

DOCKET NO. 453-03-0691.M2
[MDR TRACKING NO. M2-02-0738-01]

**TEXAS EVALUATION and
MANAGEMENT SPECIALIST,**
Petitioner

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BEFORE THE STATE OFFICE

V.

OF

**CONTINENTAL CASUALTY
COMPANY,**

Respondent

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Texas Evaluation and Management Specialist (TEMS) is appealing the decision of the Texas Workers' Compensation Commission's (Commission's) designee, an independent review organization (IRO), which denied preauthorization for 30 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 February 11, 2003, at the William P. Clements Building, 300 West 15th Street, Austin, Texas. TEMS was represented by Jacqueline Bostic, an attorney. Continental Casualty Company (Carrier) was represented by Jane Stone, 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 to her lower back on_____, when she slipped on a mopped floor. Gwendolyn E. Whigham, D.C. became Claimant's treating doctor and referred Claimant to TEMS. TEMS requested preauthorization of 30 sessions of chronic pain management. The Carrier denied the request due to lack of medical necessity because Claimant had already received a full course of physical medicine care and because Claimant had reached maximum medical improvement. The IRO found that the chronic pain management was not medically necessary because several components of the recommended program had been previously provided with little or no success.

III. DISCUSSION

Dr. Whigham testified that Claimant was diagnosed with an annular tear at the L5-S1 disc level and that she suffered from lower back pain and radiculopathy causing pain down her right leg. Dr. Whigham, who specializes in pain management, testified that chronic pain management is an individualized treatment program. In Claimant's case, treatment would consist of medication management, individual therapy, massage therapy, biofeedback, physical conditioning, and vocational counseling, which would provide maximum benefit. Although the program may not cure Claimant, the goal is to help her manage her pain, promote her recovery, and enhance her ability to return to work. Dr. Whigham contends out that the IRO decision, which recommended some type of emotional support and vocational counseling, comports with her recommendation. She points out that the IRO only took issue with the physical conditioning and massage therapy. Claimant argues

that TEX. LAB. CODE ANN. § 408.021(a) entitles Claimant to all care that is medically necessary to relieve her injury. Dr. Whigham notes that although Claimant may have received pain management in the past, she has not received chronic pain management, which the Spine Treatment Guideline provides for in the tertiary phase of care once other treatments have failed.

Carrier's main contention is that the possible benefits of the chronic pain management program are far outweighed by the cost of the treatment. Thirty sessions at 4-8 hours a day at a rate of \$250 an hour would cost from \$30,000 to \$60,000. Relying on the testimony of its expert witness, Craig DuBois, M.D., who is a neurologist, Carrier argues that less intensive and costly treatments are available. Dr. DuBois specifically questioned the long-term effectiveness of the chronic pain management program beyond the 30 sessions. Dr. DuBois noted that the record reflects that Claimant has significant emotional factors overlaying the pain process, which could be treated more effectively with several months of psychotherapy and anti-depressant medication. He also recommended further epidural treatments because injection therapy had previously proved successful. Although Claimant may have suffered from water retention, weight gain, and skin discoloration due to the steroids, he suggested that the complications could be addressed by dosage adjustments and the use of newer techniques and agents.

Based on the foregoing, the ALJ concludes that TEMS failed to meet its burden that 30 sessions of chronic pain management are medically necessary at this time. As Dr. DuBois suggests, TEMS seems to be recommending the program as a last-gap measure, when other more expedient and cost effective methods are available. Dr. Dubois recommends long-term psychotherapy, which is echoed by the IRO, which stated that Claimant would benefit from emotional support. Further, more adaptive use of medications, including injections, could benefit the Claimant. Furthermore, Dr. Whigham did not make it clear how Claimant would benefit from the particular combination of each element of the program. Therefore, the ALJ denies preauthorization.

IV. FINDINGS OF FACT

1. Claimant _____. sustained a work-related injury on _____, when she slipped on a mopped floor.
2. At the time of the injury, Claimant's employer had its workers' compensation insurance through Continental Casualty Company (Carrier).
3. Texas and Evaluation Management Specialist (TEMS) requested preauthorization to treat Claimant with 30 sessions of chronic pain management.
4. The Carrier denied the request due to lack of medical necessity because Claimant had already received a full course of physical medicine care and because Claimant had reached maximum medical improvement.
5. TEMS 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 the chronic pain management was not medically necessary because several components of the recommended program had been previously provided with little or

no success.

8. TEMS filed a request for a hearing on September 26, 2002.
9. The Commission sent notice of the hearing to the parties on October 17, 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. Chronic pain management is not the most cost effective and least intensive method of treatment available to Claimant at this time.
11. Claimant would more likely benefit from long term psychotherapy and emotional support and effective use of medications, including injections and anti-depressants.

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. TEMS timely filed a notice of appeal of the IRO 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. TEMS 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. According to TEX. LAB. CODE ANN. § 413.011(d), guidelines for medical service fees are to be fair and reasonable and be designed to ensure the quality of medical care to achieve effective medical cost control.
8. Ground Rule (e)(2)(A) of the Spine Treatment Guideline, formerly 28 TAC § 134.1002, established that treatment of a work-related injury must be, among other criteria, provided in the most appropriate, least intensive setting and be cost effective.
9. Based on Findings of Fact Nos. 10 and 11 and Conclusions of Law Nos. 7 and 8, TEMS failed to prove that the chronic pain management program was cost effective and provided in the least intensive setting.

10. Based on the foregoing findings of fact and conclusions of law, TEMS did not meet its burden of proof that its request for preauthorization of 30 sessions of chronic pain management should be granted.

ORDER

It is hereby ordered that TEM's request for preauthorization of 30 sessions of chronic pain management is denied.

SIGNED this 14th day of March 2003.

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