Claimant's failure to benefit from prior therapies, treatment, and procedures is what qualifies her for a CPM program. A CPM program is intended to be a multi-disciplinary, intensive approach that uses therapies in concert to maximize benefits and effectiveness. Therapies that were ineffective when used alone may achieve results when used in concert with other therapies.

E. CPM Criteria

Although Petitioner requested preauthorization for the CPM in January 2002, just days after the repeal of the Commission's 1996 Medical Fee Guideline (MFG), the MFG's criteria for admission to a chronic pain management program is relevant to this proceeding because Petitioner's expert and the IRO reviewer used the MFG is assessing Claimant's medical need for the program. The ALJ recognized that 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). 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 required the admission criteria for a CPM program 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 looked at the patient's GAF (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.

Based on the medical evidence Petitioner provided, Claimant met all the MFG and MHG criteria for admission into Petitioner's CPM program. She had a GAF of 50. Her pain has prevented her from returning to work and has significantly diminished her activity levels. Her reported pain levels far exceeded those expected from her corresponding physical malady. She was not a candidate for surgery, and group counseling, biofeedback, and work hardening had all failed to relieve her pain significantly.

F. Analysis

The fact that the Commission repealed its MFG and MHG did not change the nature or purpose of CPMs or make the criteria described therein less useful for deciding the suitability of such a program for a particular patient. The repeal simply ended the mandatory use of those guidelines. In this case both Petitioner's experts and the IRO reviewer used the MFG to form their opinions. Because they were both helpful and the basis of the parties' analysis, the MFG and MHG were used by the ALJ as well.

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 (at least in the sense that it restricts the patient from engaging in normal levels of activities of daily living), not responsive to traditional medical interventions, and without a corresponding physical pathology. It is, as Petitioner pointed out in argument, a multi-disciplinary intervention intended to be used after other approaches have failed.

In this case, Claimant is a candidate for a CPM program. Drs. Wright and Sarabi recognized she did not have a physical pathology that would be expected to cause such extreme physical and psychological pain as reported by Claimant. When administered separately to Claimant, neither injections, physical therapy, work hardening, analgesic drugs, group therapy, nor biofeedback have provided sufficient pain relief.

A CPM program is essentially a last step to dealing with chronic pain that has not been treated successfully. It is intended to bring together in an intense program many types of interventions in the hopes that a concentrated effort to reeducate the patient will result in the acquisition of skills needed to manage chronic pain to the extent necessary to engage in normal activities of daily living. The intensity of the application of interventions and the emphasis on psychological treatment distinguishes the CPM program from other types of therapy. The fact that

therapies used jointly in a CPM program did, when administered independently, provide complete relief does not by itself mean a CPM program is not medically necessary.

Based on the record developed in this case, the IRO decision was not supported by the great weight of the evidence. The IRO reviewer did not clearly identify what criteria he used to reach his stated conclusion. In stating that Claimant's "lack of response to care" previously given made it unlikely she would benefit from a CPM program, the IRO reviewer missed the point of a CPM program. Prior failure of multiple interventions is a requirement, not a disqualification, for admission to a CPM program.

The fact that Claimant has a psychological component that needs to be addressed in her recovery does not make her "unlikely to benefit" from a CPM program. Among the types of treatment recognized in the Act and the Commission's rules as appropriate for some injured workers are psychological and psychiatric counseling. A CPM program is recognized approach to treating psychological barriers to recovery.

As was the case with the IRO reviewer in SOAH Docket No. 453-02-3524.M2, this IRO reviewer did not seem to understand that CPM programs are specifically intended to deal with psychological barriers to pain management. In reaching that conclusion, the IRO reviewer ignored the MHG criteria for referral to CPM programs, which stated:

> A subset of patients with chronic or complex medical conditions, such as chronic pain, will not respond to outpatient psychotherapy conducted in conjunction with primary and secondary phases of treatment. These patients will require referral to a treatment program with multidisciplinary, individualized and intensive treatment to deal with the complex mixture of medical and mental problems associated with chronic disability.

Of the criteria listed in the MHG for admission to a CPM program (which was much more detailed that the MFG's discussion), Claimant met the following: a GAF of 40-90; diagnostic findings insufficient to explain the pain; pain which has persisted beyond the normal tissue healing time; a physical impairment greater than expected based on the diagnosed medical condition and treatment; and a documented history of excessive use of healthcare services such as frequent emergency room visits.

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

III. FINDINGS OF FACT

1. In_____, Claimant fell and sustained injuries to her shoulder, neck, and back, injuries compensable under the Texas Workers' Compensation Act (Act).

2. At the time of the compensable injuries, American Home Assurance Company (Respondent) was responsible for Claimant's workers' compensation insurance coverage.

3. In January 2002, Claimant's treating doctor, Paul Wright, M.D., referred her to Positive Pain Management's (Petitioner) chronic pain management (CPM) program.

4. Respondent denied Petitioner's request to preauthorize Claimant's participation in the CPM program.

5. After Respondent denied preauthorization as medically unnecessary, 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 Respondent's denial of preauthorization, stating:

> Entrance criteria for a chronic pain management program includes whether the patient will benefit from the program. According to TWCC 1996 Medical Fee Guideline, p. 40, entrance criteria includes "persons who are likely to benefit from the program design." In light of the patient's history of treatments related to the ___ work-related injury and his [sic] lack of response to care, it is not likely that the patient will benefit from a program of chronic pain management.

7. Petitioner timely appealed the IRO decision.

8. Pursuant to a notice of hearing sent by Commission staff, Petitioner and Respondent appeared and were represented at the hearing held in this matter on October 7, 2002. The Commission chose not to participate in the hearing. By agreement of the parties, the record was left open for submission of written evidence and argument. After receipt of the written submissions, all the parties' exhibits were admitted into the record, which closed October 11, 2002.

9. Claimant suffers from chronic pain, which has no corresponding pathology that would explain the level of pain she reports.

10. Due to her pain, Claimant cannot work.

11. At the time of Petitioner's request, Claimant's global assessment of functioning was 50.

12. Claimant has undergone various types of injections, physical therapy, psychological counseling, biofeedback training, and work hardening, none of which has been able to provide adequate, long-term pain relief.

13. Claimant reported persistent severe pain that was adversely affecting her activities of daily living, her marriage, and her finances. Her activity level was estimated at 63% of her pre-injury level.

14. Claimant uses various medications to deal with her pain.

15. Due to her pain, Claimant sought medical treatment at the emergency room 3 or 4 times within the year preceding her referral to the CPM program, as well as having 4 to 7 offices visits with her physician or chiropractor in the 6 months preceding that referral.

16. Claimant is not a candidate for surgery.

17. CPM programs are intended for patients whose pain is chronic, debilitating (at least in the sense that it restricts the patient from engaging in normal levels of activities of daily living), not responsive to traditional medical interventions, and without a corresponding physical pathology. A CPM program is an intense program that uses of many types of interventions 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.

18. A CPM program is distinguished from other types of programs in the intensity of the application of interventions, not in the types of therapy used.

19. The fact that therapies that are used jointly in a CPM program have not provided complete relief when administered in a less intense fashion is not by itself a disqualification for a CPM program.

20. Claimant is a candidate for a CPM program.

IV. CONCLUSIONS OF LAW

1. 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.

2. 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. GOV'T CODE ANN. ch. 2003.

3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TEX.ADMIN.CODE (TAC) § 133.305(g).

4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

5. Petitioner had the burden of proof in this proceeding. 28 TAC § 148.21(h) and (i); 1 TAC § 155.41.

6. 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).

7. 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).

8. 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).

9. Petitioner met its burden of proof to show that a chronic pain management program is reasonable and medically necessary healthcare for Claimant.

10. Petitioner's request for preauthorization for Claimant to participate in its chronic pain management program should be preauthorized.

ORDER

It is ORDERED that Positive Pain Management's request for preauthorization of a chronic pain management program for Claimant is granted.

SIGNED this 7th day of November 2002.

ANN LANDEROS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS