

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

DOCKET NO. 453-03-0986.M2
[TWCC Medical Review No. M2-02-1197-01]

TRANSCONTINENTAL INSURANCE	§	BEFORE THE STATE OFFICE
COMPANY, <i>Petitioner</i>	§	
	§	
V.	§	OF
	§	
TEXAS WORKERS' COMPENSATION	§	
COMMISSION AND LINH DUY VO, D.O.	§	
<i>Respondents</i>	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Transcontinental Insurance Company (the Carrier) requested a hearing to challenge a decision of the Texas Workers' Compensation Commission's (the Commission) independent review organization (IRO) granting preauthorization for a comprehensive pain management program for an injured worker (the Claimant). The Administrative Law Judge (ALJ) finds that the pain management program is not medically necessary for the Claimant and preauthorization should be denied.

On December 4, 2002, ALJ Georgie B. Cunningham convened the hearing at the William P. Clements Building, 300 West 15th Street, Austin, Texas. Attorney David L. Swanson represented the Carrier. Neither the Commission nor Linh Duy Vo, D.O. participated in the hearing. After determining that notice and jurisdiction were sufficient, the hearing proceeded with the presentation of the Carrier's evidence. The hearing was closed on the same day.

I.
DISCUSSION

The Claimant injured his lumbar spine, right hip, knee, and foot in a job-related accident on _____.¹ Between the date of the Claimant's injury and the date of the IRO decision, the Claimant received care from numerous doctors. His treatment has included an arthroscopy of the knee, physical therapy, extended chiropractic care, multiple diagnostic tests, work hardening, and various medication. On March 8, 2001, a designated doctor determined that the Claimant had reached MMI with a 10 percent impairment rating after noting that he displayed symptom magnification and submaximal effort.

On July 22, 2002, Mike O'Kelley, D.C. reviewed the Claimant's medical records following

¹ The first report of injury indicates the Claimant fell while he was carrying building materials on a roof, and the roofing material fell on him or with him. Subsequent medical records indicate he fell from the roof or from a ladder.

Dr. Vo's request for preauthorization for 20 sessions of a pain management program. Dr. O'Kelley noted that the Claimant is four years post-injury and may have resolved to the maximum extent possible. According to Dr. O'Kelley, the Claimant has exhausted all the physical therapy, exercises or conditioning contained in a pain management program and likely would not benefit. Based on Dr. O'Kelley's assessment, the Carrier denied the preauthorization.

After Dr. Vo requested a reconsideration, Derek A. Martin, D.C. reviewed the medical records and likewise concluded that the program was not medically necessary. He made similar observations and added documentation was not provided to meet the requirements of the *Spine Treatment Guideline* and the *Lower Extremities Treatment Guideline* (the *Guidelines*).² Specifically, he stated that documents did not show whether the complaints of pain were physical or psychological in nature, provide an assessment of past or possible treatments, indicate whether the need for treatment is related to the compensable injury, or discuss the need for treatment.

After the second denial, Dr. Vo requested an independent review by the Commission's IRO. On October 11, 2002, the IRO issued its statement of review disagreeing with the Carrier's denial based on the following reasons: (a) the Claimant is suffering from severe depression; (b) the Claimant has exhausted other avenues of treatment; (c) with his age and limited educational background, the Claimant likely needs vocational retraining; and (d) documentation meets the criteria for a pain management program.

At the hearing, the Carrier's expert witness who specializes in pain management, Craig R. Dubois, M.D., provided details about what constitutes a pain management program. Dr. Dubois had observations similar to those of Drs. O'Kelley and Martin and further noted that the Claimant probably needed suitable pain medication and an antidepressant prescribed. The chiropractors who had been treating the Claimant may have lacked the expertise necessary to get the Claimant on a good prescription regimen. Although the pain management program might make the Claimant feel better briefly, he likely would not be able to achieve long-term benefits. Dr. Dubois acknowledged that the Claimant needed treatment, but suggested appropriate prescriptions and vocational counseling would be more appropriate and much less expensive.

The ALJ concludes that the Carrier presented sufficient evidence to rebut the IRO finding, which was not supported by any evidence. The great weight of the evidence here is that the Claimant would not benefit from the pain management program. Instead, the Claimant's needs could be met more cost effectively through proper medical intervention and vocational counseling. Accordingly, the ALJ denies the preauthorization of a pain management program for the Claimant. Additional findings of fact in support of the denial are reflected below.

II. FINDINGS OF FACT

1. On _____, _____ (the Claimant) sustained a work-related injury to his lumbar spine, right hip, knee, and foot.

² The *Guidelines* were found at 28 TEX. ADMIN. CODE §§ 134.1002 and 134.1003 prior to their repeal.

2. At the time of the Claimant's injury, Transcontinental Insurance Company (the Carrier) provided workers' compensation insurance to the Claimant's employer.
3. Linh Duy Vo, D.C. requested preauthorization for Claimant to participate for 20 sessions in a chronic pain management program.
4. The Carrier denied Dr. Vo's request for preauthorization for the Claimant to participate in the chronic pain management program.
5. Dr. Vo requested that an Independent Review Organization (IRO) reassess the Carrier's denial.
6. On October 11, 2002, the IRO issued its statement of review disagreeing with the Carrier's denial based on the following reasons: (a) the Claimant is suffering from severe depression; (b) the Claimant has exhausted other avenues of treatment; (c) with his age and limited educational background, the Claimant likely needs vocational retraining; and (d) documentation meets the criteria for a pain management program.
7. On October 16, 2001, the Carrier filed a request for a hearing to contest the IRO's findings.
8. On November 6, 2002, the Texas Workers' Compensation Commission (the Commission) sent a hearing notice informing the parties of the matter to be determined, the right to appear and be represented by counsel or assisted by the Commission's ombudsman, the time and place of the hearing, and the statutes and rules involved.
9. On March 8, 2001, a designated doctor determined that the Claimant had reached MMI with a 10 percent impairment rating after noting that he displayed symptom magnification and submaximal effort.
10. The Claimant is _____ years post-injury.
11. Numerous doctors have provided the Claimant rehabilitation services and treatment including an arthroscopy of the knee, physical therapy, extended chiropractic care, multiple diagnostic tests, work hardening, various medication, and psychological care.
12. A pain management program is an intense, multi-disciplinary program.
13. Additional physical therapy, exercises, and conditioning would not likely help the Claimant.
14. The Claimant's severe depression would likely improve from having appropriate antidepressants and pain medication prescribed by a medical doctor.
15. A pain management program does not provide vocational counseling.
16. Vocational counseling is available from other sources.
17. Dr. Vo did not provide objective documentation illustrating his evaluation of the Claimant or the Claimant's need for the services.

18. Dr. Vo did not demonstrate that the pain management services would be provided in the most appropriate, least intensive setting and be cost effective.

III. 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. § 413.031 and TEX. GOV'T CODE ANN. ch. 2003.
3. The Carrier timely filed notice of its appeal, as required by 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 Carrier had the burden of proving its case by a preponderance of the evidence, pursuant to 28 TAC § 148.21(h) and (i).
6. As provided by TEX. LAB. CODE ANN. § 413.014 and 28 TAC § 134.600(h)(10), preauthorization is required for a pain management program.
7. As required by TEX. LAB. CODE ANN. § 408.025, the treating doctor did not demonstrate that the pain management program would provide efficient utilization of health care services for the injured worker.
8. The Carrier established that the request for preauthorization did not show that the Claimant's participation in a chronic pain management program would cure or relieve the effects naturally resulting from his compensable injury, promote his recovery, or enhance his ability to return to work, as specified in TEX. LAB. CODE ANN. § 408.021(a).

ORDER

It is hereby ordered that preauthorization for 20 sessions in a pain management program requested by Linh Duy Vo, D.C. for J.H.L. is denied.

SIGNED this 3rd day of January, 2003.

**GEORGIE B. CUNNINGHAM
Administrative Law Judge
STATE OFFICE OF ADMINISTRATIVE HEARINGS**