

NEUROMUSCULAR INSTITUTE OF TEXAS, P.A.,	§	BEFORE THE STATE OFFICE
<i>Petitioner</i>	§	
V.	§	OF
TRANSPORTATION INSURANCE COMPANY,	§	
<i>Respondent</i>	§	ADMINISTRATIVE HEARINGS

### DECISION AND ORDER

The Neuromuscular Institute of Texas, P.A. (Institute) is appealing the decision of the Texas Workers' Compensation Commission's (Commission's) designee, an independent review organization (IRO), which denied preauthorization for 20 sessions of chronic pain management for Claimant \_\_\_\_\_. This decision concludes that preauthorization should not be granted.

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

Administrative Law Judge Katherine L. Smith (ALJ) convened the hearing on January 21, 2003, at the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas. The Institute was represented by Daniel Bradley Burdin, D.C. The Carrier was represented by David Swanson, an attorney. The Commission did not appear. The record closed the day of the hearing. The parties did not contest notice or jurisdiction.

#### **II. BACKGROUND**

Claimant sustained a work-related injury on \_\_\_\_\_, when the tip of his left index finger was crushed in a machine. He underwent reconstruction of the finger tip on March 14 and April 6, 2000. The Institute received preauthorization from Transportation Insurance Company (Carrier) to treat Claimant with 10 sessions of chronic pain management. The Institute requested preauthorization of 20 additional sessions. The Carrier denied the request because the documentation from the 10 sessions failed to show that Claimant benefitted from the chronic pain management program. The IRO found that continuation of the chronic pain management was not medically necessary because Claimant had already received similar services.

#### **III. DISCUSSION**

Dr. Burdin testified that Claimant is disabled and that his injury has put a significant financial strain on Claimant because he has been unable to provide for his family. Although the program would not make Claimant pain free, it would help him manage his pain, decrease his need for pain medication, and help him redirect his thoughts away from hopelessness and not being productive. Dr. Burdin questioned why the program could not be continued for 20 more sessions, which is standard for such a program, when it was benefitting Claimant.

Although the Carrier recognizes that Claimant may have chronic pain, it questions whether that pain is related to the compensable injury, because Claimant is also complaining of carpal tunnel

syndrome, which Carrier asserts is yet to be found to be related to the compensable injury.

In support of its position Carrier relies on the testimony of its expert witness, Samuel L. Bierner, M.D., who questioned the relationship of Claimant's current complaints of reflex sympathetic dystrophy to the compensable injury. Dr. Bierner testified that the medical record indicates that nine months after Claimant's injury the finger had apparently healed and Claimant was reported to have only minor symptoms and sensitivity.

The Carrier also argues that the IRO's decision was correct because the record shows that Claimant had already received occupational therapy, biofeedback, and extensive psychological counseling with modest improvement. Carrier asserts that the chronic pain management would be an inefficient use of health care, because it duplicates services already provided. Moreover, Dr. Bierner testified that the record reflects Claimant derived more benefit from individual counseling, which would be more cost effective, than from the 10 sessions of chronic pain management.

Although Dr. Burdin testified that Claimant benefitted from the program, the ALJ agrees with Dr. Bierner who testified that the notes documenting the 10 sessions were sketchy and contained no objective criteria showing significant or long lasting improvement or changes in Claimant's behavior. According to Dr. Bierner objective documentation would include pinch strength, grip strength, measurements of dexterity, repetitions, peg board tests, and weights lifted, as well as a psychological evaluation. Dr. Bierner also stated that Claimant failed to receive individualized treatment in the program.

Based on the foregoing, the ALJ concludes that 20 additional sessions of chronic pain management should not be preauthorized because the evidence fails to show that Claimant benefitted from the 10 sessions of chronic pain management and because the program is a duplication of services previously provided. The ALJ also concludes that the relationship between Claimant's compensable injury and his chronic pain has not been established.

#### **IV. FINDINGS OF FACT**

1. Claimant \_\_\_\_sustained a work-related injury on\_\_\_\_\_, when the tip of his left index finger was crushed in a machine.
2. At the time of the injury, Claimant's employer,\_\_\_\_\_, had its workers' compensation insurance through Transportation Insurance Company (Carrier).
3. The Neuromuscular Institute of Texas, P.A. (Institute) received permission from the Carrier to treat Claimant with 10 sessions of chronic pain management.
4. The Institute requested preauthorization of 20 additional sessions. The Carrier denied preauthorization because the documentation from the 10 sessions failed to show that Claimant benefitted from the chronic pain management program.
5. The Institute requested medical dispute resolution before the Texas Workers' Compensation Commission (Commission).
6. The Commission's designee, an independent review organization (IRO), denied the request for preauthorization, which was issued on September 6, 2002.
7. The IRO found that continuation of the chronic pain management was not medically

necessary because Claimant had already received similar services.

8. The Institute filed a request for a hearing on September 20, 2002.
9. The Commission sent notice of the hearing to the parties on October 18, 2002. The hearing notice informed the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the statutes and rules involved; and the matters asserted.
10. The relationship between Claimant's compensable injury and his chronic pain was not established.
11. The Institute's documentation contained no objective criteria showing significant or long lasting improvement or changes in Claimant's condition.
12. The Institute's documentation failed to establish that Claimant benefitted from the 10 sessions of chronic pain management already provided.
13. The Institute's chronic pain management program was a duplication of services previously provided to Claimant, including individual counseling, which had been effective.

## **V. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented, pursuant to the Texas Workers' Compensation Act, TEX. LAB. 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 TEX. LAB. CODE ANN. §§ 402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. The Institute timely filed a notice of appeal of the independent review organization decision, as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
4. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE ANN. ch. 2001 and 28 TAC § 148.4(b).
5. The Institute had the burden of proving the case by a preponderance of the evidence, pursuant to 28 TAC § 148.21(h) and (i).
6. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the compensable 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. Based on Finding of Fact No. 10 and Conclusion of Law No. 6, the Institute failed to prove that the chronic pain management program would relieve an effect resulting from the compensable injury.
8. Ground Rule (e)(2)(A) of the Upper Extremities Treatment Guideline, 28 TAC § 134.1002,

establishes that treatment of work related injury must be adequately documented, evaluated for effectiveness, provided in the least intensive setting, objectively measured and demonstrate functional gain, and be cost effective.

9. Based on Findings of Fact No. 11 and 12 and Conclusion of Law No. 8, the Institute failed to prove that the chronic pain management program was adequately documented, objectively measured, and demonstrated functional gains.
10. Based on Finding of Fact No. 13 and Conclusion of Law No. 8, the Institute failed to prove that the chronic pain management program was cost effective and provided in the least intensive setting.
11. Based on the foregoing findings of fact and conclusions of law, the Institute did not meet its burden of proof that its request for preauthorization of 20 sessions of chronic pain management should be granted.

### **ORDER**

It is hereby ordered that the Institute's request for preauthorization of 20 sessions of chronic pain management is denied.

**SIGNED this 19th day of February 2003.**

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**KATHERINE L. SMITH**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARING**